

CHELAN COUNTY

DEPARTMENT OF HEARING EXAMINER

316 WASHINGTON STREET, SUITE 301
WENATCHEE, WASHINGTON 98801

BEFORE THE CHELAN COUNTY HEARING EXAMINER

| | | |
|--------------------------|---|-------------------------------|
| IN THE MATTER OF: |) | FINDINGS OF FACT, |
| AA 2022-235 |) | CONCLUSIONS OF LAW AND |
| Wagman |) | DECISION ON |
| |) | ADMINISTRATIVE APPEAL |

I. FINDINGS OF FACT

1. The Applicant submitted an Administrative Appeal to appeal the denial of a short-term rental permit as an existing non-conforming short-term rental.
2. The Appellant/owners are Lewis and Kelly Wagman. Their agent is Matthew S. Hitchcock of Gatens Green Weidenbach.
3. The subject property is currently used as an existing short-term rental and was granted a provisional permit pending full review. The site address is 126 Maple St., Leavenworth, WA 98826. The legal description is MAPLE TRACTS LOT 6 AMENDED 1.0000 ACRES. The Parcel No. is 24-17-02-696-060.
4. The applicant submitted an Existing Non-Conforming Short-Term Rental Application on November 15, 2021 to continue use as a short-term rental (STR). The Applicant was issued a provisional permit pending full review. The final short-term rental permit has been denied as the portion of the parcel on which the STR lies is in the Urban Growth Area (UGA) of Leavenworth.
5. Pursuant to Chelan County Code Section 11.88.290 (2)(C)(iv), The board of Chelan County commissioners adopts the cities of Cashmere, Chelan, Entiat, Leavenworth, and Wenatchee land use regulations, development standards and land use designations, as they apply to short-term or vacation rentals of fewer than thirty consecutive nights or days, within the county adopted unincorporated urban growth area respecting each city as it is now or is hereafter amended for the cities of Cashmere, Chelan, Entiat, Leavenworth, and Wenatchee; provided, that any city regulation requiring acquisition of a business license is not adopted nor incorporated as a county regulation and that instead a conditional use permit may be required, and the county's review procedures in this section must control.
 - 5.1 Upon the date of the adoption of this code on September 27, 2021, any existing short-term rentals within the exterior boundaries of any city's designated urban growth area (UGA) are required to have been in full legal compliance with any existing city codes

adopted through prior resolution by the county as they applied to short-term rental uses within that UGA.

- 5.2 If a short-term rental use is operating in violation of the existing county-adopted city codes for that UGA the rental must immediately cease all operation of that use on the date of adoption of this chapter. A property operating in violation of existing city UGA land use regulations has no legal existing nonconforming status as a short-term rental.
- 5.3 All existing nonconformance claims within a UGA will be subject to joint review by the county and the affected city.
- 5.4 New short-term rental applicants will be required to comply with the most current city regulations for short-term rental use for each city UGA, which are herein adopted and incorporated under subsection (2)(C)(iv) of this section upon adoption of this code chapter, including if any UGA code prohibits new or continued existing short-term rentals in those zones.
6. On November 15, 2021, materials were received for an Existing Non-Conforming Short-term Rental Permit. Applicant was granted a provisional STR permit November 15, 2021, pending full review.
7. On May 13, 2022, application materials were scanned and sent to Lilith Vespier, AICP in Leavenworth for joint review.
8. On May 13, 2022, Chelan County Community Development received joint review response from Lilith Vespier, AICP.
9. On May 16, 2022, the letter denying final permit for Existing Non-Conforming status was sent to applicant.
10. On May 26, 2022, the administrative appeal (AA-22-235) was filed with Chelan County Community Development with the associated application fees.
11. The notice of public hearing was posted on June 24, 2022.
12. The property in question is located at 12685 Maple St., Leavenworth, WA 98826.
13. Code 11.88.290 (4)(D)(ii) states: Application for or issuance of any provisional short-term rental permit does not guarantee future issuance of a short-term rental administrative land use permit under subsection (4) of this section. The provisional permit is intended to be temporary and is only in effect while the department reviews all permits applications for compliance with all Chelan County regulations, including this chapter, for the 2021 and 2022 permit years before issuance or denial of issuance of a short-term rental administrative land use permit. This single (4)(D)(ii) provision ceases to exist on December 31, 2022.
14. Code 11.88.290 (2)(C)(iv)(b) states: All existing nonconformance claims within a UGA will be subject to joint review by the county and the affected city. Applicants' submission materials were scanned and sent to Lilith Vespier, AICP in Leavenworth for joint review on May 13, 2022.

15. Response was received from Ms. Vespier May 13, 2022, noting that the access onto the property is in the RR5 zoning but the main portion of the parcel where the STR lies is in the RL 10 zoning; STRs are not allowed in that zoning. Ms. Vespier indicated the owner could have a B&B there but not an STR.
16. Applicant's permit is not allowed because the Leavenworth UGA does not permit STRs in RL 10 zoning.
17. On May 16, 2022, a letter was sent to applicant notifying them of the denial of Existing Non-Conforming Status.
18. On May 23, 2022, the property manager sent the STR Manager a link to a February 11, 2019 hearing examiner decision from the Maple Street Plat Alteration, PA 2018-355, in which there was a determination that the Wagman's parcel was not in the UGA.
19. GIS mapping shows the access area of the parcel is not in the UGA, but the majority of the parcel is in the UGA, which is where the proposed STR lies.
20. On May 24, 2022, the STR manager responded to the property manager and Kelly Wagman stating that the provided materials had been reviewed and letting them know the denial decision would stand.
21. On May 26, 2022 an appeal request was received from the applicant and associated fees paid.
22. Chelan County Code Section 14.12.010: Administrative appeals:
 - (1) An administrative appeal to the hearing examiner shall be filed with the department within ten working days of the issuance of the decision appealed, together with the applicable appeal fee.
 - (2) The notice of appeal shall contain a concise statement identifying:
 - (A) The decision being appealed; (B) The name and address of the appellant and his/her interest(s) in the application or proposed development; (C) The specific reasons why the appellant believes the decision to be erroneous, including identification of each finding of fact, each conclusion, and each condition or action ordered which the appellant alleges is erroneous. The appellant shall have the burden of proving the decision is erroneous; (D) The specific relief sought by the appellant; (E) The appeal fee.
23. After due legal notice, an open record public hearing was held via Zoom video conference on July 7, 2022.
24. Admitted into the record were the following:
 - 24.1 AA 22-235 Application Materials;
 - 24.2 Screen shots of GIA mapping showing parcel zone and UGA;
 - 24.3 May 16, 2022 denial of permit application issued by Chelan County Department of Community Development;
 - 24.4 All materials relied upon by Chelan County in issuing the May 16, 2022 denial letter;
 - 24.5 Declaration of Matthew Hitchcock in support of Petitioner's Administrative Appeal dated June 30, 2022, with exhibits A-I;
 - 24.6 July 5, 2022 letter from Matthew Hitchcock to the Hearing Examiner;

- 24.7 All noticing documents;
 - 24.8 Staff Report dated June 24, 2022;
 - 24.9 May 26, 2022 appeal letter from Matthew Hitchcock on behalf of the property owners;
 - 24.10 Exhibits A and B to the staff report.
25. Appearing and testifying at the hearing was Matthew Hitchcock. Mr. Hitchcock stated he was the agent of the Applicants and property owners and was authorized to appear on their behalf. Mr. Hitchcock testified consistent with his appeal materials. Mr. Hitchcock's primary position was that this was a split zoning lot and that the structure being used for the short-term vacation rental is not within the Leavenworth Urban Growth Area, and is located in Chelan County's RR-5 zoning district where short-term rentals are permitted. Alternatively, the Applicant argues that, in summary, the Applicant's STR permit should be granted pursuant to the Chelan County Code.
26. The Hearing Examiner expressly finds that Chelan County, both by its own research and through the representations by Lilith Vespier of the City of Leavenworth, properly determined that the structure is located within the Urban Growth Area on property that is zoned RR-10 by the City of Leavenworth. Short-term rentals are prohibited in City of Leavenworth RR-10 designated zoning districts. Therefore, this short-term rental permit was properly denied.
26. Any Conclusion of Law that is more correctly a Finding of Fact is incorporated herein as such by this reference.

II. CONCLUSIONS OF LAW

1. The Hearing Examiner has been granted authority to render this Decision.
2. Chelan County Code Section 11.88.290 (2)(C)(iv) states: The board of Chelan County commissioners adopts the cities of Cashmere, Chelan, Entiat, Leavenworth, and Wenatchee land use regulations, development standards and land use designations, as they apply to short-term or vacation rentals of fewer than thirty consecutive nights or days, within the county adopted unincorporated urban growth area respecting each city as it is now or is hereafter amended for the cities of Cashmere, Chelan, Entiat, Leavenworth, and Wenatchee. Provided, that any city regulation requiring acquisition of a business license is not adopted nor incorporated as a county regulation and that instead a conditional use permit may be required, and the county's review procedures in this section must control.
 - 2.1 Upon the date of the adoption of this code on September 27, 2021, any existing short-term rentals within the exterior boundaries of any city's designated urban growth area (UGA) are required to have been in full legal compliance with any existing city codes adopted through prior resolution by the county as they applied to short-term rental uses within that UGA.
 - 2.2 If a short-term rental use is operating in violation of the existing county-adopted city codes for that UGA the rental must immediately cease all operation of that use on the date of adoption of this chapter. A property operating in violation of existing city UGA land use regulations has no legal existing nonconforming status as a short-term rental.

- 2.3 All existing nonconformance claims within a UGA will be subject to joint review by the county and the affected city.
- 2.4 New short-term rental applicants will be required to comply with the most current city regulations for short-term rental use for each city UGA, which are herein adopted and incorporated under subsection (2)(C)(iv) of this section upon adoption of this code chapter, including if any UGA code prohibits new or continued existing short-term rentals in those zones.
3. The structure in which the Applicant is operating the short-term rental is within the Leavenworth Urban Growth Area and is zoned by the City of Leavenworth as RR-10.
4. Short-term rentals are prohibited in the City of Leavenworth RR-10 zoning districts.
5. Any Finding of Fact that is more correctly a Conclusion of Law is incorporated herein as such by this reference.

III. DECISION

WHEREFORE, based upon the above Findings of Fact and Conclusions of Law, the Hearing Examiner finds that the denial be **AFFIRMED** because the applicants do not qualifying for this status based on CCC 11.88.290 and joint review with Leavenworth and finding short-term rental business activity is not allowed in the zone in which the property is located within the Leavenworth UGA.

Dated this 11 day of July, 2022.

CHELAN COUNTY HEARING EXAMINER



Andrew L. Kottkamp

This decision is subject to appeal pursuant to the Chelan County Code. Appeals must be timely filed. Anyone considering an appeal of this decision should seek immediate legal advice.