

BEFORE THE CHELAN COUNTY HEARINGS EXAMINER

IN THE MATTER OF

VAR 22-031

Slimp

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FINDINGS OF FACT,
CONCLUSIONS OF LAW,
CONDITIONS OF APPROVAL
AND DECISION

THIS MATTER, having come on before the Chelan County Hearing Examiner on November 16, 2022. The Hearing Examiner having taken evidence hereby submits the following Findings of Fact, Conclusions of Law, Decision and Conditions of Approval as follows:

I. FINDINGS OF FACT

1. This is an application for a variance submitted for a reduction of one of the front yard setbacks from 55 ft. to 32 ft. from the centerline of the Unopened Entiat Avenue Right-of-Way (ROW) in order to construct the replacement single-family residence with attached garage 7 ft. from the eastern property line on the subject property line. The buildable area on the subject property is limited due to the narrow lot size, the 5 ft. side yard setback from the neighboring parcel to the west, the presence of Lake Wenatchee and its associated 50 ft. 'urban' shoreline buffer, the presence of the 55 ft. front yard setback from the centerline of N. Shore Drive located north of the subject parcel and the 55 ft. front yard setback from the centerline of the unopened Entiat Avenue ROW to the subject property.
2. The Applicants/owners are Joshus and Karshawn Slimp, 17759 N Shore Dr., Leavenworth, WA 98826.
3. The project location is 17759 N Shore Dr., Leavenworth, WA.
4. The parcel number of the subject property is 27-16-14-700-420.
5. The legal description of the subject property is: Lot 1, Block 19 Mountain Park and is 0.21 acres (9,147.6 sf).
6. The subject property is located outside of an Urban Growth Area.
7. The Comprehensive Plan and zoning designations are Rural Waterfront (RW).
8. The property currently has an existing single-family residence with garage.
9. The property slopes away from N. Shore Dr. down to the shoreline of Lake Wenatchee at an approximate 18% grade.
10. The property to the north is N. Shore Drive and is zoned Rural Waterfront.
11. The property to the south is Lake Wenatchee.

12. The property to the east and west is zoned Rural Waterfront.
13. The applicant submitted an Aquifer Recharge Disclosure Form, date stamped January 25, 2022, and is not located within a wellhead protection area.
16. Pursuant to the Washington State Department of Fish and Wildlife Priority Habitat Species Maps, the subject property does not contain priority habitat.
17. Pursuant to the Federal Emergency Management Agency (FEMA), panel number 530015750B of the FIRM maps, there is no floodplain on the subject property. Therefore, the provisions of Chelan County Code (CCC), Chapter 11.84, Frequently Flooded Areas Overlay District and CCC, Chapter 3.20, Flood Hazard Development, do not apply.
18. According to the Chelan County GIS geo hazard and contours layers, the property does contain geological hazards for erodible soils. Therefore, the provisions of Chelan County Code Chapter 11.86 Geologically Hazardous Areas Overlay District, do apply to this development and a geological assessment would be required at building permit submittal.
19. Pursuant to RCW 27.53, if the applicant or their agents discover previously unknown historic or archaeological remains/artifacts while conducting permitted development activities, the applicant/agent shall immediately stop work and notify the appropriate tribal and state representatives and the Chelan County Department of Community Development of the finding for local, state and tribal coordination.
20. Construction Phasing: Construction would begin upon issuance of all necessary permits.
21. Traffic Circulation: The subject property is accessed by N. Shore Dr.
22. Domestic Water: Water to the subject property is supplied by on-site well.
23. Power: Chelan County PUD provides electrical services to the subject property.
24. Sanitation: Sanitation would be supplied by on-site septic systems.
25. Power: Chelan County PUD.
26. Noise: The development must comply with CCC, Chapter 7.35 Noise and RCW 70.107.
27. Visual impacts: Visual impacts would be limited to views from the adjacent properties.
28. The application materials were submitted on January 25, 2022.
29. The Notice of Application was referred to surrounding property owners within 300 ft. (excluding 60 ft. of right-of-way), jurisdictional agencies and departments of the County.
30. The Notice of Public Hearing was provided on November 3, 2022
31. The following individuals submitted written public comments:
 - 31.1 David and Dianne Mirabel.

- 31.2 Richard Bailor.
 - 31.3 Raeanne Bailor.
 - 31.4 Kellen Manhart.
 - 31.5 Kimberly Manhart.
32. The following agencies provided comment:
- 32.1 Department of Archeology and Historic Preservation.
 - 32.2 Department of Ecology.
 - 32.3 Chelan County Department of Public Works.
 - 32.4 Confederated Tribes of the Colville Reservation.
 - 32.5 Chelan County Fire Marshall.
33. Pursuant to WAC 197-11-800(6)(b), variance requests that do not result in an increase in density are categorically exempt from the environmental review process.
34. The Comprehensive Plan has been reviewed. Specifically, the goals and policies related to the Rural Element. Section IV describes that the purpose of the RW land use designation is:
- ‘this designation will provide the opportunity for the development, redevelopment and infill of existing intensely developed shoreline areas for residential, and water related/water dependent recreational and tourist development consistent with the rural character and rural development provisions outlined in the goals and policies of this comprehensive plan. These areas provide a distinct water related lifestyle. Potential impacts to the surrounding areas, and water quality shall be addressed. These areas must be clearly identifiable as existing intensely developed rural shoreline; where a logical boundary can be delineated and set by the built environment. Such a boundary shall not permit or encourage a new pattern of sprawling low density or urban type development.
- Uses appropriate for these areas include: open space and developed open space; residential; agriculture; and forestry. Additional uses may be considered with supplemental provisions. These provisions shall address performance standards, impacts to the surrounding area, and be consistent with the goals and policies of the comprehensive plan. Such uses may include: intensification of existing development or new development of small-scale water related/water dependent recreational or tourist uses, including commercial facilities to serve those recreational or tourist uses, that rely on rural location or setting but that does not include a new residential component; intensification of development on lots containing existing isolated nonresidential uses; home occupations; bed and breakfasts; and community facilities.
- 34.1 Hearing Examiner Finding: The emphasis of RW land uses is on low intensity rural development. Stated in the Rural Element Goal 1, the Chelan County Comprehensive Plan seeks to establish a balance between property use and protection of the natural environment. Policies in the Rural Element generally support avoidance and mitigation of impacts to critical areas.
35. Chelan County Code, Section 11.16.020 Standards.

Standard	RW
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Standard	RW
Minimum Lot Size	12,000 sq ft
Minimum Lot Width	75' at the front building line
Maximum Lot Coverage	35%
Maximum Building Height	35'
Setback: Front	25' from front property line/ 55' from centerline of the ROW
Setback: Rear	20' from rear property line
Setback: Side	5' from side property line

36. Chelan County Code, Chapter 11.95 Variances - 11.95.030 Evaluation criteria:

36.1 No variance shall be granted unless it can be shown that all of the following conditions exist:

36.1.1 The variance is necessary for the preservation of a property right of the applicant substantially the same as is possessed by owners of other property in the same neighborhood or district and shall not constitute a grant of a special privilege.

36.1.1.2 The applicant is requesting a zoning variance from an unopened right-of-way and N. Shore Dr. to facilitate construction of a new single-family residence on the property.

36.1.1.3 Hearing Examiner Finding: The proposed single-family residence would be of similar size and design as the surrounding residences. Therefore, this variance would not constitute a special privilege.

36.1.2 The plight of the applicant is due to unique circumstances such as topography, lot size or shape, or size of buildings, over which the applicant has no control.

36.1.2.1 The plight of the applicant is due to the narrow lot size, the presence of Lake Wenatchee to the south, the assigned 50 ft Urban shoreline buffer, the presence of a 55 ft front yard setback from the Unopened Entiat Avenue ROW to the southeast, the presence of N. Shore Dr. and its 55 ft front yard setback along the northern parcel boundary, and the 5 ft side yard setback from the neighboring parcel to the west.

36.1.2.2 Hearing Examiner Finding: The plight of the applicant is due to the lot size and shape, which create a relatively small buildable area of which the applicant has no control.

36.1.3 The hardship asserted by the applicant is not the result of the applicant's or the owner's action.

- 36.1.3.1 The hardship is the result of the physical constraints of the parcel and the strict application of the chapter, which limits development within 55 ft of the centerline of the Unopened Entiat Avenue ROW. The requested variance to the front yard setback is required in order to build the single-family residence with attached garage as far from Lake Wenatchee and property lines as possible while still allowing utilization of the parcel for its intended purpose as a residential property. Many properties along N Shore Dr have constructed single-family residences with attached garages and other residential structures within 7 ft of the front property line and within 32 ft from the ROW centerline due to the lack of any suitable alternative building location based on existing topography and encumbrances.
- 36.1.3.2 Hearing Examiner Finding: The hardship does not appear to be the result of the owner's actions.
- 36.1.4 The authorization of the variance shall not be materially detrimental to the public welfare and safety, to the purposes of this title, be injurious to property in the same district or neighborhood in which the property is located, or be otherwise detrimental to the objectives of the comprehensive plan.
- 36.1.4.1 The authorization of this variance would not be materially detrimental to the purpose of Title 11. This variance would promote the goals and objectives of Title 11 and the Comprehensive Plan. The proposed development for a single-family residence is similar to other uses and structures within the same zoning district and neighborhood. CCC Chapter 11.04 District Use Chart, permits single family residence within the RW zoning District.
- 36.1.4.2 Many properties along N Shore Dr have constructed single-family residences with attached garages and other residential structures within 7 ft of the front property line and within 32 ft from the ROW centerline due to the lack of any suitable alternative building location based on existing topography and encumbrances.
- 36.1.4.3 Hearing Examiner Finding: The authorization of these front yard and rear yard variances would promote the development of the property for the new single-family residence. The development would not be injurious to property in the same neighborhood in which the development is located. The authorization of this variance would promote the goals and objectives of Title 11 and comprehensive plan
- 36.1.5 The hardship asserted by the application results from the application of this title to the property.
- 36.1.5.1 The hardship facing the applicant is related to application of CCC Section 11.14.050, which limit development within 25 ft from the front property line or 55 ft from the centerline of the ROW, whichever is greater. The setback overlaps with buildable area available on the property due to the presence of other existing constraints including

Lake Wenatchee and its associated 50 ft 'urban' shoreline buffer to the South, the 5 ft side yard setback from the neighboring parcel to the West and the presence of a 55 ft front yard setback from N Shore Dr to the North.

36.1.5.2 Hearing Examiner Finding: The hardship is a result of the application of the Chelan County Code to the subject property based on the property specific conditions, which does not factor in historically platted parcels

37. An open record public hearing was held via Zoom on November 16, 2022.
38. The staff report, application materials, agency comments and the entire file of record were admitted into the record.
39. Appearing and testifying for the Applicant was Ryan Walker. Mr. Walker testified that he was an agent authorized to appear and speak on behalf of the property owner and Applicant. Mr. Walker indicated that he was in agreement with the representations set forth in the staff report and had no objection to any of the proposed Conditions of Approval except as follows:
- 39.1 Regarding proposed Condition of Approval No. 18, add "unless approved by Chelan County".
 - 39.2 Regarding proposed Condition of Approval No. 19, he stated the unopened right-of-way is not intended to be a driveway. He indicated the Applicant agreed that they would not have exclusive access to this unopened right-of-way.
 - 39.3 Regarding proposed Condition of Approval No. 21, Mr. Walker argued that this is not related to the variance application and should be removed.
 - 39.4 Proposed Condition of Approval No. 22 has already been satisfied.
40. Testifying from the public were the following individuals:
- 40.1 Kimberly Manhart.
 - 40.2 Dan Rieke.
 - 40.3 Raeanne Bailor.
 - 40.4 Richard Bailor.
 - 40.5 David Mirabell.
 - 40.6 Josh Slimp. Mr. Slimp is the Applicant/property owner and testified after the public testimony was concluded. He indicated that there would be no variance needed for North Shore Drive or from the shoreline.
41. The Applicant requested that proposed Condition of Approval No. 21 be removed because it is not a part of this variance application. The Applicant is correct. Proposed Condition of Approval No. 21 read "the Applicant shall remove the existing boathouse/shed within the Entiat Avenue right-of-way". This boathouse and shed are not part of this variance application. The boathouse and shed may be infringing upon County right-of-way. However, if this is the case, this intrusion may be resolved by a separate action.
42. The Chelan County Hearing Examiner considered all evidence within the record in rendering this decision.

43. 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. As conditioned, the proposed use is consistent with the intent, purposes and regulations of the Chelan County Code and Comprehensive Plan.
3. The proposed variance would not be contrary to the intent or purposes and regulations of either the Chelan County Code or the Comprehensive Plan.
4. This proposal complies with the Comprehensive Plan, the zoning code and other land use regulations.
5. Any Finding of Fact that is more correctly a Conclusion of Law is hereby incorporated as such by this reference.

III. DECISION

Based upon the above noted Findings and Fact and Conclusions of Law, VAR 22-031 is hereby **APPROVED**, subject to the following Conditions of Approval.

IV. CONDITIONS OF APPROVAL

1. All conditions imposed by this decision shall be binding on the applicant, which includes the owner or owners of the properties, heirs, assigns, and successors.
2. The development shall follow the Chelan County Zoning Resolution, in addition to all other applicable local, state and federal regulations.
3. The development shall proceed in substantial compliance with the application and site plan of record date stamped January 25, 2022.
4. Pursuant to CCC Section 11.95.050, in any case where a variance is granted under the terms of this title, no building or other permit shall be issued until after the end of the appeal period allowed in Title 14 of this code. An appeal of the decision shall automatically stay the issuance of building or other permits until such appeal has been completed.
5. Pursuant to CCC Section 11.95.060, the granting of a variance and the conditions set forth runs with the land; compliance with conditions of the variance is the responsibility of the currently owner of the property, whether that is the applicant or a successor.
6. Pursuant to CCC Section 11.95.080, a variance shall become void three years after approval if no substantial construction has taken place or such other time period as established by the Hearing Examiner.
7. Pursuant to CCC Section 11.02.040, prior to commencement of construction, the applicant shall obtain all required and necessary building permits.

8. Pursuant to CCC Section 11.86.020, a geologic site assessment shall be required at the time of building permit application.
9. Pursuant to CCC Section 11.88.190, no construction activity shall be permitted within one thousand feet of an occupied residence between the hours of 8:00 p.m. to 6:00 a.m., Monday through Friday, and 8:00 p.m. to 7:00 p.m. on weekends.
10. Pursuant to RCW 27.53.060, if the applicant or their agents discover previously unknown historic or archaeological remains/artifacts while conducting the development activities authorized by this permit, the applicant/agent shall immediately notify the appropriate tribal, state representatives and the Chelan County Department of Community Development of the finding for local, state and tribal coordination.
 - 10.1. An inadvertent discovery plan must be submitted with the building permit application and kept on-site during all land disturbing activities.
11. Chelan County is not responsible for notification or enforcement of covenants or deed restrictions affecting use or title. Any permits issued does not acknowledge or recognize any covenants or deed restrictions or reservations that may be burden or otherwise affect this property. Applicant/owner assumes all risks and liability for any claims and liabilities for covenants or deed restrictions or reservations.

Chelan County Fire Marshal

12. The proposal/development shall conform to all applicable requirements of the International Fire Code and Chelan County Code administered by the Chelan County Fire Marshal.
13. The minimum fire flow and flow duration requirements for one and two-family dwellings have a fire-flow calculation area which does not exceed three thousand six hundred square feet shall be seven hundred fifty gallons per minute. Fire flow and flow duration for dwellings having a fire-flow calculation area in excess of three thousand six hundred sq ft shall not be less than that specified in Table B105.1(1) of the IFC, except that reduction in required fire flow of fifty percent, as approved, is allowed when the building is provided with an approved with an approved automatic sprinkler system.
14. The Fire Marshal may modify Fire-flow requirements downward by applying fire protection credits for isolated buildings or a group of buildings in rural areas or small communities where the development of full fire-flow requirements is impractical. Applicant is encouraged to contact this office to ascertain how the attached fire protection credits option apply to their development.
15. New hoes shall have approved address numbers, building numbers or approved building identification placed in a position that is plainly legible and visible from the street or road fronting the property. The design of the proposed sign shall be submitted to the Fire District and/or Fire Marshal for approval prior to installation.
16. Class A roofing/noncombustible roof covering, as defined in the International Building Code, shall be used in all areas of Chelan County.

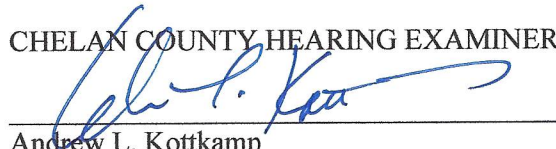
Chelan County Public Works

17. The applicant shall execute and record a 'Hold Harmless' agreement relieving the county of any liability for damage done to their property or structures due to the county's maintenance and repair work (including snow plowing).
18. No work shall be done within the unopened ROW of Entiat Avenue unless approved by Chelan County. This includes removal of trees of brush,

19. The applicant shall not use Entiat Avenue as their personal driveway, nor block access to the public use of the ROW.
20. The applicant shall obtain a Chelan County Access Permit from Public Works.
21. The applicant shall place permanent surveyed property corner markers on all corners boarding county ROW (along N Shore Dr and Entiat Avenue).

Dated this 18 day of November, 2022.

CHELAN COUNTY HEARING EXAMINER


Andrew L. Kottkamp

Anyone aggrieved by this decision has twenty-one (21) days from the issuance of this decision to file an appeal with Chelan County Superior Court, as provided for under the Judicial Review of Land Use Decisions, RCW 36.70C.040(3). The date of issuance is defined by RCW 36.70C.040(4)(a) as “(t)hree days after a written decision is mailed by the local jurisdiction or, if not mailed, the date on which the local jurisdiction provides notice that a written decision is publicly available” or if this section does not apply, then pursuant to RCW 36.70C.040(3)(c)” ..the date the decision is entered into the public record.” Anyone considering an appeal of this decision should seek legal advice.

Chelan County Code Section 1.61.130 provides that any aggrieved party or agency may make a written request for reconsideration by the Hearing Examiner within ten (10) days of the filing of the written record of decision. The request for reconsideration shall be submitted to the Community Development Department. Reconsideration of the decision is wholly within the discretion of the Hearing Examiner. If the Hearing Examiner chooses to reconsider, the Hearing Examiner may take such further action deemed proper and may render revised decision within five (5) days after the date of filing of the request for reconsideration. A request for reconsideration is not a prerequisite to filing an appeal under Section 1.61.160.

The complete case file, including findings, conclusions, and conditions of approval (if any) is available for inspection during the open office hours at Chelan County Department of Community Development. Their address is 316 Washington Street, Suite 301, Wenatchee, WA 98801. Their telephone number is (509) 667-6225.