

BEFORE THE CHELAN COUNTY HEARINGS EXAMINER

IN THE MATTER OF

VAR 22-399
Rehnfeldt

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FINDINGS OF FACT,
CONCLUSIONS, DECISION
AND CONDITIONS OF
APPROVAL

THIS MATTER, having come on before the Chelan County Hearing Examiner on December 7, 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 to reduce the required front yard setback of the subject property for the future construction of a single-family home. The variance request is to reduce the required 20 ft. building setback from the front line of the property to 8 ft. The subject property is located within the Urban Residential 2 (UR 2) zoning district within the Manson Urban Growth Area.
2. The Applicant/owners are Stefan and Jennifer Rehnfeldt, 10420 226th Place SW Edmonds, WA 98020.
3. The project location is 84 Division Street, Manson WA 98831.
4. The parcel number of the subject property is 28-21-35-696-738.
5. The legal description of the subject property is: Parcel A as described on Stokes Short Plat No. 474, recorded August 1, 1979, under Auditor's File No. 803121, being a rerecording of instrument recorded October 31, 1978, under Auditor's File No. 793119, being a portion of Tract 75, Plat of City of Manson, Chelan County, Washington, according to the plat thereof, recorded in Volume 3 of Plats, page 32. EXCEPTING THEREFORM the Northerly 15 feet as conveyed to Chelan County by deed recorded October 27, 1978, under Auditor's File No. 792974, of Parcel A of Stokes Short Plat No. 474.
6. The proposed development is within the Manson Urban Growth Area.
7. The Comprehensive Plan designation is Urban Residential 2 (UR-2).
8. The zoning designation is Urban Residential 2 (UR-2).
9. The property is currently used for residential purposes and has an existing 632 sq. ft. residence that was built in 1998, and a small above ground swimming pool. The residence will remain as an ADU and the pool will also remain.
10. The property is fairly flat with a lawn, small above ground pool, a house and asphalt parking.

11. The site size is .2 acres (8,500sf).
12. The property to the north is Division Street ROW and is zoned Urban Residential 2 (UR-2).
13. The property to the south, east and west are single-family residences and is zoned Urban Residential 2 (UR-2).
14. The Aquifer Recharge is exempt pursuant to Chelan County Code Section 11.82.060(2)(A).
15. Pursuant to the Washington State Department of Fish and Wildlife Priority Habitat and Species Maps, the subject property contains no species or habitats of concern. Therefore, the provisions of CCC Chapter 11.78, Fish and Wildlife Habitat Conservation Areas Overlay District do not apply.
16. Pursuant to the National Wetlands Inventory Map prepared by the US Department of Fish and Wildlife Services, the subject property does not contain wetlands. Therefore, the provisions of CCC Chapter 11.80, Wetlands Overlay District do not apply.
17. The subject property is not within jurisdiction of the CCSMP. Therefore, the provisions of the CCSMP do not apply.
18. Pursuant to FEMA Flood Map Panel #5300150225A, the subject property is not within identified flood hazard. Therefore, the provisions of CCC Chapters 11.84 Frequently Flooded Areas Overlay District and CCC 3.20 Flood Hazard Development do not apply.
19. Pursuant to CCC Chapter 11.86, the subject site contains erosive soils. Therefore, the provisions of CCC Chapter 11.86 Geologically Hazardous Areas Overlay District do apply.
20. Although the proposed development lies in an area with no historic or prehistoric sites, the Hearing Examiner sets as a Condition of Approval that an inadvertent discovery plan is required at time of building permit submittal. Pursuant to RCW 27.53.020, full cooperation among the Department of Archaeology and Historic Preservation and other agencies is required to ensure information regarding the possible impact of construction activities on the state's archaeological resource is maintained. The Hearing Examiner requires that notification of any artifacts that are uncovered or discovered during the development of the proposed variance.
21. Traffic Circulation: The subject property is accessed directly from Division Street.
22. Construction Phasing/Timing: Construction would commence once the variance is approved and a building permit is issued.
23. Water: The subject property would be provided water by the Lake Chelan Reclamation District.
24. Sanitation: Existing sewer provided by Lake Chelan Reclamation District.
25. Power: Chelan County PUD.

26. Fire protection: The property is located within Chelan County Fire District #5.
27. Noise: Similar to other residential uses along Division Street. The development must comply with CCC, Chapter 7.35 Noise and RCW 70.107.
28. Visual impacts: Similar to other residential uses. The proposed residence shall be placed on the property similar to other residential structures in the area.
29. The Notice of Application was referred to surrounding property owners within 300 feet (excluding 60 feet of right-of-way), jurisdictional agencies and departments of the County. These agencies and surrounding property owners were notified on October 25, 2022, with comments due November 8, 2022. Agency comments are considered in this decision and, when appropriate, made Conditions of Approval. No public comments were received.
30. The following are agencies that were notified:

Agencies Notified	Response Date	Nature of Comment
Confederated Tribes of Colville	10/25/2022	No archaeological sites have been recorded to date. The typical conditions shall be applied, that an inadvertent discovery plan will be required at time of building permit submittal.
Chelan County Assessor		No comment received.
Chelan County Fire Marshal	11/07/2022	Fire Marshal has no comments for this variance.
Chelan County Public Works	10/28/2022	Public Works has no issue with allowing the setback variance. The applicant shall record a "Hold Harmless" agreement with the County 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).
Fire District #5		No comment received.
Manson Community Council		No comment received.
WA State Dept. of Archaeology and Historic Preservation		No comment received.
Yakama Nation		No comment received.

Washington State Dept of Fish & Wildlife	11/04/2022	WDFW does not have any concerns regarding this variance.
Lake Chelan Reclamation District		No comment received
Chelan County PUD		No comment received.

31. 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.
32. The application materials were submitted on October 3, 2022.
33. A Determination of Completeness was issued on October 18, 2022.
34. The Notice of Application was provided on October 25, 2022.
35. The Notice of Public Hearing was provided on December 7, 2022.
36. The Comprehensive Plan has been reviewed. Specifically, the goals and policies related to the Urban Residential 2 (UR2) for consistency with the proposed development which permits residential uses.
37. Chelan County Comprehensive Plan, Appendix F, Manson Urban Growth Area, page 196, states the primary and preferred land use of the Urban Residential 2 (UR2) shall be *"single-family and multi-family housing at a density of up to eight dwelling units per acre"*.
 - 37.1 Land Use goal LU-1: Achieve an efficient use of land in and around the Manson community, preserving existing agriculturally-designated land, reducing urban sprawl and retaining Manson's natural-resource based rural and open-space character.
 - 37.2 Policy LU-1-C: Establish incentives to promote infill development within the existing UGA.
 - 37.3 The Hearing Examiner finds that the project, as conditioned, is consistent with the Comprehensive Plan.
38. Chelan County Code, Chapter 11.04 District Use Chart:
 - 38.1 The proposed development is associated with the UR2 zoning district, which allows residential and accessory structures as a permitted use.
 - 38.2 The proposed use is consistent with Chelan County Code.
39. Chelan County Code, Section 11.23.040 Standards:
 - 39.1 All development in this zone shall meet the applicable provisions of the CCC, including, but without limitation the following:
 - 39.1.1 Front yard: 20 ft. from the front property line.
 - 39.1.2 Rear yard: 20 ft. from the rear property line.
 - 39.1.3 Side Yard: 5 ft. from the side property line.
 - 39.1.4 Maximum Lot Coverage: 65%

- 39.1.5 Maximum Building Height: 35 feet.
- 39.2 The applicant is requesting to reduce the required front yard setback of 20 ft. from the front property line to 8 ft. from the front property line. The applicant seeks this reduction in order to construct a new residence.
- 39.3 Hearing Examiner Finding: By reducing the front yard setback, the applicant would have enough room on the property to construct a residential dwelling unit that is comparable in size and also in distance from the right-of-way to residential structures on adjacent properties.
40. Chelan County Code, Chapter 11.95 Variances - 11.95.030 Evaluation criteria:
- 40.1 No variance shall be granted unless it can be shown that all of the following conditions exist:
- 40.1.1 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.
- 40.1.1.1 Applicant Response: The variance will allow us to construct a house that will be no closer than other properties on the same street. There are several houses close to, or within the county right of way. See examples of existing structures.
- 40.1.1.2 The applicant is requesting to reduce the front yard setback from Division Street in order to construct a single-family dwelling. The applicant is burdened by a right- of-way dedication (Warranty Deed #2441600) that is not required by adjacent properties. The right-of-way dedication for the subject property is not shown on the Chelan County Assessors GIS maps. There are properties further east on Division Street that also have right-of-way dedications, and at least two of them have structures built within the front yard setback. There are also properties located along Division Street without the right-of- way dedication that appear to have dwellings within the front yard setback. Staff used the Chelan County GIS maps to approximate some of the surrounding setbacks: 20 Division Street: Approximately 16' front yard setback (no right-of-way dedication) 64 Division Street: Approximately 16' front yard setback (no right-of-way dedication), 245 Division Street: Approximately 0' front yard setback - there appears to be both a pool and a structure on the property line. (15' of right-of-way dedication shown on Chelan County GIS map), 10 Stormy Vista Lane: Approximately 8' to Division Street. (15' right-of-way dedication).
- 40.1.1.3 Hearing Examiner Finding: The residence will fit the existing character and surrounding setbacks of the neighborhood. The front yard variance request would not constitute a special privilege since several neighboring properties are built with a similar reduced front yard setback.
- 40.1.2 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.

- 40.1.2.1 Applicant's Response: The County ROW dedication effectively cuts 15' off the lot. That along with the 20' setback requirement leaves less than half of the 100' property depth and renders the lot un-constructible.
- 40.1.2.2 Hearing Examiner Finding: Due to the existing right-of-way dedication of 15', per Warranty Deed #2441600, the buildable area of the property is reduced more than adjacent properties. The right-of-way dedication is not shown on the County GIS maps. Further to the east of the subject property along Division Street there is a short section of right-of-way that is shown as 60' on County GIS maps. There are two lots that appear to have structures within the front yard setback along this section of Division Street. The plight of the applicant is due to circumstances beyond their control. Without the front yard setback reduction, the subject property would not contain sufficient area to build the desired structure.
- 40.1.3 The hardship asserted by the applicant is not the result of the applicant's or the owner's action.
 - 40.1.3.1 Applicant's Response: The County ROW is an existing condition for which we had no control.
 - 40.1.3.2 Hearing Examiner Finding: Lot sizes in the area are typically larger in size than the subject property. The proposed reduced setbacks would not negatively affect the neighboring properties since some adjacent properties currently have structures within the front yard setback. Adjacent properties do not have the 15' right of way dedication, therefore the neighboring lots have more buildable space. The hardship does not appear to be the result of the owner's actions. The plight of the applicant is due to a previously recorded 15' right-of-way dedication that is not an encumbrance that exists on neighboring lots.
- 40.1.4 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.
 - 40.1.4.1 Applicant's Response: The authorization of the variance has no bearing on public safety or welfare or the objectives of the comprehensive plan.
 - 40.1.4.2 Hearing Examiner Finding: The authorization of this variance would not be materially detrimental to the purpose of Title 11; this variance would be consistent with goals and objectives of Title 11 and the Comprehensive Plan. The proposed development for a residential structure is similar to other uses and structures within the same zoning district and neighborhood. The District Use Chart in CCC Section 11.23.030 permits Single-Family Dwellings and Accessory Dwelling Units within the UR2 zoning district. The issuance of the front yard variance would not be injurious to properties in the general vicinity.

40.1.5 The hardship asserted by the application results from the application of this title to the property.

40.1.5.1 Applicant's Response: Yes, the County ROW materially affects the use of the land. We relied on previous property surveys when we designed the house which made no mention of the ROW.

40.1.5.2 Hearing Examiner Finding: Per CCC Section 11.23.040, a front yard setback of 20 ft. from the front property line is required. The hardship is a result of the application of the CCC to the subject property. The 15' of right of way dedication and the smaller size of the lot make it difficult to build within required setbacks. The applicant is meeting both rear and side yard setbacks for the new structure.

41. An open record public hearing was held via Zoom on December 7, 2022.
42. The staff report, application materials, agency comments and the entire file of record were admitted into the record.
43. Jennifer Rehnfeldt, Applicant and property owner, appeared and testified. She stated that she agreed with all representations in the staff report and had no objection to any of the proposed Conditions of Approval.
44. No member of the public testified at this hearing.
45. The Chelan County Hearing Examiner considered all evidence within the record in rendering this decision.
46. 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. As conditioned, the proposal will conform to the standards specified in the Chelan County Code.
4. As conditioned, the use will comply with all required performance standards as specified in the Chelan County Code.
5. As conditioned, the proposed use will not be contrary to the intent or purposes and regulations of either the Chelan County Code or the Comprehensive Plan.
6. As conditioned, this proposal does comply with Comprehensive Plan, the zoning code and other land use regulations, and SEPA.

7. 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 2022-399 is hereby **APPROVED**, subject to the conditions noted below.

IV. CONDITIONS OF APPROVAL

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.

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 comply with the Chelan County Zoning Code, in addition to all other applicable local, state and federal regulations.
3. The development shall proceed in substantial compliance with the application submitted on October 3, 2022, and the site plan of record, which is also date stamped October 3 (Exhibit A).
4. Pursuant to CCC Chapter 11.86, the subject site contains erosive soils; therefore, a geotechnical report shall be provided at the time of building permit submittal.
5. The existing residence onsite shall meet the criteria listed in CCC Chapter 11.88.200 – Accessory dwelling unit.
6. Pursuant to CCC 11.88.200(8) both the title holder and the Director of the Chelan County Community Development Department shall sign a notice to title. Said notice shall be notarized, and be recorded by the Chelan County Auditor for the property prior to building permit issuance stating: “The separate sale or division of the accessory dwelling unit from the single-family dwelling unit is prohibited, unless all standards in zoning and subdivision can be met. This covenant is intended to run with the land burdening and benefiting the parties’ successors and assigns.”
7. Pursuant to comments received from Chelan County Public Works on October 28, 2022, the applicant shall record a “Hold Harmless” agreement with the County that relieves the county of any liability for damage done to the property or structures due to the County’s maintenance and repair work (including snow plowing).
8. 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.
9. 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 current owner of the property, whether that is the applicant or a successor.

10. 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.
11. Pursuant to CCC Section 11.02.040, prior to commencement of construction, the applicant shall obtain all required and necessary building permits.
12. Pursuant to CCC Section 11.88.190, no construction activity shall be permitted within one thousand ft. of an occupied residence between the hours of 10:00 p.m. to 7:00 a.m.
13. Pursuant to RCW 27.53.060, if any Native American grave sites or archaeological resources are discovered or excavated, work shall stop immediately.
14. An inadvertent discovery plan (IDP) shall be submitted with the building permit application and kept onsite during all land disturbing activities. A sample IDP can be found in Exhibit E.
15. Chelan County is not responsible for notification or enforcement of covenants or deed restrictions affecting use or title. Any permit issued does not acknowledge or recognize any covenants or deed restrictions or reservations that may 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.
16. The new residence or ADU shall not be used as a short-term rental without first receiving all required permits.

Dated this 9 day of December, 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.