

BEFORE THE CHELAN COUNTY HEARINGS EXAMINER

IN THE MATTER OF)	
)	
VAR 23-274)	FINDINGS OF FACT,
Nelson)	CONCLUSIONS OF LAW, DECISION
)	AND CONDITIONS OF
)	APPROVAL

THIS MATTER, having come on before the Chelan County Hearing Examiner on September 20, 2023. 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 submitted for the purpose of obtaining a variance from the 3-foot freeboard requirement pursuant to Chelan County Code (CCC) Section 3.20.260(1). The requested variances would have no impact on any riparian or wetlands areas, nor on any neighbors, as no new construction is required. The approval is sought for the as-built floor elevation. The variance submitted was based on the main floor finished grade elevation 1252.8, and the Base Flood Elevation (BFE) at the site is 1251.8, or a freeboard of 1.0 ft. The FIRM map and profile of the site are provided to illustrate the calculated BFE elevations. The elevations were surveyed for the Final Construction Flood Elevation Certificate for the Nelson residence. The subject property is located within a Rural Residential/Resource 5 (RR5) zoning district and holds an 'rural' shoreline environmental designation for Entiat River.
2. The Applicant/Owners are Chad and Melissa Nelson, 166 Mad River Road, Entiat, WA 98822. The agent is Mark Siegenthaler, Munson Engineers, PO Box 3796, Wenatchee, WA 98807-3796.
3. The project location is 166 Mad River Road, Ardenvoir, WA.
4. The parcel number of the subject property is 26-20-19-475-300.
5. The legal description of the subject property is: Lot 1 of SP 2006-098 and is 5.04 acres.
6. The subject property is located outside of an Urban Growth Area.
7. The Comprehensive Plan is Rural Residential/Resource 5 (RR5).
8. The zoning designation is Rural Residential/Resource 5 (RR5).
9. The property currently has an existing single-family residence with attached garage and accessory structure.
10. The subject property is relatively flat on the shoreline of the Entiat River. The Entiat River holds a 'rural' shoreline designation at this location. However, per staff, this project is outside of the shoreline jurisdiction.
11. The site size is 5.04 acres.

12. The property to the north is Rural Residential/Resource 5 (RR5) zoning district and the Entiat River.
13. The property to the south is Mad River Road, Entiat River and RR5.
14. The property to the east is zoned RR5.
15. The property to the west is zoned RR5.
16. The applicant submitted an Aquifer Recharge Disclosure Form, date stamped June 23, 2023 and is not located within a wellhead protection area.
17. Pursuant to the Washington State Department of Fish and Wildlife Priority Habitat Species Maps, the subject property does not contain priority habitat.
18. Pursuant to the Federal Emergency Management Agency (FEMA), panel number 5300150375A of the FIRM maps, there is 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, does apply.
19. 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, does apply.
20. Pursuant to RCW 27.53, if the applicants 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.
21. The single-family residence and accessory structures are already constructed.
22. The subject property is accessed by Mad River Road.
23. The subject property currently is provided domestic water by a on-site well.
24. Power: Chelan County PUD.
25. Sanitation would be supplied by on-site septic systems.
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 was submitted on June 23, 2023. The Notice of Public Hearing was submitted on September 9, 2023 and the public hearing was held on September 20, 2023.
29. Pursuant to WAC 197-11-800(6)(e), variance requests that do not result in any change in land use or density are categorically exempt from the environmental review process.
30. The Comprehensive Plan has been reviewed. Specifically, the goals and policies related to the Rural Residential/Resource 5 (RR5). Section IV describes that the purpose of the RR5 land use designation is:

‘Provides opportunities for small scale agricultural activities, and rural development consistent with the rural character and rural development provisions outlined in goals and policies of the comprehensive plan. These areas may provide opportunities for protecting se environmental areas and open space typical of a rural setting. RR5 designations

adjacent to urban growth areas are intended to encourage the preservation of rural areas until such time as they serve as urban growth areas and urban services become available. RR5 designations can also act as buffers between designated resource lands and more intense rural or urban development.

Uses appropriate for these areas include: 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: natural resource support facilities and services; mineral resource activities; intensification of existing development or new development of small scale recreational or tourist uses that rely on a rural location or setting but that do not include a new residential component; intensification of development on lots containing existing isolated nonresidential uses or new development of isolated cottage industries and isolated small-scale businesses that are not principally designed to serve the existing and projected rural population and nonresidential uses, but do provide job opportunities for rural residents; home occupations; bed and breakfasts; and community facilities.'

- 30.1 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.

31. Chelan County Code, Section 11.12.020 Standards.

Standard	RR5
Minimum Lot Size	5 acres
Minimum Lot Width	100' 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

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

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

- 32.1.1 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.

- 32.1.1.1 The applicant is requesting a variance from the 3-foot freeboard requirement pursuant to Chelan County Code Section 3.20.260(1) for the existing single family residence.
- 32.1.1.2 Hearing Examiner Finding: The existing single-family residence is similar in size compared to those in the area; therefore, this variance would not constitute a special privilege d.
- 32.1.2 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.
 - 32.1.2.1 The plight of the applicant is due to the physical characteristic of the subject property and the existing development. During the building permit and flood development permit review in 2021 the professional surveyor hired by the applicant did not meet the CCC Section 320.260(1)(A), which requires any residential structures lowest floor be at least three feet above the base flood elevation. While reviewing the flood development permit Chelan County Development staff did not catch that the lowest residential floor was not three feet above the base flood elevation.
 - 32.1.2.2 Hearing Examiner Finding: The variance request is based on the flood hazard where the base flood evaluation was established but was not applied correctly by the applicants professional and by Chelan County Community Development staff.
- 32.1.3 The hardship asserted by the applicant is not the result of the applicant's or the owner's action.
 - 32.1.3.1 The hardship asserted by the applicant appears to be not by their own action. The applicants were given an elevation certificate that was prepared by a professional establishing the base flood elevation but didn't show the required three feet above the base flood elevation pursuant to CCC Section 3.20.260(1)(A).
 - 32.1.3.2 Hearing Examiner Finding: The hardship does not appear to be the result of the owner's actions but by those actions of the applicants professional.
- 32.1.4 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.
 - 32.1.4.1 The proposed development would not create any additional public welfare or safety issues. The residential development met all building code requirements and conform to other required sections of the code to the greatest extent possible.

- 32.1.4.2 Hearing Examiner Finding: As conditioned, the proposal is not materially detrimental to the public welfare and safety or injurious to property in the neighborhood.
- 32.1.5 The hardship asserted by the application results from the application of this title to the property.
- 32.1.5.1 The ultimate hardship asserted by this application is the fact that the applicants professional and Chelan County Community Development Staff did not apply CCC Section 3.20.260(1)(A), which requires the lowest residential floor be three feet above the base flood elevation.
- 32.1.5.2 Hearing Examiner Finding: The hardship appears to be the result of the application of the Chelan County Code and the incorrect application by the applicants professional and Chelan County Community Development Staff.
33. The Hearing Examiner has reviewed the applications and submitted materials. The information in the application, as proposed, complies with the Revised Code of Washington, the Washington Administrative Code, Chelan County Comprehensive Plan, and the Chelan County Code
34. An open record public hearing was held via Zoom on September 20, 2023.
35. The staff report, application materials, agency comments and the entire file of record were admitted into the record.
36. Appearing and testifying for the Applicants was Mark Siegenthaler. Mr. Siegenthaler stated that he agreed with all representations in the staff report and had no objection to any of the proposed Conditions of Approval.
37. No member of the public testified at the hearing.
38. The Chelan County Hearing Examiner considered all evidence within the record in rendering this decision.
39. 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 23-274 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. The development shall be in substantial compliance with the Chelan County Zoning Resolution, in addition to all other applicable local, state and federal regulations.
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 June 23, 2023.
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 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.
8. An inadvertent discovery plan must be submitted with the building permit application and kept on-site during all land disturbing activities.
9. 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 other wise affect this property.

Applicant/owner assumes all risks and liability for any claims and liabilities for covenants or deed restrictions or reservations.

Dated this 22 day of September, 2023.

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.