

**CHELAN COUNTY  
LAND USE HEARING EXAMINER**

<b>IN THE MATTER OF</b>	)	<b>FINDINGS OF FACT,</b>
	)	<b>CONCLUSIONS OF LAW, AND</b>
<b>VAR (PL) 24-443</b>	)	<b>DECISION AND</b>
<b>Apgar Variance</b>	)	<b>CONDITIONS OF APPROVAL</b>

THIS MATTER having come on for hearing in front of the Chelan County Hearing Examiner on March 19, 2025, 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. An application for a Variance was submitted to reduce the required front yard setback for the construction of a detached garage. The variance request is to reduce the required front yard setback of 25 ft. from property line / 55 ft. from the centerline of North Shore Drive to 10 ft. from property line / 40 ft. from centerline.
2. **General Information**
  - 2.1. Project Location: 17725 North Shore Drive, Lake Wenatchee, WA 98826
  - 2.2. Parcel Number: 27-16-14-700-470
  - 2.3. Legal Description & Lot Size: Mountain Park Block 21 Lot 3
    - 2.3.1. The subject property is 0.16 acres according to Assessor's records
  - 2.4. Owners: Deiderik & Jan Apgar; 12611 SE 59th Street; Bellevue, WA 98006
  - 2.5. Agent: Same as Owner
  - 2.6. Urban Growth Area: The subject property is located outside of any Urban Growth Area.
  - 2.7. Comprehensive Plan Designation & Zoning: Rural Waterfront (RW)
  - 2.8. Existing Land Use & Permit History: An existing single-family residence that was built in approximately 1977 and an existing storage structure that was built in approximately 1930 (proposed to be removed).
3. **Site Information**
  - 3.1. Site Physical Characteristics: The subject property is located on the north shore of Lake Wenatchee and has steep topography from North Shore Drive down toward the shoreline. There is an existing single-family residence on the subject property which has chimney on the road-facing side of the residence.
    - 3.1.1. Property North: N Short Road (Public) / Rural Waterfront (RW)
    - 3.1.2. Property South: Lake Wenatchee
    - 3.1.3. Property East: Rural Waterfront (RW)
    - 3.1.4. Property West: Rural Waterfront (RW)

- 3.2. Aquifer Recharge Area: The Aquifer Recharge form was completed with the variance application. Pursuant to Chelan County Code (CCC), Section 11.82.060(2)(A), residential dwelling units and their accessory uses are exempt from the aquifer recharge area regulations under this chapter.
- 3.3. Chelan County Shoreline Master Program (CCSMP): Pursuant to CCSMP 3.4, Lake Wenatchee is considered a shoreline of statewide significance. Therefore, the provisions of the CCSMP would apply to the subject property.
- 3.4. Fish & Wildlife Habitat Conservation Areas: According to the Washington State Department of Fish and Wildlife, Priority Habitat and Species Maps, the subject property contains Gray Wolf, Northern Spotted Owl and Yuma Myotis habitats. Therefore, the provisions of CCC, Section 11.78 would apply.
- 3.5. Wetlands: Based on WA Dept. of Ecology mapping system, there are no wetlands located on the subject property. Therefore, the provisions of CCC, Section 11.80 would not apply.
- 3.6. Floodplain: According to the Federal Emergency Management Agency, FIRM panel # 5300150750A, there are no indications of flooding on the subject property. Therefore, the provisions of CCC, Section 11.84 and CCC, Section 3.20 would not apply.
- 3.7. Geologically Hazardous Areas: According to the Chelan County GIS mapping, the subject property is located within a geologically hazardous area. Therefore, the provisions of CCC, Section 11.86 would apply.
  - 3.7.1.A geological site assessment would be required with building permit application.
- 3.8. Cultural Resources: There are no known cultural resources in the project location.

**4. Project / Design Information**

- 4.1. Construction Phasing/Timing: Construction will commence once an approved building permit was issued.
- 4.2. Traffic Circulation: The subject property is accessed from North Shore Drive, a county right-of-way.
- 4.3. Domestic Water: The subject property draws water directly from Lake Wenatchee.
- 4.4. Power: The subject property is provided power by Chelan County PUD.
- 4.5. Sanitation: The subject property is provided sewer service by Chelan County PUD.
- 4.6. Fire Protection: The subject property is located within the boundaries of Fire District #9.
- 4.7. Noise: Any future development of the subject property must comply with the noise requirements of CCC, Section 7.35 and Revised Code of Washington (RCW) 70.107.
- 4.8. Visual Impact: Due to the natural vegetation and topography, visual impacts are not anticipated.

**5. Noticing & Comments**

- 5.1. The Notice of Application was referred to surrounding property owners within 300' (excluding 60' of right-of-way), jurisdictional agencies and departments of the County. These agencies and surrounding property owners were notified on February 06, 2025 with comments due February 20, 2025; no public comments were received for the application. Agency comments are considered in the staff report and, when appropriate, associated recommended Conditions of Approval. The following is a list of Agencies who received notice and the date comments were received:

5.2. Agencies Notified      Response Date/Nature of Comment

5.2.1. Chelan County Fire Marshal:

5.2.1.1.      No Comment

5.2.2. Chelan County Building Official:

5.2.2.1.      No Comment

5.2.3. Chelan County Public Works:

5.2.3.1.      February 14, 2025: No objection with variance request as long as applicant records a Hold Harmless Agreement with the County.

5.2.4. Chelan-Douglas Health District:

5.2.4.1.      February 10, 2025: No objections to proposal.

5.2.5. Chelan County PUD:

5.2.5.1.      No Comment

5.2.6. WA Dept. of Archaeology and Historic Preservation:

5.2.6.1.      No Comment

5.2.7. Yakama Nation:

5.2.7.1.      No Comment

5.2.8. Confederated Tribes of Colville:

5.2.8.1.      No Comment

5.2.9. WA Dept. of Ecology:

5.2.9.1.      No Comment

5.2.10. WA Dept. of Natural Resources:

5.2.10.1.      No Comment

5.2.11. US Army Corps of Engineers:

5.2.11.1.      No Comment

5.2.12. WA Dept. of Fish & Wildlife:

5.2.12.1.      No Comment

**6. SEPA Environmental Review**

6.1. Pursuant to WAC 197-11-800(6) (b), variance applications that do not result in an increase in density are categorically exempt from the environmental review process.

**7. Application & Public Hearing Notice Compliance**

7.1. Application Submitted: November 12, 2024

7.2. Determination of Incompleteness issued:      November 20, 2024

7.3. Determination of Completeness issued: December 22, 2024

7.4. Notice of Application: February 06, 2025

7.5. Notice of Public Hearing: March 08, 2025

7.6. Public Hearing: March 19, 2025

**8. Chelan County Comprehensive Plan**

8.1. The Comprehensive Plan has been reviewed; specifically, the goals and policies related to the Rural Waterfront (RW) Comprehensive Plan designation and Critical Areas, for consistency with the proposed residential development.

8.2. The project is consistent with the Rural Waterfront (RW) purpose statement: to maintain the range of rural development opportunities consistent with the rural character and rural development provisions outlined in the goals and policies of this comprehensive plan. These areas can provide buffering or transitions between existing rural developments and areas of higher or lower densities...appropriate uses include: residential; agriculture; and forestry.

8.3. Additionally, the project is consistent with Goal CL 1 of the Resource Element: Identify and protect critical areas from adverse environmental impacts while providing for reasonable use of the property.

8.4. The Hearing Examiner finds that the project, as conditioned, is consistent with the Comprehensive Plan.

**9. Chelan County Code 11.16.020: Standards for the RW Zoning District**

9.1. Minimum Lot Size: Not less than 12,000 square feet.

9.1.1.Finding of Fact: The applicant is not requesting to modify the lot size.

9.1.2.Finding of Fact: This requirement does not apply.

9.2. Minimum Lot Width: 75 ft. at the front building line

9.2.1.Finding of Fact: The subject property was created by the recording of the Plat of Mountain Park on July 14, 1909, which was prior to the establishment of any zoning codes in Chelan County. The lot measures 50.39 ft. at the front building line.

9.2.2.Finding of Fact: The lot does not comply with the current required minimum lot width.

9.3. Maximum Building Height: 35 ft.

9.3.1.Finding of Fact: No new structures are being proposed with this application.

9.3.2.Finding of Fact: Building height for any new structures would be verified at time of building permit application.

9.4. Maximum Lot Coverage: Buildings and structures shall not occupy more than 35% of the lot area.

9.4.1.Finding of Fact: According to Chelan County Assessor's records, the property is 0.16 acres, this would allow for over 2,439 sq. ft. of lot coverage.

9.4.2.Finding of Fact: Any new lot coverage would be reviewed at time of building permit application.

9.5. Minimum Setback Distances: Front yard 25 ft. from the front property line or 55 ft. from the street centerline, whichever is greater; Side yard 5 ft. from side property line; Rear yard 20 ft. from rear property line.

9.5.1.Finding of Fact: The applicant is requesting a reduction of the front yard setback of 25 ft. from the property line / 55 ft. from the centerline to 10 ft. from the property line / 40 ft. from

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the centerline, in order to build a detached garage that would be located between the existing single-family residence and the front property line, at distance safe enough to preserve the structural integrity of the existing chimney on the residence and create 10 ft. of fire separation between the two structures but also located outside of the County right-of-way.

9.5.1.1. CCC, Section 11.88.040(2)(B) would allow for a reduction of the front yard setback due to slope down to 15 ft. from the front property line; however, utilizing this provision would not enable the applicant to place a new garage at a distance from the existing residence that would not potentially destabilize, or cause to fail, the residence's existing fireplace stone chimney. Such destabilization or failure could cause the chimney to be damaged beyond reasonable repair.

9.5.2. Finding of Fact: As conditioned, the approval of this application would allow for the modification of the required front yard setback to 10 ft. from the front property line would allow for the future construction of a detached garage to be located a safe distance from the existing single-family residence and the front property line.

9.6. Off-street parking requirements in this district shall be as follows: (A) Two spaces per single-family dwelling.

9.6.1. Finding of Fact: The applicant is requesting the setback variance in order to build a new detached garage which would be located a safe distance from the existing single-family residence and a safe distance from the road. The purpose for building a detached garage would be to provide the required two parking spaces for a single-family dwelling.

9.6.2. Finding of Fact: As conditioned, the approval of this application would allow for the modification of the required setbacks to allow for the future construction of a detached garage to provide the required residential parking spaces to be located outside of the County right-of-way.

#### 10. Chelan County Code 11.95.030: Variance Evaluation Criteria

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

10.1.1. 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.

10.1.1.1. Finding of Fact: The applicant is requesting a reduction to the front yard setback in order to build a proposed garage which would be located outside of the County right-of-way and would also not jeopardize the structural integrity of the existing single-family residence and its associated fireplace chimney.

10.1.1.2. Finding of Fact: The requested variance of the front yard setback would not constitute a special privilege whereas other properties along North Shore Drive are required to park within the County right-of-way due to the steep slopes of the property frontages along the right-of-way. In addition, the historic raising of the grade elevation of North Shore Road has made previously existing storage/parking structures inaccessible. The requested variance of the front yard setback would allow the property owners to have the minimum number of required parking spaces to be located outside of the County right-of-way.

10.1.2. 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.

- 10.1.2.1. Finding of Fact: Due to the location of the existing single-family residence and chimney in conjunction with the steep slope of the topography of the property frontage along North Shore Drive, the existing parking area is located within the County right-of-way.
- 10.1.2.1.1. While a “Front Yard Setback Due to Slope”, as allowed through CCC, Section 11.88.040(B), would grant the applicant a reduced setback of 15 feet from the front property line, this would place the proposed garage close enough to the existing single-family residence to potentially create instability issues with the existing chimney, as well as create potential fire hazards with the proposed garage being too close to the chimney. Therefore, the applicant is requesting a 10-foot setback to ensure structure stability and fire safety.
- 10.1.2.2. Finding of Fact: The plight of the applicant is due to circumstances over which the owner has no control.
- 10.1.3. The hardship asserted by the applicant is not the result of the applicant’s or the owner’s action.
- 10.1.3.1. Finding of Fact: The hardship asserted by the owners appears to not be of their own actions. The hardship stems from the creation of the subject property by the Plat of Mountain Park and the steep slope topography along the property frontage along North Shore Road.
- 10.1.3.2. Finding of Fact: The hardship of the steep slope topography and the required front yard setback along the frontage of North Shore Drive is a result of the application of Chelan County Code, Title 11 and not of the owner’s actions.
- 10.1.4. 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.
- 10.1.4.1. Finding of Fact: The proposal is to create a building area for a residential garage in order to provide off-street parking. Residential Accessory Structures are a permitted use in the RW zoning district as well as outlined in the Chelan County Comprehensive Plan.
- 10.1.4.2. Finding of Fact: The proposal satisfies the objectives of the comprehensive plan for the RW zone and critical areas. The proposal is not anticipated to be materially detrimental to the public welfare and safety or injurious to property in the neighborhood.
- 10.1.5. The hardship asserted by the application results from the application of this title to the property.
- 10.1.5.1. Finding of Fact: Due to the location of the existing single-family residence and chimney in conjunction with the steep slope of the topography and increased grade elevation along the frontage of North Shore Drive, the existing parking area is located within the County right-of-way. The construction of a new garage observing the required setbacks could potentially destabilize the existing chimney and create a potential fire hazard.
- 10.1.5.2. Finding of Fact: The hardship asserted is a result of the application of CCC, Title 11 and the required setbacks applied to the subject property.
- 10.2. The granting of a variance should not:



10.2.1. Be substantially based upon precedent established by illegal or nonconforming circumstances.

10.2.1.1. Finding of Fact: The variance request is based on the subject property's topography. encumbrances due to the application of CCC, Title 11, required zoning setbacks. The parcel was legally established pursuant to CCC, Section 14.98.1090, Definition of Legal lot of Record being that the subject property was created through the recording of the Plat of Mountain Park, under AFN: 28454, on July 14, 1909. The existing single-family residence was built in approximately 1977 and the existing storage shed/garage was built in approximately 1930.

10.2.1.2. Finding of Fact: The proposed variance is not based upon a precedent established by illegal or non-conforming circumstances.

10.2.2. Be substantially based upon lack of reasonable economic return or a claim that the existing/proposed structure is too small.

10.2.2.1. Finding of Fact: Currently, parking for the subject property is located within the right-of-way of North Shore Road. The applicant indicates that the request is not based on economic return, but rather a reasonable use of the property in way similar to properties in the proximity.

10.2.2.2. Finding of Fact: There is no claim of economic return. The reduced front yard setback would provide a building area for a modest garage which was located outside of the County right-of-way and located a safe distance from the residential chimney.

10.2.3. Be based on the fact that the condition, for which the variance is requested, existed at the time the applicant acquired the property.

10.2.3.1. Finding of Fact: The owners acquired the subject property in June of 2013. The lot has been in existence since July of 1909, when it was created by the recording of the Plat of Mountain Park, under AFN: 28454. The existing single-family residence was built in approximately 1977 and the existing storage shed/garage was built in approximately 1930.

10.2.3.2. Finding of Fact: The lot conditions for which this variance is being applied, existed at the time the applicant acquired the subject property.

10.2.4. Result in a de facto zone reclassification.

10.2.4.1. Finding of Fact: The proposed variance would not change the permitted land uses.

10.2.4.2. Finding of Fact: This would not apply.

10.2.5. Be substantially for the purpose of circumventing density regulations.

10.2.5.1. Finding of Fact: The proposed variance would not affect density.

10.2.5.2. Finding of Fact: This would not apply.

11. An open record public hearing was held, after legal notice, on March 19, 2025.

12. Appearing and testifying on behalf of the Applicant were the following individuals:

12.1. Dirk Apgar: Mr. Apgar is the property owner and the applicant. He agreed with all the representations set forth in the staff report. He also agreed with all of the proposed conditions of approval. The testified that this Variance from the required 25' set back to 10' is due to the steep

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slopes on the property. It's the minimum necessary to provide relief because of the chimney that is on the side of the house facing the road.

12.2. David Schettler: Mr. Schettler testified that he was an agent of the applicant and property owner and was authorized to testify on his behalf. He testified to the multiple other variances on north shore road that have been granted in the past. He indicated that the setback from the chimney to the new garage must be a minimum of 10' and so the requested variance is the minimum necessary to grant relief. He stated that the plan would be to remove the existing shed adjacent to the roadway.

13. No member of the public testified at the hearing.

14. The following exhibits were admitted into the record:

14.1. Ex. A Site Plan;

14.2. Ex. B Public Works Comment Letter;

14.3. Ex. C Inadvertent Discovery Plan Example;

14.4. Ex. D Staff Report;

14.5. Ex. E Remainder of Planning Staff File.

15. The Chelan County Hearing Examiner considered all evidence within the record in rendering this decision.

16. Any Conclusion of Law that is more correctly a Finding of Fact is hereby incorporated as such by this reference.

## II. CONCLUSIONS OF LAW

1. The Hearing Examiner has been granted the authority to render this decision.
2. As conditioned, this application is consistent with the Chelan County Code and Chelan County Comprehensive Plan.
3. Any Finding of Fact that is more correctly a Conclusion of Law is hereby incorporated as such by this reference.

## III. DECISION

Based on the above Findings of Fact and Conclusions of Law, VAR (PL) 24-443 is hereby **APPROVED** subject to the following Conditions of Approval.

## IV. CONDITIONS OF APPROVAL

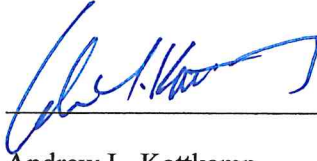
1. All conditions imposed by this decision shall be binding on the applicant, which includes the owner or owners of the properties, heirs, assigns, and successors.



2. Any future development shall be in compliance with the Chelan County Code, in addition to all other applicable local, state and federal regulations.
3. The development shall proceed in substantial compliance with the application submitted on November 12, 2024 and the site plan of record date stamped December 22, 2024 (Exhibit A).
4. Pursuant to CCC, Section 11.88.190, no construction activity shall be permitted within 1,000 ft. of an occupied residence between the hours of 10 p.m. to 7 a.m.
5. 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.
6. 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 current owner of the property, whether that is the applicant or a successor.
7. Pursuant to CCC, Section 11.95.070, upon final action of the hearing examiner as set forth in the provisions of this chapter, the department of building/fire safety and planning shall not accept filing of an application for substantially the same matter within one year from the date of the final denial of the application.
8. 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.
9. Pursuant to CCC, Section 11.02.040, prior to commencement of construction, the applicant shall obtain all required and necessary building permits.
10. Pursuant to comments received from Chelan County Public Works on February 19, 2025, the applicant shall execute and record a "Hold Harmless" agreement relieving the County of any liability for damage done to their property or structures due to the County's maintenance and repair work (including snow plowing) (Exhibit B).
11. Pursuant to RCW 27.53.020, if the applicant or his agents discover previously unknown historic or archaeological remains/artifacts while conducting the development activities authorized by this permit, 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.
12. Pursuant to RCW 27.53.060, if any Native American grave sites or archaeological resources are discovered or excavated, work shall stop immediately.
13. 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 C.
14. 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.

Dated this 1 day of April, 2025

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.