

CHELAN COUNTY

DEPARTMENT OF HEARING EXAMINER

316 WASHINGTON STREET, SUITE 301
WENATCHEE, WASHINGTON 98801

IN THE MATTER OF:)	FINDINGS OF FACT,
AA 2023-345)	CONCLUSIONS OF LAW AND
Stone)	DECISION ON
)	ADMINISTRATIVE APPEAL

I. FINDINGS OF FACT

1. An Administrative Appeal was submitted appealing the denial of a short-term rental permit.
2. The Appellants are Christopher and Theresa Stone. Their lawyer is Dakota N. Nelson of Demco Law Firm, P.S.
3. The project location is 165 Winesap Ave., Manson, 98831. The parcel number is 282232606110. The zoning district is RR 5 (Rural Residential/Resource 5).
4. The Applicant had originally applied for an Existing Nonconforming Short-Term Rental (STR) permit in 2021 and had operated with a provisional permit pending full application review. Full review of the application revealed the structure being rented was not permitted as habitable space and the final permit was denied. This denial was not appealed and is not at issue in this appeal. The applicant then applied for a new STR permit and that has been denied due to insufficient parcel size per CCC 11.88.290.
5. The initial existing nonconforming STR permit was submitted November 19, 2021 and provisional permits were issued for operation pending full review.
6. There are multiple emails pertaining to the nonconforming application, issues with the structure, and the issue of the structure being sold to current owners not being permitted as a dwelling that is a civil matter between current and previous owners and not the County.
7. On July 19, 2022, staff issued a denial letter which explained the structure was not permitted as habitable space and addressed the Commercial Agricultural Waiver of Setback. The Applicants, per CCC 11.88.290, were instructed they would have to cease operation by September 26, 2022. This decision was not appealed.
8. Per 11.88.290 (4)(D)(ii)- 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 permit 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. 11.88.290 (2)(E)(i)(c)- That the short-term rental meets all requirements of subsection (3) of this section

within one year of the effective date of the ordinance codified in this section; provided, that legally required health and safety provisions within subsection (3) of this section including garbage, consumer safety, fire safety and outdoor burning, and property management plan communications provisions are met within ninety days of the effective date of the ordinance codified in this section, except that in the Manson urban growth area, all provisions consistent with Section 11.23.040 as it existed on August 25, 2020, shall be met on the effective date of the ordinance codified in this section.

9. The denial issues with the parcel were not resolved 'within one year of the effective date of the ordinance codified' or by the extended deadline of the end of 2022. There was no further communication with the STR department through the end of 2022.
10. On May 3, 2023, the Applicant emailed they were nearly through the permitting process for the structure and asked if they needed to reapply or just provide the updated information. The STR Manager responded that as their initial permit was for an existing nonconforming permit and since those were no longer being issued, they would need to completely reapply as a new applicant and provided a link to the forms. The Applicant responded they would look through information and get to work on a new application.
11. On May 29, 2023, The Applicant emailed they were filling out the new application and stated they were hoping they could get 'special consideration' due to the issues that arose in 2022.
12. On May 31, 2023, staff responded in detail to Applicant's May 29, 2023 email answering questions and stated that their understanding was that an after-the-fact permit did not always get a Certificate of Occupancy. Staff conferred with the Building Official and a Planner for clarification. The Applicant responded, reviewing part of the process they had been through and copied a portion of an email sent by one of the Plans Examiners to their architect stating the permit should be good to go.
13. The portion of the email cut and pasted into the May 31, 2023, from Plans Examiner to the Applicant's architect was in reference to the building permit only. The Plans Examiners have no role in the approval of short-term rental permits.
14. On June 12, 2023, the Applicant submitted a new STR Application and associated materials via email noting again they were hoping for an exception due to previous issues. Staff acknowledged receipt of materials and noted it was incomplete. Staff then sent an updated version of the email noting the previous email had an additional line in error noting incomplete and that review had not yet begun.
15. Per CCC 11.88.290 (4)(D)(v)(c) A completed permit application does not guarantee that the applicant will receive a permit to operate a short-term rental. Application acceptance only guarantees participation in the permit application process and a review for subsequent permitting under the regulations in existence at time of acceptance.
16. On July 10, 2023, the Applicant emailed they had submitted the application on 6/12/2023, had received confirmation of receipt, and were hopeful consideration might be made to allow them to rent in 2023 given previous history of the home. Staff responded directing Applicant to refer to emails sent on specific dates/times for clarification and that staff would reach out when ready to review their materials. The Applicant responded they were unclear as to what was missing.

17. On July 11, 2023, the STR manager responded that without doing a full review of materials, a comprehensive list could not be given but that all the attachments on the application email were not in PDF format and could not be accessed. Further noted was that the application submitted in 2023 was for operation in 2024 and that the previous issues did not allow department staff to not abide by the code. The Applicant responded that sometimes if a PDF is too big but they created a link and they had compressed the big ones and reattached. They again reiterated hope for some consideration given circumstances.
18. On July 19, 2023, the Applicant emailed to confirm the attachments were received on 7/11/2023. Staff confirmed they had been received and the Applicant acknowledged that.
19. On August 3, 2023, staff sent the Applicant a denial letter for the new short term rental permit application. New applications are reviewed under different requirements than the previous existing nonconforming application. Per CCC 11.88.290 (2)(D)(i) the minimum lot size requirement for RR5 zoning for a Tier 2 STR permit is 5 acres. The Applicant's parcel is 0.67 acres.
20. On August 15, 2023, an appeal request was received from Demco Law Firm, PS. Staff responded, provided assigned case number, and receipt for payment of appeal fees. The Applicant then acknowledged receipt and asked if hearing would be held via ZOOM. Staff confirmed that it would be.
21. On August 17, 2023, the Applicant emailed requesting a change of date. Staff responded the next available date was October 3, 2023, and asked if that would work for them. Applicant confirmed.
22. On August 21, 2023, staff confirmed the hearing date was changed to October 4, 2023 at 0900 am PST. The Applicant acknowledged.
23. On August 29, 2023, the Applicant emailed requesting another schedule change. Staff responded that the next date available was October 18, 2023. The Applicant confirmed and requested to be notified if there was a cancellation for an earlier date.
24. On September 29, 2023, the Applicant emailed 2018 lodging tax information they had received from Vacasa. An automatic reply was sent from staff as out of office.
25. On October 2, 2023, staff emailed confirmation of receipt of tax info and received an automatic response from Applicant as out of office. Staff forwarded information to appeal staff to add to appeal file.
26. After due legal notice, an open record public hearing was held via Zoom video conference on October 18, 2023.
27. Admitted into the record were the following:
 - 27.1 Ex. A AA 23-337 Appeal Application Materials.
 - 27.2 Ex. B Denial of STR Permit.
 - 27.3 Ex. C Email timeline and emails between STR staff and Appellant.
 - 27.4 Ex. D Staff Report.

28. Appearing on behalf of the Appellant was Dakota Nelson. Ms. Nelson was not sworn in as a witness. She is the attorney for the Appellant. She argued consistent with their appeal materials. She acknowledged that the July 19, 2022, denial of the prior non-conforming STR permit application was not appealed. She argued that the Stones believed that they only needed to reapply under rules that existed in July of 2022 and did not need to apply and satisfy current Code criteria. While there was some discussion between the Appellant and staff about whether the prior application could be “revived”, the Appellants were clearly told that the 2022 application could not be revived.
29. Also testifying on behalf of the Appellant was Theresa Stone. Ms. Stone is one of the property owners and Appellants. She stated that their intent was to rent the property as a short-term rental until they moved to Chelan County. She claimed that she was “blindsided” that the property was not permitted as a residence and needed to get an occupancy permit. This was not disclosed to Ms. Stone by the people who sold them the property. They eventually obtained their occupancy permits.
30. The County stated that all STR applicants are required to acknowledge that they are familiar with the Chelan County Code. Chelan County affirmed that the only denial that is at issue in this appeal is the denial dated August 3, 2023.
31. This property is not now eligible for a STR permit based upon the position that it was a legal non-conforming use. In fact, because the structure did not have an occupancy permit, the use was not legal.
32. The Hearing Examiner finds that the parcel does not meet the Chelan County Code lot size criteria in 11.88.290 for RR5 zoning. The insufficient lot size made the parcel ineligible for STR permitting at a Tier 2 level.
33. A Tier 2 STR permit in RR5 zoning requires a minimum lot size of 5 acres. The Applicant’s parcel is 0.67 acres. The Chelan County Code does not allow a reduction of lot sizes for short-term rentals, by any means, such as variance, administrative discretion, etc.
34. The application for an existing non-conforming short-term rental permit submitted in 2021 was denied on July 19, 2022. This denial was never appealed. Therefore, that denial decision is final.
35. 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 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.

3. The parcel remains deficient in meeting the requirements of the STR permit for which the Appellants applied.
4. A New Tier 2 STR permit was denied based on codified lot size criteria in 11.88.290 for their RR5 zoning.
5. The insufficient lot size made the parcel ineligible for STR permitting at a Tier 2 level.
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 dated August 3, 2023, is hereby **AFFIRMED** in its entirety based on the fact the parcel does not satisfy the minimum size requirement set forth in the Chelan County STR code, 11.88.290.

Dated this 23rd day of October, 2023.

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.