



CHELAN COUNTY HEARING EXAMINER

Chelan County Administration Building, Room 1,
400 Douglas Street, Wenatchee, WA 98801

June 5, 2019, 9:00 am

Chelan County Hearing Examiner: Andrew Kottkamp

Chelan County Staff: Planner – Emily Morgan, Planner – Jamie Strother, Assistant Planner – Scott Kugel, Permit Clerk - Wendy Lane, Code Enforcement Manager – Angel Hallman, Fire Marshall – Bob Plumb

Public/Agencies: Eric Sexauer, Randy Sexauer, Keith and Kitty Searles, Anna Sample, Harry Knechtel, Pat Hills, Anne Hessburg, Renee Monson, Julie Norton, Rudy Prey Jr, Robin Werner, Gregg Herkenrath, Kathy Blum, Paul Coppock, Ken and Joyce Phipps

AGENDA:

I. CALL TO ORDER

[9:00:19 AM](#) Hearing Examiner Kottkamp called the Hearing to order. No objections were given to Mr. Kottkamp running today's hearing. Instruction was given to attendees on how the hearing is conducted and how to participate, testify, and appeal a decision.

II. PUBLIC HEARINGS

RIP-V 2019-002: An application for a Riparian Variance was submitted by WA Dept. of Fish & Wildlife to reduce the required riparian setback of 150 feet to approximately 38 feet from the ordinary high water mark (OHWM) of Swakane Creek, a fish-bearing (type F) stream, for the construction of a new equipment storage building. The new construction is proposed to replace an existing storage building that is to be demolished. The subject property is located within the within the Rural Residential/Resource 20 (RR20) zoning district. The subject property is located at NNA Swakane Canyon Road, Wenatchee and is further identified as Assessor's Parcel Number: 24-20-22-865-003. **Planner: Emily Morgan**

[9:04:31 AM](#) Mr. Kottkamp discussed the application details, and entered the staff-report, attachments to the staff-report, application materials, site plans, and entire planning staff files into the record. Planner Emily Morgan explained the application. Staff recommends denial of the application.

[9:07:07 AM](#) Anna Samples and Harrison Knechtel were sworn in to testify on behalf of the applicant. Anna Samples states that based on the fact that the stream typing was corrected from fish bearing stream to non-fish bearing stream reduces the buffer required for the application. She states that building is now outside the buffer zone. She still feels that it is the best location for the building. Moving it would interfere with the agriculture businesses in the area.

[9:09:03 AM](#) Mr. Kottkamp asked about the parking lot in the area. Does it increase in size? Harrison Knechtel answered that there would be more grating and additional gravel added. He explained that the area was an access ramp, not a parking area.

[9:10:28 AM](#) Andy Kottkamp asked why the ramp couldn't be placed elsewhere. Harrison Knechtel explained why the proposed site was the best area and moving the location would be difficult and expensive.

[9:11:48 AM](#) Mr. Kottkamp asked about the size of the parcel and wanted to know why the building couldn't be moved to another area. Anna Samples and Harrison Knechtel reiterated that this was the best site for the project.

[9:12:58 AM](#) Anna Samples inquired that if the project was approved, what type of conditions of approval could they expect. Andy Kottkamp answered that they would be revealed in his decision should the application be approved.

[9:13:57 AM](#) With no public present, Mr. Kottkamp closed the public portion of the record on the matter.

CUPA 2019-001/VAR 2019-004: An application for a Conditional Use Permit Amendment and a Variance has been requested by Grette Associates, LLC (Agent) on behalf of Yakama Land Enterprise (Owner) to vary the required 200 ft. setback from the adjacent property per CCC Section 11.93.290(1) and to amend Condition of Approval #10 of CUP 2004-015 for the placement of a storage building. The amendment to CUP 2004-015 is for the construction of a 35 ft. x 120 ft. (4,200 sq. ft.) pole building for storage of vehicles and equipment used by the Yakama Nation Fisheries program. A variance is also proposed to reduce the required setback of 200 ft. from adjoining properties to 125 ft. to allow for the construction of the pole building. The property is located at 7051 US 97, Peshastin, WA; and is identified as Assessor's Parcel number: 24-18-29-420-100. The parcel is zoned Rural Residential/Resource 5 (RR5). **Planner: Emily Morgan**

[9:14:09 AM](#) Mr. Kottkamp discussed the application details, and entered the staff-report, attachments to the staff-report, application materials, site plans, and entire planning staff files into the record. Planner Emily Morgan explained the application. Staff recommends approval with conditions.

[9:16:24 AM](#) Anne Hessburg was sworn in, as an agent, to testify on behalf of the applicant. She agrees with the staff-report and finds the conditions of approval acceptable.

[9:17:41 AM](#) Pat Hills was sworn in to testify as a member of the public. She is an adjoining property owner. She is concerned about the height of the building and if would interfere with her view. Emily Morgan verified the building height and Anne Hessburg concurred that it will not interfere with the neighboring view. Anne Hessburg showed Pat Hills the site plan to explain the position of the building.

[9:20:09 AM](#) Mr. Kottkamp closed the public portion of the record on the matter.

SDP 2018-429/SCUP 2018-430/SV 2019-002/RIPV 2019-003: Applications for a shoreline substantial development permit and shoreline conditional use permit were initially submitted December 4, 2018, with additional materials submitted February 12, 2019, applications for a shoreline variance, and riparian variance were submitted on February 12, 2019. All were submitted by Grette Associates, LLC (agent) on behalf of Jeffrey and Renee Monson (owner) and deemed complete on March 7, 2019; for the installation of a new 125 sq. ft. boatlift, that will be approximately 22 feet waterward of the OHWM on Lake Chelan, the replacement of existing stairs that connect the existing pier to the land within the same footprint and will not increase overwater coverage, and the permitting of existing retaining walls. The subject property is

located within the Rural Waterfront (RW) zoning district and holds a 'Rural' shoreline environment designation for Lake Chelan, a shoreline of statewide significance. Project Location is 13390 South Lakeshore Road, Chelan, WA 98816; Parcel No.: 28-21-17-140-075. **Planner: Scott Kugel.**

[9:20:28 AM](#) Mr. Kottkamp discussed the application details, and entered the staff-report, attachments to the staff-report, application materials, site plans, and entire planning staff files into the record. Planner Scott Kugel explained the application. Staff recommends approval as conditioned.

[9:22:56 AM](#) Anne Hessburg was sworn in, as an agent, to testify on behalf of the applicant. She agrees with the staff-report and finds the conditions of approval acceptable.

[9:23:42 AM](#) Andy Kottkamp asked if this application was due to a code enforcement issue. Both Assistant Planner Scott Kugel and Ann Hessburg confirmed that it was and the permits applied for will satisfy the code enforcement. The current owner, of the property, was unaware that they were not in compliance.

[9:25:08 AM](#) With no public present, Mr. Kottkamp closed the public portion of the record on the matter.

VAR 2019-003: The variance proposes to reduce the commercial agriculture setback for residential structures for the placement of a single family residence from 100' to 55' from the side property line. The property currently is undeveloped and access is from US HWY 2. The parcel is zoned Rural Residential/Resource—1 Dwelling Unit per 5 Acres (RR5) and classified as a 'rural' environmental shoreline designation for the Wenatchee River. Project location is 11350 US HWY 2, Leavenworth, WA 98826; and identified by Assessor's Parcel No.: 24-18-07-240-250. **Planner: Scott Kugel**

[9:25:22 AM](#) Mr. Kottkamp discussed the application details, and entered the staff-report, attachments to the staff-report, application materials, site plans, and entire planning staff files into the record. Planner Scott Kugel explained the application. Staff is neither recommending approval nor denial of this application.

[9:27:14 AM](#) Anne Hessburg was sworn in, as an agent, to testify on behalf of the applicant. She addressed comments received by adjacent property owner. She stated that some of the comments were true and some were not. She also stated that the neighbors were asking too much money for their cooperation in the matter. She submitted a document, identified as Exhibit 1, which was an email showing dialog, with regard to the waiver, exchange from Eric Sexauer and Anne Hessburg.

[9:29:48 AM](#) Eric Sexauer was sworn to testify. He stated that he purchased the property to build a home. After designing the plans, they were made aware of the setback required, on the property, and they would need a waiver to get them reduced. Rudy Prey agreed to sign the waiver, but after consulting with a lawyer, asked for an amount of money for his willingness to sign the waiver, plus lawyer fees.

[9:31:50 AM](#) Andy Kottkamp asked about the site plan and could a smaller building be put on the property without a variance. Eric Sexauer said that they could go much, much smaller but would still require a variance.

[9:33:04 AM](#) Anne Hessburg stated that Eric Sexauer's testimony proved that Rudy Prey was not concerned about the setbacks. Andy Kottkamp stated that it was not part of the criteria. Anne

Hessburg disagreed and stated that the property did meet criteria for the variance and went on to explain her position. She also stated that no other reductions options would work for this piece of property. She submitted an updated site plan that was marked as Exhibit 2.

[9:35:23 AM](#) Anne Hessburg explained that Eric Sexauer did not create the need for the variance, but the county did with the code. She stated that the code subjects properties to unreasonable setbacks due to zoning. She also stated that the setback of 100 feet was not disclosed at the time of sale of the property. The intent, of the setbacks, was to protect the property from agriculture spray. That is not an issue in this case with the Sexauer property due to its location. With the variance, the property would still be out of the line of spray drift. She also stated that a multi-level home is not possible, due to overhead cables in the area for the PUD and cable companies.

[9:40:16 AM](#) Anne Hessburg submitted a six page document, marked as Exhibit 3 , document, correspondence with the cable company to prove a conversations was had concerning a multi-level home.

[9:41:21 AM](#) Anne Hessburg continued by stating that the property had a very steep slope with 70% of the area affected. They are not asking for special privilege, they are just trying to construct a simple home on the property.

[9:43:27 AM](#) Anne Hessburg then submitted 5 photographs showing how forested the property was. They were marked Exhibit 4. She stated that there was a vegetation buffer between the adjacent properties.

[9:44:38 AM](#) Andy Kottkamp asked if the applicant was going to remove trees from the property. The plan was to try and build without removing trees.

[9:45:58 AM](#) Anne Hessburg referenced to an Agency Comment, from Dennis at DAHP, and his rescinding the requirement to have a cultural representative on site during construction. Upon further review, DAHP determined that the property was set on the old Highway 2 and the concerns the Agency had with the project are non-existent. She entered a document into the record supporting her correspondence with DAHP. It was marked as Exhibit 5.

[9:48:01 AM](#) Anne Hessburg went through the staff-report, and identified several pages where she felt inconsistencies were found and pointed out areas where she disagreed with in the report.

[9:51:17 AM](#) Todd Smith was sworn in to testify, on behalf of the applicant. He submitted, into the record ,10 photographs, double sided on 5 pages. They were marked as Exhibit 6. Going through the photographs page by page, he explained the logic of the land use the applicant was trying to convey.

[9:54:21 AM](#) Andy Kottkamp asked if his testimony would confirm that the property was at a minimum of 70% slope. Todd Smith answered that is it considered a sleep slope up to and beyond 70%. He did not have an exact calculation to give Mr. Kottkamp.

[9:58:38 AM](#) Andy Kottkamp asked about the new site submitted as Exhibit 2. How would a drain field be allowed in that particular part of the property? Anne Hessburg explained, with the help of the new site plan, how it would function in the new location.

[10:00:02 AM](#) Todd Smith then explained why a multi-level dwelling would not work for this property.

[10:01:10 AM](#) Andy Kottkamp asked Todd Smith if the construction was set to the 100 foot setback, how big would the house be. Mr. Smith stated 1000 square feet.

[10:02:33 AM](#) Julie Norton from Ogdon Murphy Wallace and Ruby Prey were sworn in to testify. Ms. Norton submitted a letter on why this application doesn't meet county code. She stated that the code was enacted in 2000 and was in effect when the Sexauers purchased the property. She stated that the previous owners may have qualified for the variance; however, the current owners do not. She stated that the Sexauers can still build on the property; they just need to build a smaller residence. She submitted a document, marked as Exhibit 7, that showed neighboring properties, with less than a 100 foot setback, had done so before the code was written in 2000.

[10:08:08 AM](#) Julie Norton felt that the applicant did not meet the burden of proof that they were ignorant of the law when the land was purchased and that it should not be a factor in to approve the variance.

[10:09:23 AM](#) Rudy Prey disputed that because his property was higher in elevation, spray drift would not be a factor. He felt that if there is going to be a problem, in the future, with noise or drift, he would be the party blamed.

[10:11:17 AM](#) Joyce and Kenneth Phipps were sworn in to testify. They believe that keeping the setbacks was necessary to keep the spray drift where it could be contained. She doesn't want their house to be an example on why a Variance should be granted; since it was built before the 2000 Code went into place.

[10:15:01 AM](#) Kenneth Phipps stated that it upset him to hear his name and property being used to justify the applicant's actions in pursuing the variance. Mr. Phipps thought that the property was owned jointly by neighbors only to find out that it was its own parcel with the sale of the land. He is worried that farming is getting more restrictive, so he asked that the setback remains at 100 feet so it would encourage farming practices.

[10:18:26 AM](#) The Phipps submitted a letter, marked as Exhibit 8, from them to Chelan County Planning Manager Kirsten Larsen. Andy Kottkamp allowed Anne Hessburg to review the letter before he presented it to staff.

[10:19:16 AM](#) Randy Sexauer was sworn in to testify. He stated that he was on the Planning Commission for 10 years and was on the board when the setbacks were established. He stated that the code cannot be applied to each property in the same manner, due to property layout. On a flat piece of land, the setbacks make sense, but sloped areas need different perimeters.

[10:21:20 AM](#) Assistant Planner Scott Kugel clarified that the 100 foot setback is for residential structures. He also stated that the letter from Dennis at DAHP was in the file of record.

[10:22:04 AM](#) Anne Hessburg wanted to dispute Julie Norton and Rudy Prey's testimony. She submitted, as Exhibit 9, Chelan County Code Title 11. She covered how she interpreted the language to read. Andy Kottkamp asked for clarification. Anne Hessburg, further, how she thought the code read. Andy Kottkamp still did not follow her argument. They did not agree on an interpretation of the county code on the matter.

[10:27:12 AM](#) Anne Hessburg stated that should the variance be granted. She also wanted Condition of Approval 3 to be removed due the letter from DAHP rescinding their concerns on construction on the property.

[10:28:15 AM](#) Anne Hessburg then submitted 5 pages of her notes. They were marked as Exhibit 10.

[10:29:00 AM](#) Mr. Kottkamp closed the public portion of the record.

CUP 2019-005: An application for a Conditional Use Permit for adding temporary classrooms buildings on the following school sites: Sunnyslope Elementary School and Mission View Elementary School. The additional classrooms will provide assistance for overcrowding at the existing schools. The applicant is proposing two (2) portable classrooms and an electronic reader board to the main entry of each of the two (2) school locations. Sunnyslope Elementary School is additionally proposing eliminating parking across School Street and adding parking in the playground and construct an addition to the elementary school to the west. The placement of the portables would be behind existing buildings and/or use other forms of screening such as landscaping and painting the portables to look similar to the existing buildings. The applicant is proposing several phases for the project beginning in the spring of 2019. The subject properties are both zoned Residential High (RH) within the City of Wenatchee's Urban Growth Boundary which require commercial building permits meeting the adopted Wenatchee City Code Section 10.48.080(D)(4), architectural design standards and 10.65.270, conditional use permits regarding schools. Deviations to these standards may be considered where the applicant can demonstrate that the change or deviation in design is necessary due to the inherent function of the facility. Consideration of such a deviation shall include an informal design review workshop recommendation of the planning commission to be incorporated in the staff analysis for the hearing examiner. Project location is 3109 School Street, Wenatchee, WA and 60 Terminal Avenue, Wenatchee, WA; and identified by Assessor's Parcel No.: 23-20-21-860-301, 23-20-21-860-312, 23-20-21-860-303 and 22-20-14-320-550. **Planner: Jamie Strother**

[10:29:23 AM](#) Mr. Kottkamp discussed the application details, and entered the staff-report, attachments to the staff-report, application materials, site plans, and entire planning staff files into the record. Planner Jamie Strother explained the application. Staff recommends approval as conditioned.

[10:32:01 AM](#) Paul Coppock and Greg Herkenrath were sworn in, as agents, to testify on behalf of the applicant. He agrees with the Staff-Report. Paul Coppock stated that they were in agreement with staff and the conditions of approval.

[10:33:54 AM](#) Andy Kottkamp asked how long the temporary conditions would be needed for portable usage. Greg Herkenrath answered that there was no end date, but projected a bond would be in place, in the future, to resolve the problem of space requirements for the school.

[10:34:52 AM](#) Mr. Kottkamp asked if they knew about the time frame to complete the project and Paul Coppock answered that he knew they had three years. If they go outside that frame, an extension would need to be obtained through the County.

[10:35:38 AM](#) With no public present, Mr. Kottkamp closed the public portion of the record on the matter.

CUP 2019-003/VAR 2019-002/AM 2019-001: An application for a Conditional Use Permit, Variance and an Administrative Modification has been requested for a Guest Inn and front yard setback and a reduction in the Commercial Agricultural setbacks for a new residence. The guest inn includes 5 bedrooms and each

room will have a private bathroom, the guest inn will also include a swimming pool, hot tube, fire pit and landscaped yard. The applicant is requesting a variance from the front yard setback from 25' from property line/55' from center line of the right-of-way to 15' from property line. The administrative modification is requesting a deviation from the 100' setback from all property lines abutting Commercial Agricultural zoning district. The subject property is located within the Commercial Agricultural (AC) zoning district. Primary access is from Swartout Road, domestic water and sewer will be supplied by Lake Chelan Reclamation District. Project Location is 244 Swartout Road, Manson, WA; and identified by Assessor's Parcel No.: 28-22-32-680-265. **Planner: Jamie Strother**

[10:36:02 AM](#) Mr. Kottkamp discussed the application details, and entered the staff-report, attachments to the staff-report, application materials, site plans, and entire planning staff files into the record. Planner Jamie Strother explained the application. Staff recommends denial on the administrative modification, and the variance but recommends approval on the conditional use permit.

[10:39:21 AM](#) Keith Searles and Katherine were sworn in to testify. They are the property owners. Keith Searles said it would be their primary residence. He explained why he was in disagreement with the denial on the administrative modification. He would like to keep all of the setbacks in his site plans as designed. He then explains why he should be able to carry out that design. His neighbors were not here to disagree with the application. Katherine Searles reiterated that the neighbors would not put anything in writing in support the application but would not move to try and stop it either.

[10:44:37 AM](#) Keith Searles stated that a hardship was meeting the PUD requirements for the property.

[10:45:26 AM](#) Andy Kottkamp asked about the agriculture zone setback. It is at 100 feet, for a residential unit. Keith Searles stated that the lot is only 150 feet wide so they could not build if such a setback was enforced.

[10:47:01 AM](#) Andy Kottkamp asked if there property had agriculture properties adjacent to it on all sides. Keith Searles answered yes and explained the variety of businesses connected to his property.

[10:47:51 AM](#) Keith Searles asked about the denial of the administrative modification and what it means. He wants to know how he would be able to go forward with his project. Andy Kottkamp answered that a variance would be applied for. If the administration modification was denied, Keith Searles fears that there would be a delay in construction because he would have to go back and do a variance.

[10:52:37 AM](#) Planner Jamie Strother requested a continuance due to the fact that a variance should have been applied for instead of the administrative modification. She stated that she that staff miscommunication resulted in the error.

[10:53:45 AM](#) Keith Searles is concerned with the time involved with a continuance. The date would be uncertain at this time. He wanted to know when would a future hearing date be. Planner Jamie Strother stated that she did not want to continue the application and would speak with the applicants after the hearing.

[10:56:18 AM](#) Andy Kottkamp reiterated that staff wants to proceed and finish the hearing and have a decision rendered. Keith Searles asked if the administrative modification was denied, could he come back for a variance. Andy Kottkamp asked if the applicant wanted to continue the application. Keith Searles answered that he would like a continuance. Planner Jamie Strother answered they would agree to a continuance to an uncertain date.

[10:58:33 AM](#) Robin Werner was sworn in to testify. She stated that she is an orchardist in Manson and is concerned about residences encroaching on orchard operations. She stated that it would be difficult for orchards to spray if the variance was granted. She also stated that orchardists cannot meet the conditions for spraying if properties are developed without the proper setbacks required. Spray drift would affect the Searles property if the variance was granted. She stated that it would affect quality of life. She stated that it was an unavoidable fact. She continued by stating sources that supported her concern about drift contamination on nearby properties. The goal is to keep farmworkers and nearby residence safe. She stated that there is a cost of compliance when properties are in close proximity to agriculture ventures. She asked why farmers are having to negotiate with established setbacks. Spray drift is a fact. Changing the setbacks will not change spray drift. Chelan County Code states that the purpose is to protect farmers from encroachment due to surrounding properties. She is concerned about lawsuits due to the drift and being in compliance with the code. She also does not see that there had been any mention of lead and arsenic that the property might be contaminated with. She would like to request that the county requires soil testing for the sight. If they are running a business, it would be necessary to insure the safety of the public. Robin Werner does not recommend approval of this application.

[11:09:22 AM](#) Kathleen Blum was sworn in to testify. She is testifying on behalf of the Manson Community Council. The Council is concerned about the spray drift and she referenced a letter from the state concerning anything less than a 100 foot setback causing problems for the health of the public. She agrees with Robin Werner about lead and arsenic testing wants it required as well. In her opinion, the setbacks need to remain in place. She stated that the Searles are not building a family residence, but a business and the public must be protected.

[11:13:29 AM](#) Andy Kottkamp explained why variances are applied for if a 100 foot setback would not work on a given property. He provided the information for Kathleen Blum to take back to the Manson Community Council to explain why some of the variances are granted for building purposes.

[11:15:47 AM](#) Andy Kottkamp did not have the applicant redirect due to the continuance. The record will be kept open until a new hearing is set.

III. AJOURNMENT

[11:16:23 AM](#) Hearing Examiner Kottkamp adjourned the June 5, 2019, meeting.