

**CHELAN COUNTY**

**DEPARTMENT OF HEARING EXAMINER**

316 WASHINGTON STREET, SUITE 301  
WENATCHEE, WASHINGTON 98801

**BEFORE THE CHELAN COUNTY HEARING EXAMINER**

**IN THE MATTER OF:**

AA 2022-466  
Adler Bach LLC

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**FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
DECISION ON  
ADMINISTRATIVE APPEAL**

**I. FINDINGS OF FACT**

1. The Applicant submitted an Administrative Appeal of the denial of a Tier 1 short-term rental permit.
2. The Appellant/property owner is Adler Bach, LLC, c/o Dallas and Judith Meggitt. Their agent is Clay Gatens of Gatens, Green & Weidenbach, PLLC.
3. The subject property had previously been used as an unpermitted short term rental. The Applicant was denied a Tier 2 permit, and has now been denied a Tier 1 permit. The project location is 20 and 24 Adler Bach Ln, Leavenworth, WA 98826. The legal description is T 25N R 18EWM S 29 NWSW, LOT 1 SP 3544, LOT 1 SP 1957, 2.0400 ACRES, and the parcel number is 25-18-29-300-024.
4. The applicant submitted a Tier 1 Short-Term Rental Application on July 18, 2022. The applicant was issued a provisional permit pending full review. The application was placed on hold as the applicants already had a Tier 2 application in process for the same parcel. The Tier 2 STR permit was denied based on the parcel having a main dwelling, an ADU, and the owners not living onsite per Chelan County Code (CCC) 11.88.200. The Tier 1 application was then also denied as the owners do not reside on the parcel.
6. The Tier 2 application was denied on August 9, 2022.
7. CCC 11.88.200(5) in reference to ADUs states: The property owner (which shall include title holders and contract purchasers) shall occupy either the primary unit or the accessory unit as their permanent residence.
8. Per the appeal decision regarding AA 22-340, the highly restricted ownership of one unit of Adler Bach, LLC by Evan Garcia and Sarah Caracciolo, does not constitute "owner occupied" as set forth and intended by the Chelan County Code.

9. After the Tier 2 denial the applicant continued to rent on the provisional permit they had been issued for the Tier 2 application. That provisional permit expired September 26, 2022. The applicant has continued to rent unlawfully without permit.
10. August 9, 2022, an email was sent by staff to Mr. Meggitt to clarify the owner's intent for the property. A return email was received stating, "It is our intent to operate a Tier 1 Short Term Rental with owner residing on the property. The owners reside at 20 Adler Bach Lane, Leavenworth."
11. As the application submitted July 18, 2022 did not resolve the property owner (including contract purchaser) living onsite, the Tier 1 application was denied without collection of the fee from the applicant as it was inconsistent with County code by not meeting required criteria.
12. On November 8, 2022, a letter was sent to the applicant notifying them of the denial of the Tier 1 STR permit.
13. On November 21, 2022, the administrative appeal (AA 22-466) was filed with Chelan County Community Development with the associated application fees.
14. 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.
15. After due legal notice, an open record public hearing was held via Zoom video conference on December 7, 2022.
16. Admitted into the record were the following:
  - 16.1 AA 22-466 Application and Appeal Materials;
  - 16.2 October 3, 2022 Declaration of Dallas Meggitt, with attachments;
  - 16.3 October 3, 2022 Declaration of Evan Garcia;
  - 16.4 October 3, 2022 Declaration of Sarach Caracciolo;
  - 16.5 December 6, 2022 letter from Clay Gatens, attorney for Appellants, to the Hearing Examiner;
  - 16.6 December 12, 2022 Declaration of Dallas Meggit with attachments;
  - 16.7 Denial letter of permit application for Tier 1 Short-Term Rental dated November 8, 2022.
  - 16.8 Staff Report.



17. Appearing at the hearing on behalf of the Appellant was Clay Gatens. Mr. Gatens did not provide any testimony, but argued consistent with the written materials on file. At no time during Mr. Gatens' presentation did Mr. Gatens advise the Hearing Examiner that the subject property at 20 Adler Bach Lane was no longer occupied by anyone. At no time up to, and during the hearing, did Mr. Gatens advise the Hearing Examiner that neither Evan Garcia or Sarach Caracciolo currently resided at 20 Adler Bach Lane.
18. After the Appellants' presentation, the County submitted evidence that 20 Adler Bach Lane is currently unoccupied and that the Appellant was seeking new tenants for this property.
19. At the request of the Appellant, and based upon this evidence by the County, the Hearing Examiner kept the record open until December 15, 2022, to give the Appellant time to submit their response to the County's evidence that 20 Adler Bach Lane is currently unoccupied.
20. The Appellants submitted responsive materials on December 13, 2022. The Hearing Examiner then closed the record on December 13, 2022.
21. The October 3, 2022 declarations submitted by the Appellant in support of their appeal in AA 2022-466 did not contain accurate information as to the current occupancy of 20 Adler Bach Lane. These declarations were submitted as proof that Sarach Caracciolo and Evan Garcia currently reside at 20 Adler Bach Lane. This information turned out to be inaccurate in relation, at least, to the date of the hearing. The Appellant must have known that 20 Adler Bach Lane was not occupied as of the date of the hearing. The October 3, 2022 declarations were clearly intended by the Appellant to be relied upon by the Hearing Examiner in considering this appeal. At no time during the December 7, 2022 hearing did the attorney for the Appellant correct the factual misrepresentation as to the current occupancy of 20 Adler Bach Lane. The Hearing Examiner is not finding that the Appellant's attorney knew of the occupancy status of 20 Adler Bach Lane as of the date of the hearing.
22. Nevertheless, the Applicant led the Hearing Examiner to believe that the ADU was, as of the date of the hearing rented to long term tenants, Evan Garcia and Sarah Caracciolo, who are, were, or may be, owners of one unit of Adler Bach, LLC.
23. With the presentation of the December 12, 2022 declaration signed by Mr. Meggitt, the Hearing Examiner is convinced that 20 Adler Bach Lane is currently unoccupied. Since it is not occupied by anyone, including any owner, the Appellants' Tier 1 short term permit application was correctly denied.
24. 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. CCC 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.


3. CCC 11.88.200(5) in reference to ADUs states: The property owner (which shall include title holders and contract purchasers) shall occupy either the primary unit or the accessory unit as their permanent residence.
4. CCC 11.88.290 (3)(A)(ii) states: A short-term rental owner may operate only one short-term rental per parcel as designated on their permit application form, which may be in either the primary dwelling or the accessory dwelling unit but not both.
5. The Applicants' application for a Tier 1 short term rental permit was appropriately denied because the owner does not occupy, as their primary residence, either of the dwelling units on the subject property.
6. 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 is **AFFIRMED**.

Dated this 14 day of December, 2022.

CHELAN COUNTY HEARING EXAMINER

  
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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.**