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BEFORE THE CHELAN COUNTY HEARINGS EXAMINER

CHELAN COUNTY
COMMUNITY DEVELOPMENT

IN THE MATTER OF)

VAR 21-146)
Oyler/Porter)

) FINDINGS OF FACT,
) CONCLUSIONS, DECISION
) AND CONDITIONS OF
) APPROVAL

THIS MATTER, having come on before the Chelan County Hearing Examiner on July 21, 2021. 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 and rear yard setback for the construction of a residence on an approximately 6,000 sq.ft. lot. The variance request is to vary the front yard setback from 25 ft. to 19 ft. and to vary the rear setback from 20 ft. to 10 ft. The subject property is located within the remote Stehekin area and is within the Rural Residential/Resource 20 (RR20) zoning district.
2. The owners are Gary Oyler and Bethany Porter, 16713 Mclean Road, Mount Vernon, WA 98273. The agent is Larry Hibbard, Hibbard Architecture and Planning, PO Box 499, Manson, WA 98831.
3. The project location is NNA Stehekin Valley Road, Stehekin, WA 98852.
4. The parcel number of the subject property is 33-17-36-645-020.
5. The legal description of the subject property is: Lot 1 of Kellers Stehekin Homes and is 0.14 acres (6,098.4 sf).
6. The subject property is not located within an Urban Growth Area (UGA).
7. The Comprehensive Plan and zoning designation is Rural Residential/Resource 20 (RR20).
8. The property is currently vacant.
9. The property is flat and heavily forested.
10. The property to the north is Stehekin Valley Road and is zoned Rural Residential/Resource 5 (RR5).

11. The property to the south is Rural Residential/Resource 20 (RR20) and Rural Residential/Resource 5 (RR5).
12. The property to the east is Rural Residential/Resource 20 (RR20).
13. The property to the west is Rural Residential/Resource 5 (RR5) and Rural Residential/Resource 2.5 (RR2.5).
14. The applicant submitted an Aquifer Recharge Disclosure Form, date stamped April 9, 2021, and is not located within a wellhead protection area.
15. Pursuant to the Washington State Department of Fish and Wildlife Priority Habitat Species Maps, the subject property does not contain priority habitat.
16. Pursuant to the Federal Emergency Management Agency (FEMA), panel number 5300150300A of the FIRM maps, there is no 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, do not apply.
17. According to the Chelan County GIS geo hazard and contours layers, the property does not contain geological hazards. Therefore, the provisions of Chelan County Code Chapter 11.86 Geologically Hazardous Areas Overlay District, does not apply to this development.
18. There are no known cultural resources on the subject property. 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.
19. Construction would begin upon issuance of all necessary permits.
20. The subject property is accessed by Stehekin Valley Road.
21. Water to the subject property is supplied by existing on-site well.
22. Chelan County PUD provides electrical services to the subject property.
23. Sanitation would be supplied by on-site septic systems.
24. Noise: The development must comply with CCC, Chapter 7.35 Noise and RCW 70.107.
25. Visual impacts would be limited to views from the adjacent properties.
26. The application was submitted on April 9, 2021. The Notice of Public Hearing was issued on July 10, 2021.
27. 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.

28. Chelan County Comprehensive Plan - Rural Element. Section IV describes that the purpose of the RR20 land use designation is:

28.1 'to allow for low intensity rural development, agricultural and forestry uses which do not require the extension of services or infrastructure. These areas provide greater opportunities for protecting sensitive environmental areas and creating open space typical of a rural setting.

28.2 Uses appropriate for these areas include: open space; residential; agriculture; and forestry. Additional uses may be considered with supplemental provision. 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 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; home occupations; bed and breakfasts; and community facilities.'

28.3 The emphasis of RR20 land uses is on low intensity rural development. 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.

29. Chelan County Code Development Standards 11.08.020:

Standard	RR20
Minimum Lot Size	20 acres
Minimum Lot Width	250' 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

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

30.1 (1) No variance shall be granted unless it can be shown that all of the following conditions existing:

30.1.1 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.

- 30.1.2 The applicant is requesting a zoning variance to facilitate construction of a 1,500 sq. ft. single-family residence on the property.
- 30.1.3 The proposed single-family residence would be of similar size and design as the surrounding residences. Therefore, this variance would not constitute a special privilege.
- 30.2 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.
 - 30.2.1 The existing lot appears to have some limitation due to the size of the lot. The lot was created prior to current zoning regulations that require a minimum width of 200 ft. lot pursuant to Chelan County Code 11.08.020(2).
 - 30.2.2 The plight of the applicant is due to the lot size and shape, which create a relatively small buildable area of which the applicant has no control.
- 30.3 The hardship asserted by the applicant is not the result of the applicant's or the owner's action.
 - 30.3.1 Due to the required setbacks from Stehekin Valley Road and an unopened right-of-way, the buildable area of the small lot is significantly reduced. The property is currently heavily forested vacant land. Lot sizes in the area are significantly larger in size than the subject property.
 - 30.3.2 The proposed reduced setbacks would not negatively affect the neighboring properties. The adjacent areas are either a right-of-way, unopen right-of-way or properties with much larger lots than the subject property.
 - 30.3.3 The property to the south of the subject property is owned by the US Forest Service and would most likely not be developed.
 - 30.3.4 The hardship is not the result of the owner's actions.
- 30.4 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.
 - 30.4.1 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 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 residence within the RR20 zoning District.
 - 30.4.2 The authorization of these front yard and rear yard variances would promote the development of the property for the new single-family residence. The development would not be injurious to property in the same neighborhood in which the development is located. The authorization of this variance would promote the goals and objectives of Title 11 and comprehensive plan.
- 30.5 The hardship asserted by the application results from the application of this title to the property.
 - 30.5.1 The Plat of Keller Stehekin Homes was approved and recorded by Chelan County in January 1931. The current code requires front yard setback of 55 ft.

from the centerline of the right-of-way and the rear setback requires a 20 ft. from the property line.

30.5.2 The hardship is a result of the application of the Chelan County Code to the subject property based on the property specific conditions, which does not factor in historically platted parcels.

31. An open record public hearing was held via Zoom on July 21, 2021.
32. The staff report, application materials, agency comments and the entire file of record were admitted into the record.
33. Neither the Applicant, nor the Applicant's agent, appeared at this hearing. The Applicant was given notice of the date, time and manner of the hearing.
34. No member of the public appeared at this hearing.
35. The Chelan County Hearing Examiner considered all evidence within the record in rendering this decision.
36. 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 21-146 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 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 April 9, 2021.
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 currently 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 11.88.190, 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 p.m. on weekends.
9. 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.
 - 9.1. An inadvertent discovery plan must be submitted with the building permit application and kept onsite during all land disturbing activities.
10. 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 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 Fire Marshal

11. Class A roofing/noncombustible roof covering, as defined in the International Building Code, shall be used in all areas of Chelan County. All building that require a building permit within this short plat shall have Class A roofing materials.
12. New construction permitted after February 1, 2021 is subject to WAC 51-54A-8200 International Wildland-Urban Interface Code. These include possible defensible space (Firewise) requirements for the property landscape and possible construction requirements for new buildings. All buildings that require a building permit within this short plat shall comply with the portion of the International Wildland-Urban Interface Code adopted by the State of Washington and Chelan County.

Dated this 21 day of July, 2021.

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.