

BEFORE THE CHELAN COUNTY HEARINGS EXAMINER

IN THE MATTER OF

VAR2019-006
ALLBAUGH

RECEIVED)

OCT 03 2019)

CHELAN COUNTY)

COMMUNITY DEVELOPMENT

FINDINGS OF FACT,
CONCLUSIONS, DECISION
AND CONDITIONS OF
APPROVAL

THIS MATTER, having come on before the Chelan County Hearing Examiner on October 2, 2019, the Hearing Examiner having taken evidence hereby submits the following Findings of Fact, Conclusions of Law, Decision and Conditions of Approval as follows:

FINDINGS OF FACT

1. A application was submitted to vary the setback from Echo Avenue from 55 feet from centerline to 35 feet from the centerline and vary the setback from North Shore Drive from 55 feet from the centerline to 41 feet from the centerline to construct a single-family residence and garage on the property.
2. The property owner is Shannon B Allbaugh, 7326 NE 120th St., Kirkland, WA 98034.
3. The project location is NNA North Shore Drive, Leavenworth, WA 98826.
4. The parcel number of the subject property is 27-16-14-700-475.
5. The legal description of the subject property is Mountain Park Block 21 Lot 4.
6. The proposed development is not within an Urban Growth Area.
7. The Comprehensive Plan designation and zoning is Rural Waterfront (RW).
8. The subject property currently is vacant.
9. The subject property has moderately steep slopes and partially forested topography.
10. The property size is 0.16 acres.
11. The property to the north is North Shore Drive and is zoned Rural Waterfront (RW).
12. The property to the south is Lake Wenatchee, an 'urban' shoreline environment designation.
13. The property to the east is residential and is zoned Rural Waterfront (RW).
14. The property to the west is Residential and is zoned Rural Waterfront (RW).
15. The property is exempt from aquifer recharge area disclosure form per Section 11.82.060(2)(A).
16. Pursuant to the Washington State Department of Fish and Wildlife Priority Habitat and Species Maps, the subject property does not contain identified habitat areas. Therefore, the provision of Chelan County Code Chapter 11.78, Fish and Wildlife Habitat Conservation Areas Overlay District do not apply.

17. The subject property is within the jurisdiction of the Chelan County Shoreline Master Program (CCSMP). The subject property has a shoreline environmental designation of 'urban' on Lake Wenatchee, a shoreline of statewide significance.
18. The proposed residence is approximately 50 feet from the ordinary high water mark (OHWM) of Lake Wenatchee. Therefore, the setback provisions of the Chelan County Shoreline Master Program have been met.
19. Pursuant to the Federal Emergency Management Agency, FIRM panel #5300150750B on the subject property is outside of identified flood hazard; therefore, the provisions of Chelan County Code Chapters 11.84 Frequently Flooded Areas Overlay District and CCC 3.20 Flood Hazard Development do not apply.
20. Pursuant to Chelan County Code Chapter 11.86, the subject site does contain geological hazards; therefore, the provisions of Chelan County Code Chapter 11.86 Geologically Hazardous Areas Overlay District do apply. A geologic site assessment will be required at the time of building permit application.
21. Pursuant to the National Wetlands Inventory Map prepared by the US Department of Fish and Wildlife Services, the subject property does not contain a wetland area associated with Lake Wenatchee. Therefore, the provisions of Chelan County Code Chapter 11.80 Wetland Areas Overlay District do not apply.
22. Based on the comment letter from the Confederated Tribes of Colville (dated June 28, 2019), the proposed development lies in an area with no historic or prehistoric sites. Staff made a recommended Condition of Approval that an inadvertent discovery plan would be required at time of building permit submittal.
23. 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. Staff recommends notification if any artifacts are uncovered or discovered during the development of the proposed variance.
24. Construction will begin once the variance is approved and a building permit is issued.
25. The subject property is accessed directly from North Shore Drive, a public road.
26. Domestic water is provided by a private well.
27. Power is provided by the Chelan County PUD.
28. Sanitation is provided by Lake Wenatchee Sewer District.
29. The property is located within the Chelan County Fire District No. 9.
30. Noise will be similar to other residential and personal recreational uses on Lake Wenatchee.
31. Visual impacts will be similar to other residential uses. The proposed single-family residence and detached garage shall be placed on the property similar to other residences in the area.
32. 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 June 28, 2019 with comments due July 12, 2019. The following agencies provided comments:
 - 32.1 Chelan County Public Works responded on July 8 and July 12, 2019
 - 32.2 Chelan County Fire District #9 responded on July 1, 2019

- 32.3 Confederated Tribes of Colville responded on June 28, 2019
33. The following agencies were notified but did not respond:
- 33.1 Chelan County Fire Marshal
 - 33.2 WA State Department of Archaeology and Historic Preservation
 - 33.3 Yakama Nation
 - 33.4 Chelan-Douglas Health District
 - 33.5 Chelan County PUD
 - 33.6 WA State Department of Ecology
34. Public comments were received from Rita Ogdon on August 14, 2019, and Andy and Mimi Reid on September 23, 2019.
35. The application materials were submitted on May 23, 2019.
36. A Determination of Completeness was issued on June 23, 2019.
37. The Notice of Application was provided June 28, 2019.
38. The Notice of Public Hearing was provided September 20, 2019.
39. 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.
40. The Comprehensive Plan has been reviewed. Specifically, the goals and policies related to the Rural Waterfront (RW) for consistency with the proposed development which permits residential uses. The Hearing Examiner finds that the development, as conditioned, is consistent with the Comprehensive Plan.
41. The project is consistent with Chelan County Code (CCC) Chapter 11.04 in the following respects:
- 41.1 The proposed development is associated with the Rural Waterfront (RW) zoning district which permits accessory structures.
 - 41.2 The proposed use is consistent with Chelan County Code.
42. The project is consistent with CCC Section 11.16.020 in the following respects:
- 42.1 The applicant is requesting to reduce the required front yard setback of 55 feet from the centerline of Echo Avenue, an unopened right-of-way, to 35 feet from the centerline as well as to vary the front yard setback 55 feet from the centerline of North Shore Drive to 41 feet from the centerline.
 - 42.2 The applicant has applied for a zoning variance to reduce the front yard setback from the required 55 feet from the centerline of Echo Avenue to 35 feet and vary the front yard setback from 55 feet from the centerline of North Shore Drive to 41 feet from centerline of both right-of-ways.
43. The project is consistent with CCC Section 11.95.030 (1)(a) in the following respects:
- 43.1 The applicant is requesting to reduce the front yard setback which abuts Echo Avenue, an unopened right-of-way and a reduction from North Shore Drive. The applicant is seeking a reduction from the required 55 feet from centerline of Echo Avenue to 35 feet from centerline and a reduction to 41 feet from the centerline of North Shore Drive to construct a single-family residence and a detached garage.
 - 43.2 This variance would not constitute a special privilege as the surrounding properties have constructed residential and accessory structures within the required front yard setbacks.

44. The project is consistent with CCC Section 11.95.030 (1)(b) in the following respects:
- 44.1 The existing lot appears to have some limitations due to topography and is a non-conforming width of approximately 50 feet. The natural topography of the lot is steeply sloping down towards Lake Wenatchee.
 - 44.2 The lot was created prior to current zoning regulations that require a minimum width of 80 feet for a corner lot pursuant to Chelan County Code 11.16.020(2) standards for lot widths within the Rural Waterfront zoning.
 - 44.3 The plight of the applicant is in part due to the topography of the subject property together with the lot being created prior to current zoning regulations.
45. The project is consistent with CCC Section 11.95.030 (1)(c) in the following respects:
- 45.1 Due to the unopened right-of-way along the west property line, the proposed single-family residence and detached garage is unable to be placed 5 feet from the side property similar to other properties that are not burdened by double frontage.
 - 45.2 The hardship is not the result of the owner's actions.
46. The project is consistent with CCC Section 11.95.030 (1)(d) in the following respects:
- 46.1 The authorization of this variance would not be materially detrimental to the purpose of Title 11; this variance would promote the goals and objectives of Title 11 and the comprehensive plan. The proposed development for a single-family residence and detached garage is similar to other uses and structures within the same zoning district and neighborhood. Chelan County Code Chapter 11.04 District Use Chart, permits single family residences and detached garages within the RW zoning district.

The proposed detached garage will provide two off-street parking spaces as required by Chelan County Code Section 11.16.020(6)(A).
 - 46.2 The authorization of these front yard variances would promote the development of the property for the new single-family residence and detached garage. The development would not be injurious to property in the same neighborhood in which the development is located. This application is requesting approval of the preservation of a property right the same as is enjoyed by other properties in the neighborhood. The authorization of this variance would avoid injury to the applicant's property rather than cause injury to other property in the neighborhood. The authorization of this variance would promote the goals and objectives of Title 11 and the comprehensive plan.
47. The project is consistent with CCC Section 11.95.030 (1)(e) in the following respects:
- 47.1 The Plat of Mountain Park Summer Homes was approved and recorded by Chelan County in July of 1909. The current code requires a front yard setback of 55 feet front the centerline of the right-of-way. The configuration of the lot was created prior to the implementation of the corner lot zoning regulations per the Current Chelan County's Code.
 - 47.2 The hardship is a result of the application of the Chelan County Code to the subject property based on property specific conditions, which does not factor in historically platted parcels.
48. The variance is requested to reduce the required front yard setback from 55 feet from the centerline of the right-of-way on both Echo Avenue and North Shore Drive. The applicant is requesting to vary the front yard setback from Echo Avenue from 55 feet from centerline to 35 feet from

centerline of the right-of-way (Echo Avenue is an unopened county right-of-way) and to vary the front yard setback from 55 feet to 41 feet from centerline of North Shore Drive right-of-way.

49. The application and site plan submitted May 23, 2019 identifies the proposed location of the single-family residence and detached garage. The proposed location of the detached garage allows for adequate backing of vehicles prior to entering of the right-of-way.
50. Therefore, based upon the foregoing facts and analysis, the Hearing Examiner finds that the proposal is consistent with Chelan County Zoning Resolution and Comprehensive Plan.
51. Staff recommended APPROVAL of the Allbaugh variance, File #VAR 2019-006.
52. An open record public hearing was held on October 2, 2019.
53. The staff report, application materials, agency comments and the entire file of record were admitted into the record.
54. Appearing and testifying on behalf of the applicant was Mr. Ryan Walker. Mr. Walker is the agent authorized to appear and speak on behalf of the applicant. Mr. Ryan Walker testified that the hardship of the applicant in developing this property is due to narrow lot and steep topography. Mr. Walker indicated that the applicant had no objection to any of the proposed conditions of approval. However, Mr. Walker did indicate that proposed condition of approval number 10, regarding notification to the Confederated Tribes of the Colville Reservation and the Washington State Department of Ecology and Historic Preservation, was not requested by either of those entities and he requested that this requirement be removed.
55. The Hearing Examiner finds that although this notification was not requested by those entities, the notice is reasonable given the potential for the existence of artifacts on the site and results in a minimum burden on the applicant.
56. No member of the public testified at this hearing.
57. The Chelan County Hearing Examiner considered all evidence within the record in rendering this decision.
58. Any Conclusion of Law that is more correctly a Finding of Fact is incorporated herein as such by this reference.

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 Shoreline Master Program, 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.

DECISION

Based upon the above noted Findings and Fact and Conclusions of Law, request for variance, V 2019-006, Allbaugh is hereby **APPROVED**, subject to the conditions noted below.

CONDITIONS OF APPROVAL

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 be in compliance with 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 May 23, 2019.
4. Pursuant to Chelan County Code 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 Chelan County Code 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.
6. Pursuant to Chelan County Code 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 Chelan County Code Section 11.02.040, prior to commencement of construction, the applicant shall obtain all required and necessary building permits.
8. Pursuant to Chelan County Code Section 11.86.020, a geologic site assessment shall be required at the time of building permit application.
9. Pursuant to Chelan County Code Section 11.88.190, no construction activity shall be permitted within one thousand feet of an occupied residence between the hours of 8:00 p.m. to 6:00 a.m., Monday through Friday, and 8:00 p.m. to 7:00 a.m. on weekends.
10. Pursuant to RCW 27.53.060, the owner/developer/contractor shall contact the Confederated Tribes of the Colville Reservation and the Washington State Department of Archaeology and Historic Preservation 10 days prior to any ground disturbing activities in order for an agency representative to be present on site. Should the entity waive this right to notice, the applicant does not need to provide notice. If any Native American grave sites or archaeological resources are discovered or excavated, work shall stop immediately.
 - 10.1. An inadvertent discovery plan shall be submitted with the building permit application and kept onsite during all land disturbing activities. A sample of this plan is attached as Exhibit A.

11. 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.

CHELAN COUNTY PUBLIC WORKS

12. The subject property and variance shall conform to the comments and conditions of approval as found in the Chelan County Public Works memorandum dated July 12, 2019 (Exhibit B) and email dated July 8, 2019 (Exhibit C).

Approved this 3rd day of October, 2019

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.