

**DOUGLAS COUNTY**

**DEPARTMENT OF HEARING EXAMINER**

140 19<sup>th</sup> Street NW  
East Wenatchee, WAS 98802-4109

<b>IN THE MATTER OF</b>	)	<b>FINDINGS OF FACT,</b>
	)	<b>CONCLUSIONS OF LAW,</b>
NC-2021-01	)	<b>DECISION AND</b>
Good Life Enterprises LLC	)	<b>CONDITIONS OF APPROVAL</b>

THIS MATTER having come on for hearing in front of the Douglas County Hearing Examiner on August 19, 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. The property owners and Applicants are Good Life Enterprises LLC (C/O G Merritt & A Schlegelmilch, PO BOX 69 Waterville, WA 98858).
2. The applicant is requesting the reconstruction of a nonconforming use and building/structure damaged beyond seventy-five percent of its value, expansion of a nonconforming use or building/structure pursuant to Douglas County Code 18.82.080, and construction pursuant to a Commercial Building Permit. "Jack's Resort restaurant/store" was destroyed by the Pearl Hill Fire on September 7, 2020. The "Jack's Resort restaurant/store" was approximately 1,680 square feet, and built prior to 1960. The new structure will be 2,400 square feet and placed at or near the same location.
3. Jack's Resort is located on the south end of Jameson Lake. The property is located at 425 S Jameson Lake Rd, Waterville, WA. The property is located within the Rural Resource 20 (RR-20) zoning district, and is further described as being located within the Section 13, Township 25N, Range 25E., W.M., Douglas County, Washington. The Douglas County Assessor's Parcel Number is 25251310005.
4. Site Characteristics: The subject property is approximately 36.03 acres in size, and includes varied rental stalls and cabin(s) (one known permit - BPC-05-022), miscellaneous commercial legacy permit (BPC-05-014), residential structures (storage addition - BPR-05-146 & residential attached garage - BPR-04-101 with varied legacy residential permits). In addition, the site includes varied existing structures supporting the resort and boat launch (SP-01-84). Much of the land is submerged and/or rolling hills.
5. Uses adjacent to the subject properties:

North: Undeveloped land owned by the Bureau of Land Management and private recreational property.  
South: Undeveloped land owned by the Bureau of Land  
East: Undeveloped land owned by the USA  
West: Lake Jameson and land owned by the Bureau of Land

6. Access: The subject property is accessed from Jameson Lake Rd.
7. Zoning: The subject property is located within the Rural Resource 20 (RR-20), which allows for “Recreational vehicle parks or campgrounds” (Pursuant to DCC 18.31.040 Conditional uses, 18.80.320 Conditional use permit matrix, and 18.80.230). The purpose of the RR-20 rural resource district is to encourage and maintain the county’s rural character; provide opportunities for compatible agriculture, grazing, forestry and other rural land uses that are sensitive to the area’s physical characteristics; and provide greater opportunities for protecting sensitive critical/environmental areas. The RR-20 district may have significant rangeland use and provides a buffer to resource areas from incompatible activities. These areas are generally located in areas utilized for grazing livestock, are adjacent to designated agricultural lands, reflect the area’s remoteness and/or have limited opportunities for development. Such lands typically are outside of fire service areas, provide minimal improved road access or have other site constraints. Clustering or other innovative techniques for residential lots are encouraged; provided, that the density does not encourage urban levels of service and provides significant open space corridors and protection of critical areas.
8. Applicable provisions of Douglas County Code (DCC) 18.82.060 Nonconforming buildings/structures: Reconstruction of a Nonconforming Building/Structure When Damage Exceeds Seventy-Five Percent of its Value. The following provisions shall apply when the reconstruction costs for a damaged, removed, demolished or destroyed nonconforming building/structure exceeds seventy-five percent of its value determined by using the most recent ICBO construction tables:
  - 8.1 When a damaged, removed, demolished or destroyed nonconforming building/structure was used for an approved or existing use, any reconstruction of the building/structure shall occur in accordance with the provisions of this title and other applicable development regulations of the DCC.
  - 8.2 When a damaged, removed, demolished or destroyed nonconforming building/structure was used for a nonconforming use it may be replaced as it was before or in a manner that is more conforming upon approval by the Hearing Examiner in accordance with DCC Section 18.82.080.
10. Douglas County Code (DCC) 18.82.080 - Procedures for reconstruction of a nonconforming use and building/structure damaged beyond seventy-five percent of its value. Change from a nonconforming use to another nonconforming use—Expansion of a nonconforming use or building/structure. The following procedures shall be followed to change a nonconforming use to a different nonconforming use, expand a nonconforming use throughout a building/structure, expand a nonconforming structure or use throughout a lot or onto an adjoining lot, or replace a nonconforming use and/or building/structure damaged by any means beyond seventy-five percent of its predamaged value as determined by using the most

recent Building Safety Journal Square Foot Construction Costs chart, as published by the International Code Council:

- 10.1 Applications submitted under this section are classified for quasi-judicial review described in DCC Section 14.10.040.
  - 10.2 The Hearing Examiner may grant the relief requested if he/she finds all of the following:
    - 10.2.1 That the expansion, change, reconstruction or replacement requested would not be contrary to the public health, safety or welfare; and
    - 10.2.2 That the proposed expansion, change, reconstruction or replacement is compatible with the character of the neighborhood; and, in the case of an expansion or change, does not significantly jeopardize future development of the area in compliance with the provisions and the intent of the zoning district; and
    - 10.2.3 That the significance of the hardship asserted by the applicant is more compelling than, and reasonably overbalances, the public interest resulting from the denial of the relief requested; and
    - 10.2.4 That the use or building/structure was lawful at the time of its inception; and
    - 10.2.5 That the approval of the requested expansion, change, reconstruction or replacement will not significantly adversely impact nearby properties.
  - 10.3 The Hearing Examiner shall deny the proposed expansion, change, reconstruction or replacement if he finds that one or more of the provisions in DCC Section 18.82.080(B) are not met.
  - 10.4 When approving a change in or the expansion, reconstruction or replacement of a nonconforming use or building/structure, the Hearing Examiner may attach conditions to the proposed change, expansion, reconstruction or replacement or any other portion of the development in order to assure that the development is improved, arranged, designed and operated to be compatible with the objectives of the comprehensive plan, applicable development regulations and neighboring land uses and transportation systems.
11. COMPREHENSIVE PLAN: The Comprehensive Plan designates this property as Rural Resource. Rural lands are those areas outside of urban growth areas (UGA) that are not designated resource lands of long-term commercial significance. The rural element accommodates a range of land uses including a variety of residential densities that are compatible with the character of rural areas. The rural land use element guides the future use and development of the rural areas of Douglas County. Rural areas are considered the unincorporated areas outside of the urban growth areas and not designated as resource lands. Rural development activities are comprised of small unincorporated rural communities, farms, rangeland, forested areas, isolated rural commercial and industrial development and regionally important recreation areas that have limited services and very low rural densities. The rural element seeks to protect the rural character of the County by reducing the inappropriate conversion of undeveloped land into sprawling, low density development and assuring the protection of the natural environment, historic properties and rural lifestyles. The ways in which rural character will be accommodated include encouraging cluster developments, revitalization of the existing rural service centers, master planned resorts and other low impact development that minimizes impacts to resources valued by the community.

12. RURAL DEVELOPMENT: Measures governing rural development are dependent on a number of factors including the type of rural development activity and the intensity of rural development anticipated. Conditions for rural development include provisions that protect the rural character and visual compatibility with the surrounding rural areas; reducing the inappropriate conversion of rural lands to sprawling low-density development; protecting against conflicts with designated agricultural, forest and mineral resource lands; and protecting critical areas. It is the intent of this comprehensive plan to balance resource uses, the natural environment and rural development opportunities. Rural land use designations include Rural Recreation, Rural Resource 2, Rural Resource 5, and Rural Resource 20.
- 12.1 4.3.1 Rural Development Goals and Policies:
- 12.1.1 GOAL: Provide opportunities for continued smaller scale developments outside UGAs that will be compatible with and continue to preserve, maintain and enhance the vital agricultural uses in the County.
- 12.1.2 RD-3. Development and recreational opportunities in rural shoreline and other rural areas shall minimize potential adverse impacts to water quality, slope stability, vegetation, wildlife and aquatic life.
- 12.1.3 RD-4. Rural developments will not impact existing public facilities/services to the extent that the level of service for that facility is reduced below the adopted threshold and/or an acceptable operation capacity.
- 12.1.4 RD-5. The costs associated with implementing a rural development and providing the necessary utilities, facilities and/or services will be borne by the developer.
13. ECONOMIC DEVELOPMENT. A robust and diverse economy is central to maintain the vitality and quality of life within Douglas County. This chapter encourages sustainable economic development activities that complement the varying geographical regions of the County by promoting growth within the capacity of the County's natural resources and existing or future proposed public services and capital facility infrastructure. Economic development in the county is primarily the role of the Port of Douglas County, however, the goals and policies in this chapter support their efforts by ensuring that land use policies and regulations are flexible enough to encourage a strong economic base and by promoting family-wage employment opportunities. Through good policy direction and development regulations the county can support steady and beneficial growth over the long-term.
- 13.1 GOAL: Preserve the strength of the existing agricultural industry while diversifying the economy by strengthening a wide spectrum of economic activity throughout the County in both rural and urban growth areas and maximize the positive economic impact of tourism and recreational development.
- 13.2 ED-1 Support the retention and expansion of existing business and the recruitment of new businesses that provide family-wage jobs.
- 13.3 ED-14 Promote the development of entertainment and recreational facilities that to attract and capture tourism dollars within the County.
14. ENVIRONMENTAL REVIEW. The granting of the project is categorically exempt from the thresholds determination pursuant to DCC 19.04.110 Flexible thresholds for categorical determinations (A) (3) and WAC 197-11-800(1)(b)(iii). For office, school, commercial, recreational service or storage buildings twelve thousand square feet or less and forty or fewer parking spaces.

15. Comprehensive Plan Consistency: The proposal is consistent with the goals and policies of the Douglas County Comprehensive Plan.
16. Consistency with the provisions of Rural Resource 20 (RR-20) Zoning District, DCC Chapter 18.31: The Rural Resource 20 (RR-20) allows for “Recreational vehicle parks or campgrounds” (Pursuant to DCC 18.31.040 Conditional uses, 18.80.320 Conditional use permit matrix, and 18.80.230). “Jack's Resort restaurant/store” is a part of a recreational vehicle park and campground. The structure was destroyed by the Pearl Hill Fire on September 7, 2020. The “Jack's resort restaurant/store” and the existing recreational vehicle park and campground were built prior to 1960. “Jack's resort restaurant/store” qualifies as a nonconforming use and structure.
17. Consistency with Chapter 18.82 Nonconforming Uses. “Jack's Resort restaurant/store” is a part of a recreational vehicle park and campground. The structure was destroyed by the Pearl Hill Fire on September 7, 2020. The “Jack's resort restaurant/store” and the existing recreational vehicle park and campground was built prior to 1960.
18. Consistency with Douglas County Code (DCC) 18.82.060 Nonconforming buildings/structures subsection (D) (2). The structure was destroyed in its entirety (greater than 75%), and the applicant desires expansion of the “Jack's resort restaurant/store” from 1,680 square feet to 2,400 square feet and placed at or near the same location which can be allowed upon compliance with DCC 18.82.080.
19. Consistency with Douglas County Code (DCC) 18.82.080 Procedures for reconstruction of a nonconforming use and building/structure damaged beyond seventy-five percent of its value—Change from a nonconforming use to another nonconforming use—Expansion of a nonconforming use or building/structure: The following procedures shall be followed to change a nonconforming use to a different nonconforming use, expand a nonconforming use throughout a building/structure, expand a nonconforming structure or use throughout a lot or onto an adjoining lot, or replace a nonconforming use and/or building/structure damaged by any means beyond seventy-five percent of its predamaged value as determined by using the most recent Building Safety Journal Square Foot Construction Costs chart, as published by the International Code Council:
  - 19.1 Applications submitted under this section are classified for quasi-judicial review described in DCC Section 14.10.040. On 06/30/2021, the applicant submitted application requesting approval for the expansion of the “Jack's resort restaurant/store” from 1,680 square feet to 2,400 square feet. Pursuant to DCC 2.13.070 (A) (5) the Hearing Examiner—Authority and duties, the examiner shall receive and examine available relevant information, including environmental documents, conduct public hearings, cause preparation of a record thereof, prepare and enter findings and conclusions for: Applications for variances, conditional use permits, permits for the alteration, expansion or replacement of a nonconforming use, and waivers;
  - 19.2. The Hearing Examiner may grant the relief requested if he finds all of the following:
    - 19.2.1 That the expansion, change, reconstruction or replacement requested would not be contrary to the public health, safety or welfare. The Hearing

Examiner finds that the rebuild is not contrary to the public health, safety or welfare. It actually will improve all. The reconstruction and expansion of the “Jack’s resort restaurant/store” is not contrary to the public health, safety or welfare. Construction shall adhere to the adopted standards of the IBC, Health Codes, and adhere to the standards which meet public welfare standards.

- 19.2.2 That the proposed expansion, change, reconstruction or replacement is compatible with the character of the neighborhood; and, in the case of an expansion or change, does not significantly jeopardize future development of the area in compliance with the provisions and the intent of the zoning district. The Hearing Examiner finds that the rebuild does not have any effect on any neighboring properties and does not jeopardize any future development whatsoever. “Jack’s Resort restaurant/store” is a part of a recreational vehicle park and campground. The Rural Resource 20 (RR-20) allows for “Recreational vehicle parks or campgrounds” (Pursuant to DCC 18.31.040 Conditional uses, 18.80.320 Conditional use permit matrix, and 18.80.230). The subject property is approximately 36.03 acres in size, and the reconstruction / expansion would not impact future development.
- 19.2.3 That the significance of the hardship asserted by the applicant is more compelling than, and reasonably overbalances, the public interest resulting from the denial of the relief requested. The Hearing Examiner finds that this has been a devastating loss not only for the Applicant, but for the community and many people who have visited the facility for generations. It has not only been financially devastating but emotionally, and physically as well. The Applicant is trying to rebuild their lives not only for them, but the many people who have been devastated by it. The Applicants are a huge part of this community and are very well supported. The structure was destroyed by the Pearl Hill Fire on September 7, 2020.
- 19.2.4 That the use or building/structure was lawful at the time of its inception and The Hearing Examiner finds that Jack and Trudy McDonald bought the resort with the restaurant/store already in place in 1971 and it had changed hands multiple times prior to that. “Jack’s Resort” was established prior to 1960, and Douglas County has issued permits for new uses and structures supporting the recreational vehicle park and campground (rental cabin permit - BPC-05-022), miscellaneous commercial legacy permit (BPC-05-014), and boat launch (SP-01-84).
- 19.2.5 That the approval of the requested expansion, change, reconstruction or replacement will not significantly adversely impact nearby properties. The Hearing Examiner finds that there is no adverse impact to nearby properties. The majority of surrounding properties include Lake Jameson and undeveloped land owned by the Bureau of Land. The Comprehensive Plan supports the recreational use, and no adverse agency nor public comments were transmitted to Douglas County.
- 19.3 The Hearing Examiner shall deny the proposed expansion, change, reconstruction or replacement if he/she finds that one or more of the provisions in DCC Section 18.82.080(B) are not met. The Hearing Examiner finds that all required criteria are met.

- 19.4 When approving a change in or the expansion, reconstruction or replacement of a nonconforming use or building/structure, the Hearing Examiner may attach conditions to the proposed change, expansion, reconstruction or replacement or any other portion of the development in order to assure that the development is improved, arranged, designed and operated to be compatible with the objectives of the comprehensive plan, applicable development regulations and neighboring land uses and transportation systems. The proposal is consistent with the goals and policies of the Douglas County Comprehensive Plan, the expansion is located on or near the same footprint of the destroyed “Jack’s Resort restaurant/store,” and shall meet construction and infrastructure standards and specifications.
20. Consistency with the provisions and requirements of D.C.C. Title 19 Environment (Critical Areas and SEPA). The expansion will not impact Critical Areas are located within nor the vicinity of the subject property. This includes, but is not limited to Wetlands, Fish and Wildlife Habitat Conservation Areas, Geologically Hazardous Areas (steep slopes), Aquifer Recharge Areas, and /or Floodplains / Floodways.
21. Applicable agencies have been given the opportunity to review this proposal. These agencies have identified mitigation or project design requirements for the project that have been included as conditions of approval where appropriate.

Agency Notified	Response Received	Agency Notified	Response Received
Dept. of Fish & Wildlife	N/R	Dept. of Ecology	N/R
Dept. of Arch. & Historical Preservations	N/R	Douglas County - Fire District	07/30/2021
Colville Confederated Tribes	N/R	Chelan-Douglas Health District	08/04/2021
Douglas County PUD	08/02/2021	Transportation & Stormwater	07/30/2021
Douglas County TLS - GIS	07/27/2021	Land Use	08/02/2021

22. Surrounding property owners were given the opportunity to comment on the proposals, can request a copy of the decision, and can appeal the decision subject to the requirements outlined in DCC Title 14.
23. Proper legal requirements were met and surrounding property owners were given the opportunity to comment on the proposal at a public hearing.
24. No written public comments were received.
25. After due legal notice an open record public hearing was held via Zoom due to the Covid-19 pandemic on August 19, 2021.

26. The entire Planning Staff file was admitted into the record at the public hearing.
27. Appearing and testifying on behalf of the Applicant were Ryan Best and Ginger Merritt. Mr. Best testified that he is the attorney for the property owner and Applicant. He testified that all of the representations contained in his letter dated August 18, 2021, were truthful and accurate. Mr. Best indicated that the size of the destroyed building was 35' by 48' for a total of 1,680 sq. ft. Mr. Best testified consistent with his letter, regarding the right-of-way going through the property. He stated that there would be a parking lot located on the property.
28. Ms. Merritt testified that she is a co-owner of the property. She objected to the plan to put a cul-de-sac on their property on the access road that leads to the State Park. She stated that the road would not end at the cul-de-sac, but goes on to access private property and Washington Department of Fish and Wildlife property. Further, she wanted to confirm that the address of 425 S. Jameson Lake Road, Waterville, Washington, would remain the address for Jack's Resort restaurant and store.
29. Mr. Best and Ms. Merritt indicated that all Conditions of Approval were acceptable, with the exception of the cul-de-sac.
30. No member of the public testified at this hearing.
31. Providing additional information from the County, were Jack Horton of Douglas County Public Works and Todd Wilson, GIS Coordinator. Both Mr. Horton and Mr. Wilson testified that the cul-de-sac would only be evidenced on paper and that there would be no construction of a cul-de-sac blocking access to other properties served by this road. The cul-de-sac is necessary so that there is an established area for vehicles to turn around on the subject property. In response, Mr. Best indicated the Applicant still objected to the establishment of a formal cul-de-sac, indicating that they would be putting a parking lot in this location.
32. 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 authority to render this decision.
2. As conditioned, the development meets the goals, policies and implementation recommendations as set forth in the Douglas County Comprehensive Plan.
3. The reconstruction and expansion meets the standards and procedures of DCC 18.82.080.
4. The reconstruction and expansion is located on or near the same footprint of the destroyed "Jack's Resort restaurant/store."
5. The project shall meet construction and infrastructure standards and specifications.
6. 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, review of all applicable files, including the Planning Department staff file, and after an open record public hearing, the Hearing Examiner has determined that NC 2021-01 is hereby **APPROVED** subject to the following Conditions of Approval.

### IV. CONDITIONS OF APPROVAL

All Conditions of Approval shall apply to the applicant, and the applicant's heirs, successors in interest and assigns.

1. Applicant shall obtain a Commercial Building Permit. The applicant shall adhere to the requirements of BPC-2021-027. The applicant shall obtain all necessary, local, state and federal permits prior to construction. Such includes, but is not limited to:
  - 1.1 A Connecting to Existing System application will be required from the Chelan-Douglas Health District with a recent septic system inspection from a CDHD Licensed O&M service provider to determine if existing septic system can meet the flow requirements of the new restaurant/store.
  - 1.2 A new construction septic permit may be required in the event the existing septic system is not sized adequately or if existing system is not functioning properly. Fees paid for the Connecting to Existing System application will be applied to the new construction permit fees.
  - 1.3 The resort's address will remain 425 S Jameson Lake Rd. The residence shall receive a new address, as well as, the RV spaces and cabins. The RV spaces and cabins will remain as 425 S Jameson Lake Rd and all of the RV spaces and cabins shall be numbered and documented.
  - 1.4 The applicant shall provide documentation for the numbering of the RV spaces and cabins which includes application and maps with numbered spaces.
  - 1.5 Prior to occupancy, the applicant shall dedicate the right of way necessary to accommodate a cul-de-sac (55' radius) at the location where vehicles have been historically turning around (prior to WDFW gate). Douglas County shall prepare the Statutory Warranty Deed for execution by the applicant.
  - 1.6 The lot owner/contractor is responsible for taking measures necessary to prevent sediment from discharging on to the public right-of-way and/or adjacent properties.
  - 1.7 Construction materials, equipment and debris shall not be stockpiled within the County right-of-way. This includes but is not limited to portable toilets and building/landscaping materials.
  - 1.8 Implementation and update of temporary erosion control plan required until site is stabilized. Prior to construction, the stabilized entrance shall be in place. The construction entrance shall be maintained and refurbished as necessary to keep sediment from being tracked off site.

Dated this 23rd day of August, 2021.

DOUGLAS COUNTY HEARING EXAMINER



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Andrew L. Kottkamp

**Any aggrieved party or agency of record may request a reconsideration of this Hearing Examiner's decision. Motions for reconsideration must be filed with the Department within ten (10) days from the date of issuance as defined by RCW 36.70C.040(4)(a). Unless otherwise provided, the filing of a motion for reconsideration shall not stop or alter the running of the period provided to appeal the Hearing Examiners decision to Superior Court. Motions for reconsideration are governed by Douglas County Code 2.13.150.**

**Anyone aggrieved by this decision has twenty-one (21) days from the issuance of this decision, to file an appeal with Douglas 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.**