



**City of Leavenworth**  
**Department of Development Services**

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**Staff Report – Conditional Use Permit and Variance**

**To:** Leavenworth Hearing Examiner

**From:** City of Leavenworth Community Development Department

**Date of Report:** April 16, 2019

**Date of Hearing:** April 30, 2019

**Subject:** Leavenworth Adventure Park - Conditional Use Permit and Variance

**Permit:** CUP 2018-04  
VAR 2018-02

**Applicant:** D.R. Moffett & Associates, Inc, Dave Moffett and John Sutherland  
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Mercer Island, WA 98040

**Project Manager:** John Sutherland  
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## **I. PROJECT INFORMATION**

**Approvals Requested:** There are two types of application approvals being requested; (1) an application for a Conditional Use Permit (CUP 2018-04) for a Commercial Amusement Enterprise and (2) a Variance (VAR 2018-02) request from the side yard setback requirements for the alpine coaster. The variance request was modified on April 5, 2019, removing front yard setback requests.

**Project Details:** The applicant is proposing to construct and operate a year-around, commercial amusement enterprise called the Leavenworth Adventure Park (Adventure Park). The applicant is proposing to construct Phase 1 of the Adventure Park, and if successful, may pursue Phase 2.

**Phase 1** of the proposed Adventure Park includes several amusement features: (a) Wiegand Alpine Coaster with an uphill track length of 750 feet and a downhill track length of 2,000 feet long with a vertical drop of 234 feet; (b) Climbing Wall and/or Tower; (c) Bungee Trampoline; and (d) Sluice Mining. Other development features proposed in Phase 1 include: (a) Developed Base Area (approximately 17,000 square feet) with loading/unloading storage, ticketing, retail, restrooms, picnic area, office, and food services; (b) Landscaping; (c) Parking (approximately 32,000 square feet with 69 stalls for guests; employee parking is provided off-site, on leased land); (d) Crosswalk; and (e) Fencing.

**Phase 2** of the proposed Adventure Park includes additional amusement features: (a) Aerial Ropes Challenge/Obstacle Course; and (b) Via Ferrata Climbing Experience. Other development features proposed in Phase 2 include: (a) An estimated 5,000 square foot building for food services; (b) Landscaping; and (c) Parking as

necessary.

The applicant has an anticipated start date of operation in early 2020. Operating a minimum of 225 days per year; Monday - Friday 10:00 am to 10:00 pm; Saturdays and Holidays 9:00 am to 10:00 pm; and Sundays 9:00 am - 7:00 pm with private parties available midweek from September through May.

**Location of Project:** The project site is located at 9342 Icicle Road, Leavenworth, Washington; Chelan County Assessors Tax Parcel Number 24-17-11-420-150. The subject site is located within the Tourist Commercial District (CT), is approximately 10.11 acres, and is bordered by State Highway 2.

**General Site Characteristics:** Along the east property line the site is generally flat, covering approximately 1 acre, with the remainder of the site containing a steep sloped hill which peaks near the center of the site and slopes down to the river along the west side of the property.

**Built Environment:** The site is partially developed with the existing parking lot, wood-frame building and storage trailer used by the Osprey Rafting Company.

**Adjacent Land Uses:**

North: Highway 2 and vacant land beyond

Zoning: Tourist Commercial (CT)

South: City of Leavenworth Reservoir and residential property

Zoning: Tourist Commercial (CT) and Chelan County Rural Waterfront (RW)

East: Icicle Road, Gas Station and Icicle Village Resort Condominiums

Zoning: Tourist Commercial (CT)

West: Wenatchee River and vacant land beyond

Zoning: Chelan County Rural Residential/Resource 20 (RR20)

**II. CONSISTENCY ANALYSIS**

**Comprehensive Plan Review:** The Comprehensive Plan promotes tourism specifically within the Tourist Commercial designation. There are two goals which specifically address the “Tourist Commercial” designation; Goal 3 of the Land Use Element defines the intent of the Tourist Commercial district to accommodate motels and other auto-oriented patrons; and, Goal 30 of the Land Use Element which encourages the development of additional tourist facilities to stimulate the area as a quality destination.

*Goal 3: Strengthen, preserve and enhance the Leavenworth Commercial districts as an active and economically viable place to shop, conduct business, reside, and enjoy events. Enhance and attract small and medium sized businesses, which serve the community's needs for goods and services.*

*Rationale: Commercial activities in the city are permitted in three commercial districts based on their functional similarities and locational requirements. Small retail and service shops in the Central Commercial district serve a compact / concentrated pedestrian tourism. Larger stores with more goods and services, not properly a part of the central area, is found in the General Commercial district. The Tourist Commercial district classification is intended to be applied to areas suitable and desirable for motels, restaurants, service stations and similar uses to accommodate auto-oriented patrons.*

*Goal 30: Encourage the development of additional tourist commercial facilities.*

*Rationale: One of the keys to a strong commercial base is the provision of additional tourist*

*commercial facilities to help stimulate the planning area's development as a quality destination, rather than just a stopping point for tourists.*

The proposed Adventure Park would diversify tourist recreational activities within the City which currently include City parks, public golfing, public pool, walking, biking and hotel amenities such as miniature golf at the Icicle Village Resort. With the more diversified tourist activities, the proposed Adventure Park can be viewed to support Leavenworth's goal to develop "as a quality destination". Additionally, the proposed location within the Tourist Commercial designation along the Highway and accessed from Icicle Road, supports auto-oriented patrons while still being within walking distance (approximately ½ mile) to downtown and most hotels, as encouraged in the rationale to Goal 3. The proposed development is consistent with the Comprehensive Plan.

### **Leavenworth Municipal Code Review for Conditional Uses:**

#### **CHAPTER 18.52 CONDITIONAL USES**

*SECTION 18.52.050 Approval or denial – Authority. Uses designated in this title as conditional uses shall be permitted only upon approval of the Leavenworth hearing examiner, after a public hearing, in accordance with this chapter. Conditional uses are those which may be appropriate, desirable, convenient or necessary in the district in which they are allowed, but which by reason of their height or bulk or creation of traffic hazards or parking problems or other adverse conditions may be injurious to the public health, safety, welfare, comfort and convenience unless appropriate conditions are imposed.*

#### **Applicant Response: In order to meet and exceed this code requirement, the applicant:**

- Completed and submitted a traffic study with traffic counts taken at two separate times during the year, including Labor Day weekend.
- Completed and submitted a peer review of the traffic study to confirm the study results.
- Submitted a parking plan that exceeds code requirements including a proposal for a second parking area as part of Phase 2, should it be deemed necessary.
- Proposes using Dark Sky Standards for lighting, except if an emergency situation requires additional lighting.
- Submitted information regarding noise and acknowledges the requirement to meet LMC 9.33. The applicant also is open to providing a future noise study if required, and mitigating any issues the city deems appropriate.

While the Hearing Examiner may certainly propose additional conditions, we are proposing the following conditions are part of approval should the Hearing Examiner deem them important. Proposed conditions were focused on issues that we raised during the first submittal on this project.

Proposed condition #1 - Parking. Prior to the construction of Phase 2, we are asking, as part of this application, that a condition of approval be that prior to Phase 2 opening, the City of Leavenworth and the [Adventure Park] will determine, by mutual agreement, additional parking needs. To accomplish this, during the first year of Phase 1 operation the [Adventure Park] will conduct a ground-view study to collect parking counts to inform whether additional parking may be warranted though not required by code. Any additional off-street parking would be located within 500' of the project site as required by LMC 14.12.160.

Proposed Condition #2 - Noise. Noise is required to meeting LMC 9.33 for noise. The City may request a noise study be completed if deemed necessary. If noise levels are found to exceed City of Leavenworth standards, appropriate mitigation will be required to ensure the project complies LMC.

Proposed Condition #3 - Crosswalk. A marked crosswalk across Icicle Road on the north side of the site driveway will be added as part of Phase 1 and should be combined with appropriate signage deemed necessary by the City.

Proposed Condition #4 – Lighting. To the extent possible, the [Adventure Park] will follow guidelines established by the Dark Sky Association. The exception would be any lighting necessary to accommodate emergency situations for first responders.

Proposed Condition #5 – Sidewalks. If additional parking is deemed necessary as part of Phase 2, the [Adventure Park] will either provide a sidewalk or other pedestrian connection deemed necessary by the City of Leavenworth.

Proposed Condition #6 – Bike Racks. As part of Phase 1, the [Adventure Park] will install bike racks to encourage cycling as an alternative form of transportation.

Proposed Condition #7 – Off-Road Vehicle. As part of Phase 1, the [Adventure Park] will purchase an off-road vehicle (ORV) for on-hill emergency access. The ORV will be donated to the Leavenworth Fire Department.

**Finding of Fact:** The applicant has proposed several conditions of approval, some of which have been addressed within the MDNS and others have been modified and added as recommended conditions of approval by staff. The condition for an off-road vehicle has several complicating factors, such as maintenance and use. Access within the site for emergencies is required and may be resolved through various methods. Staff recommends a general condition of approval by the Fire District for access to all areas of the development.

The zoning code permits a Commercial Amusement Enterprise within the Tourist Commercial zoning district with a Conditional Use Permit. Therefore, the use has been determined “appropriate, desirable, convenient or necessary” for this site, if specified criteria for *“height or bulk or creation of traffic hazards or parking problems or other adverse conditions may be injurious to the public health, safety, welfare, comfort and convenience unless appropriate conditions are imposed.”* Staff addresses each of the criteria below:

**HEIGHT:** The height of the proposed buildings is limited to 35’ within the Tourist Commercial district. The coaster structure is not defined as a building in code. Therefore, the height of the coaster was addressed and conditioned within the MDNS issued February 8, 2019 to not exceed 35’ at any point.

**Staff Conclusion:** The height of the proposed structure and buildings will not be injurious to the public health, safety, welfare, comfort or convenience.

**BULK:** Bulk is defined as “the mass or magnitude of something large”. The project site is approximately 10 acres. The proposed development covers approximately 3 acres with parking and congregation area, buildings and activities. The remaining approximate 7 acres is undeveloped, excluding the proposed emergency access easement road.

**Staff Conclusion:** The size of any one structure or the overall project, in relationship to the site, is not a bulk issue.

**TRAFFIC:** The majority of public comments related to, or included, traffic and parking concerns primarily based on existing conditions near the project site and within the City. To determine the potential impacts of the proposed development, the applicant provided a Traffic Impact Analysis completed by RBT Consultants, dated October 2018, and peer review by Gibson Traffic Consultants, Inc, dated October 24, 2018. After review by the City Engineer and the SEPA Official, the City issued a MDNS with conditions for the crosswalk design standards and location, placement of “no parking” signs along Icicle Road, restriping of the left-hand turn lane for Icicle Road, and compliance with the RBT recommendations. These conditions resolve the technical impacts to the environment.

There are potential conditions which may support the public “comfort and convenience” specifically for the intersection. However, neither WSDOT nor the City have identified a need for intersection improvements but acknowledge the potential for future improvements. Once those improvements are defined it will be appropriate for

the surrounding land owners to be supportive of the improvements. To that end, staff is recommending a No Protest Agreement be a condition of approval.

**Recommended Condition of Approval:** The property owner shall enter into a No Protest Agreement regarding the future development of intersection improvements at Highway 2 and Icicle Road, including but not limited to streets, sidewalks, utilities and/or lighting in the area, or the formation of a Local Improvement District. Said agreement shall be approved by the City as a notice to title recorded with the Chelan County Auditor's Office. The Applicant's participation shall be in accordance with reasonable methods established by Washington State law and/or by the Leavenworth City Council, and shall be for a pro-rata share of improvements in the geographic area as established by a benefits assessment or other mechanism. The notice shall bind all future property owners to the agreement.

**Staff Conclusion:** Traffic related concerns for the development are addressed in the MDNS and the recommended conditions of approval and shall not be injurious to the public health, safety, welfare, comfort or convenience of the public.

**PARKING:** The applicant is proposing 69 parking spaces. As noted in the MDNS, the calculation for parking was based on the congregation area of 17,055 square feet and the Leavenworth Municipal Code requirement of 1 space for 300 square feet of ground area (17,055/300 requiring 56.85 spaces). The LMC does not require additional parking for employees; therefore, it is assumed that the calculation for the amusement enterprise includes employee parking. This method of calculation is consistent with a similar project and an Administrative Interpretation for the Icicle Village Resort, see City Appeal Exhibit dated April 1, 2019.

The RBT report, found that increasing the length of stay due to the development of Phase II may result in additional parking demands; therefore, a follow up parking study was recommended by RBT and required as mitigation within the MDNS.

The proposed development has been reviewed and determined to meet the City Code parking requirements as interpreted.

There are additional conditions which may support the public "comfort and convenience". Staff recommends a managed parking system to provide a level of convenience and comfort for those traveling to the site by vehicle with the expectation of parking.

**Recommended Condition of Approval:** The applicant shall require ticketed parking for patrons and employees. Parking shall be limited to the duration of the stay and shall be monitored for compliance by the applicant. A report shall be submitted to the City at the end of the first year of operations, pursuant to LMC 18.52.090, documenting the number of parking spaces occupied during peak visitor days/times.

**Staff Conclusion:** Parking related concerns for the development are addressed in the MDNS and the recommended conditions of approval and shall not be injurious to the public health, safety, welfare, comfort or convenience of the public.

**OTHER:** Other adverse conditions may include those identified through the agency and public comments.

SEPA related items have been addressed by the MDNS issued January 8, 2019, including geotechnical requirements, re-vegetation requirements, construction mitigation planning, bear proofing waste containers, multiple noise testing and reporting, fire suppression requirements, height requirements, light mitigation including shielding and limited use of lights, secondary Traffic Impact Analysis prior to Phase II, installation of "no parking" signage, road restriping, development of a crosswalk, fire lanes and signage. The Construction Mitigation Plan requires a Stormwater Pollution Prevention Plan and a Stormwater Plan, re-vegetation plan, identifying the construction staging area and construction schedule, Emissions Plan, Hazardous Spill Control and Emergency Spill Management Plan and a Construction Traffic Control Plan. Additionally, the project is required to be compliant with the Leavenworth Municipal Code, including

Titles 13, 14, 15, 16, 18 and 21.

Quality of life and level of tourism related issues raised by the public can be correlated to the “comfort and convenience” considerations of a Conditional Use Permit. However, there were comments both for and against the project which demonstrate the subjective-ness of these issues for various residents and visitors. Ideally, the quality of life and level of tourism are best defined and addressed through the Comprehensive Planning process rather than an individual permit application. The current Comprehensive Plan supports Tourist Commercial land uses on the subject site.

**Staff Conclusion:** The current Comprehensive Plan outlines tourist related activities as appropriate within the Tourist Commercial designation.

*SECTION 18.52.060 Additional Requirements and Conditions. In permitting a conditional use, the hearing examiner may impose, in addition to the regulations and standards expressly specified by this title, other conditions found necessary to protect the best interests of the surrounding property, the neighborhood, or the county as a whole. These conditions may include but are not limited to the following:*

*A. Increasing the required lot size or yard dimensions;*

**Applicant Response:** This is not applicable to the [Adventure Park] project.

**Finding of Fact:** The project site is approximately 10 acres. The applicant is seeking a reduction in the side yard (setback) requirement, addressed below.

*B. Limiting the coverage or height of buildings because of obstruction to view and reduction of light and air to adjacent property;*

**Applicant Response:** The code for the Tourist Commercial designation requires that no structure shall exceed a height of 35 feet. No structures will exceed this height limit. Structures will not impact light or air to adjacent properties.

**Finding of Fact:** The proposed buildings are located near the existing road grade with no immediate adjacent structures. The proposed alpine coaster development is limited to a height of no more than 35’ at any point, per the MDNS Item 10.1. The alpine coaster, similar to any other development of the hillside, will be visible from the surrounding area but has not been determined to obstruct, defined for purposes of this report as blocking, an existing view.

*C. Controlling the location and number of vehicular access points to the property;*

**Applicant Response:** The [Adventure Park] parking lots will include specific arrival/departure access points that meet the city code and sight distance standards. (Please see site plan, sheet A007)

**Finding of Fact:** The proposed development includes one crosswalk near the middle of the east property line and one vehicular access near the southeast corner of the property. Both access points are from Icicle Road.

The proposed development will remove one existing vehicular access point near the center of the east property line. This removed access is used, in part, for access to the City water tower, easement AFN 2289170. The modification of the access point, appears to be permitted on the subject site. The applicant proposes that the easement be accessed from the proposed parking lot entrance to the south. Fire District #3 has reviewed and recommended conditions, documented within the MDNS, to ensure that this access point is accessible. The City Public Works department has no concern with the change to the access point.

The applicant has shown on the site plans other modifications to the easement to access the top of the property during

construction and in case of emergency. The final access to all areas of the development may or may not be located from the easement but all access should meet the Fire access requirements.

**Recommendation:** Staff recommends a condition of approval stating that the Applicant shall ensure emergency access, approved by the Fire District, to all areas of the proposed development, prior to issuance of a City permit.

*D. Increasing the street width;*

**Applicant Response:** This is not applicable to the [Adventure Park] project.

**Finding of Fact:** The proposed development is located adjacent to US Highway 2, with no requirement for additional road width from the Washington State Department of Transportation, and adjacent to Icicle Road with a 60' to 100' road width and no requirement for additional road width from the City of Leavenworth.

*E. Increasing the number of off-street parking or loading spaces required;*

**Applicant Response:** The [Adventure Park] will be providing parking that exceeds code requirements.

**Finding of Fact:** The proposed development meets the code requirement as interpreted for parking, as documented in the MDNS. Additionally, the traffic analysis done by RBT includes a parking analysis which documents adequate parking for Phase 1 but development with Phase 2 would require additional parking. Understanding that the model split used by RBT is an estimate, the RBT report recommended an additional study to determine actual model split and development need before approval of Phase 2. The additional study is required by the MDNS prior to Phase 2.

*F. Limiting the number, location and size of signs;*

**Applicant Response:** The [Adventure Park] will meet city code with the number, location and size, as well as the Old-World Bavarian Theme required by the city.

**Finding of Fact:** The application materials, site plan A006, includes the general location of signs, including the proposed crosswalk sign (item 18) and park sign (item 17). The exact location of these sign may require relocation to meet City standards and any safety concerns. The final location of signs is an Administrative decision, pursuant to LMC 21.09.030, unless otherwise conditioned by the Hearing Examiner.

*G. Requiring suitable landscaping where necessary to reduce noise and glare and to maintain the property in a character in keeping with the surrounding area;*

**Applicant Response:** The [Adventure Park] will use landscaping to mitigate potential noise issues and create complementary aesthetics to the surrounding area. (See Noise, page 11 [Narrative])

**Finding of Fact:** The application materials, Site Plan A006, denotes landscaping areas. Specific plantings will be reviewed with the building and parking permits. The MDNS mitigation requirements 11.1 and 11.2, require additional plantings to address potential light and glare impacts from vehicles parking. The final landscaping plan is an Administrative decision, pursuant to LMC 21.09.030, unless otherwise conditioned by the Hearing Examiner.

*H. Specifying a specific time limit for construction, alteration or enlargement to begin for a structure to house a conditional use;*

**Applicant Response:** The [Adventure Park] will meet this requirement through the submission of construction docs and planning.

**Finding of Fact:** The Construction Mitigation Plan, required by the MDNS, limits construction between the hours of 7:00 pm and 7:00 am. Additionally, the construction of the project may be defined by the weather conditions.

*I. Requiring that any future enlargement or alteration of the use be reviewed by the hearing examiner in view of specifying new conditions.*

**Applicant Response:** The [Adventure Park] agrees to this potential condition.

**Finding of Fact:** Pursuant to LMC 21.09.030, the Development Services Manager may review minor amendments or modifications to approved developments or permits which may affect the precise dimensions or location of buildings, accessory structures and driveways, but do not affect the overall project character, increase the number of lots, dwelling units or density, or decrease the quality or amount of open space. All other amendments, or at any time the Administrator may require, a conditional use permit be reviewed by the hearing examiner, who will have the authority to revise the initial conditions of approval if need for mitigation is determined, pursuant to LMC 18.52.090.

**Recommendation:** Staff recommends clarifying project amendment procedures as outlined above or solely with the Hearing Examiner.

*SECTION 18.52.090 Approval – Term – Permanent. Any approval of any application for a conditional use shall: A. Automatically be for a period of one year from the date of approval; B. At the expiration of its first year of approval, and after review by the community development director and assurance by the director that all conditions of approval have been or are being met, any such approved conditional use may be continued. At any time, the city may at its discretion require that the conditional use permit be reviewed by the hearing examiner, who will have the authority to revise the initial conditions of approval if need for mitigation is determined. All conditions of the permit shall continue to apply throughout the life of the use.*

**Finding of Fact:** If approved, the conditional use shall be authorized for one year. Review of all Conditional Use Permits is required to ensure compliance at the conclusion of the first year. The review is administrative; however, the city may at any point request the conditional use permit be reviewed by the Hearing Examiner who may revise the conditions of approval if there is a need for mitigation.

**Recommendation:** Staff recommends a condition of approval citing Section 18.52.090 as applicable to the proposed development.

## **Leavenworth Municipal Code Review for Variances:**

### *CHAPTER 18.56 VARIANCES*

The applicant modified the variance request on April 8, 2019 removing two components, (1) a reduction in the 25' front yard setback from Icicle Road and (2) a reduction in the 25' front yard setback from Highway 2, while retaining the third request – a reduction in the 10' side yard setback to approximately 2' for the alpine coaster along the south side yard property line, see site plan sheet A004.1.

*SECTION 18.56.060 Requirements. No variance shall be granted unless it can be shown that all of the following conditions exist:*

*A. 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.*

**Applicant's Response:** The Tourist Commercial District is intended for a wide variety of uses from multi-family and apartments to restaurants, professional offices, and family amusement enterprises.

While the hilly nature of the Leavenworth Adventure Park is necessary for the Alpine Coaster, we must locate amenity

spaces in areas that are safe and accessible to the public. The front setback variance requests from Icicle Road and Highway 2 simply allow these structures and park amenities to be placed on the limited areas of the site that are flat. The variances requested will still allow line of sight to be maintained as no structure will be closer than 8' 11 ½" from the Icicle Road Right of Way (ROW) or 16' 2 ¾ from the ROW of Highway 2. These setback variances still allow plenty of distance between the proposed structures and property lines.

The variance request for the Alpine Coaster on the east and south property lines will still allow space between the coaster and adjacent property lines for maintenance. These variance requests are being made because the Alpine Coaster is gravity fed. This request will allow the site to take advantage of the natural topography of the property.

**Finding of Fact:** The variance request is from the side yard setback requirement. The subject site is primarily surrounded by the Tourist Commercial zoning with similar uses permitted. Surrounding properties may be developed with a similar use under the current zoning code.

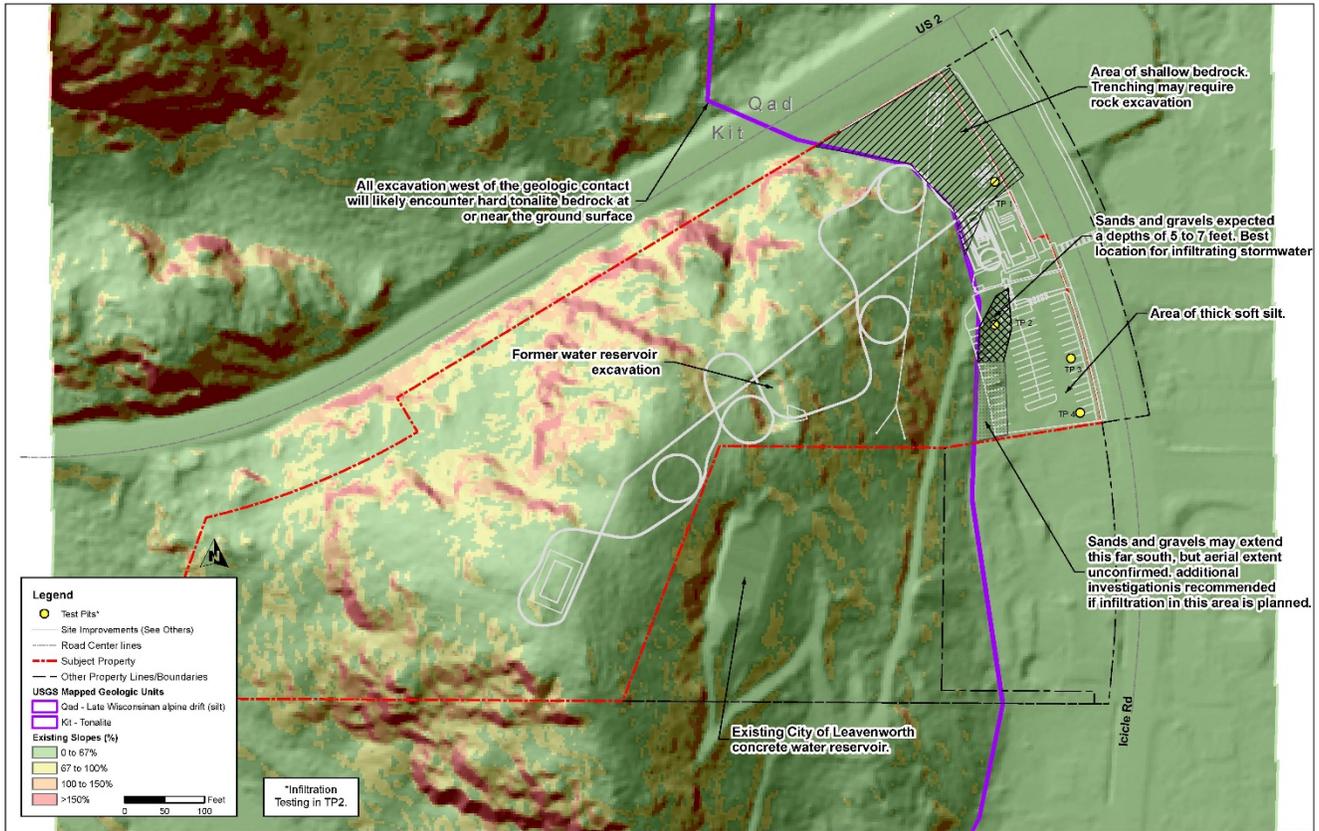
**Staff Conclusion:** The variance is necessary for the preservation of a property right of the applicant substantially the same as is possessed by owners of other property in the same neighborhood or district.

*B. 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.*

**Applicant's Response:** The majority of the 10.11-acre site is a steep slope that which is unusable for most family friendly activities. While we will be utilizing some of that hillside for activities such as the Alpine Coaster, limited ground area is usable as for structures and staging areas that are necessary for the proposal. This includes utilizing flat areas for parking, ticketing, and food service. Without variances being allowed, the buildable area is approximately 9,000 square feet (.20 acres) out of 10.11 acres. (This is not including the parking area.) Further, the existing Icicle Road right-of-way acts as an additional setback, therefore amenities along Icicle Road will seem even further front property lines. Lastly, there is also a portion of the site which is unbuildable due to an activated easement by the City of Leavenworth for access to the reservoir.

The usable land on the eastern side of the hill is so constricted, we need this variance to maximize our best design for the Alpine Coaster. (See site plan, A004.1.) Note that the reservoir is enclosed by safety fencing and will not be accessible to the public. The variance requests will simply allow the Leavenworth Adventure Park to utilize a site that is otherwise severally constricted.

**Finding of Fact:** The slope of the hill creates a partial "hour-glass" shape at the base of the hill. The existing hillside slope was used to design the layout of the alpine coaster in a way that uses gravity to move the coaster. The coaster layout was superimposed on a terrain map within the Geotechnical Report, dated April 2018 by RH2 Engineering, page 12 and copied below. This image shows the terrain north of the alpine coaster dropping steeply to the north while the gentler slopes to the south were used for the alpine coaster. The image includes the existing parcel boundaries for the subject site and the property to the south, owned by the City of Leavenworth and developed with an existing water reservoir. The area between the proposed alpine coaster and the water reservoir is very steep and would not readily be available for building.



**Staff Conclusions:** The existing topography poses limitations for development of the site. Where the hillside slope is gentler, the alpine coaster design requirements permit a layout that fits within the property boundaries but requires a variance from the side yard setback. The alpine coaster variance is due to unique circumstances such as topography and the lot size or shape, over which the applicant has no control.

*C. The hardship asserted by the applicant is not the result of the applicant's or the owner's action.*

**Applicant's Response:** The hardship asserted by the applicant is not the result of the applicant's or the owner's action.

**Finding of Fact:** As addressed above, the site has limitations due to steep slope and lot configuration which restrict developable area primarily to the flat area along Icicle Road. The proposed coaster development requires a specific layout on the existing topography.

**Conclusion:** The hardship relates to the site conditions and the design layout of the coaster.

*D. The authorization of the variance shall not be materially detrimental 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 any comprehensive plan.*

**Applicant's Response:** The Tourist Commercial District anticipates a variety of different uses including commercial amusement enterprises. The use is buffered away from other uses by Icicle Road to the east, City owned property to the south and Highway 2 to the north. The Leavenworth Adventure Park is being built as a family friendly activity to

complement the variety of activities currently within the City.

This project implements the 2017 Leavenworth Comprehensive Plan as well. Here are a few of the policies that support this project:

Economic Development Element – Goal 2 Policy 1: Recognize the importance of tourism and its contribution to the health of the economy of Leavenworth. Rationale: Tourism has become an important sector that has an impact on development of the economy. The main benefits of tourism are income creation and generation of jobs.

Policy 3: Develop and explore the area's potential for enhanced facilities, services and events that will appeal to residents and visitors year-round. Rationale: The ability of the tourism economy to benefit from tourism depends on the availability of investment to develop the necessary infrastructure and on its ability to supply the needs of tourists.

Land Use Element Goal 4: Provide an appropriate level of flexibility through development regulations which promote efficient use of buildable land. Balance this flexibility with other community goals and the need for predictability in decision making. Achieve this through measures such as clustering that preserves open space and administrative deviations for minor variations/ deviations from prescribed standards.

Rationale: Rigid prescriptive regulations, rules and requirements are unable to address all aspects of community desires and implementation of the Comprehensive Plan. Some areas within the regulations, rules and requirements need to be performance based to add variety, address complexity, and allow options not availed within strict conformance with regulations, rules and requirements. Administrative discretion allows effective decisions while serving the public interest.

Goal 30: Encourage the development of additional tourist commercial facilities. Rationale: One of the keys to a strong commercial base is the provision of additional tourist commercial facilities to help stimulate the planning area's development as a quality destination, rather than just a stopping point for tourists.

**Finding of Fact:** The subject parcel is located in the Tourist Commercial zoning district. The surrounding properties, within the City or City's Urban Growth Area, are also within the Tourist Commercial zoning district. A portion of property southwest of the subject site, beyond the proposed development site, adjoins a County Rural Waterfront zoning district and the west property line adjoins the Wenatchee River and a Rural Residential/Resource 20 zoning district.

The surrounding properties are primarily Tourist Commercial which are either developed with commercial uses (gas station) or intended to be developed with higher intensity commercial development.

The proposed variance request is intended to provide for development of the site in a manner which is consistent with the Tourist Commercial zoning district, when approved by a Conditional Use Permit. The Comprehensive Plan objectives for the Tourist Commercial designation are for tourist related activities, as noted above.

**Conclusion:** The proposed variance request is not materially detrimental to the purposes of the zoning code, injurious to property in the same district or neighborhood in which the property is located, or otherwise detrimental to the objectives of any comprehensive plan.

*E. The hardship asserted by the applicant results from the application of this title to his property.*

**Applicant's Response:** Having a 25' front setback and 10' on the sides may make sense for many uses. However, the Tourist Commercial zone allows for numerous unique uses where application of the setbacks creates a hardship. This is one of those cases. Unlike many uses, the Leavenworth Adventure Park (LAP) needs the site topography of the site for some of the uses, such as the coaster. However, we must be able to utilize those portions of the site that are flat for additional attractions and services such as parking, ticketing, food, and some of the park amenities. While

a 25' front and 10' side setback may be appropriate in some cases, it creates a hardship for this property.

**Finding of Fact:** The Tourist Commercial zoning district requires a 10' side yard setback.

**Conclusion:** Without the required setbacks, the applicant would not have a hardship for development of the alpine coaster.

### III. REGULATORY COMPLIANCE

**Application Submittal:** An application was submitted by Dave Moffett (applicant), D.R. Moffett & Associates, Inc, and John Sutherland (contact) on November 8, 2018. The application included all required components and appropriate fees, and was determined complete on November 28, 2018.

**Noticing:** A Notice of Application was issued on December 5, 2018, posted on three bulletin boards at City Hall and posted on the site by the applicant. The Notice of Application was sent to all property owners within 350' of the subject property on December 6, 2108 (following the National Day of Mourning for President George Bush which closed the Post Office) and published in the newspaper on December 5, 2019. The Notice of Application 14-day public comment period through December 19, 2018.

The following agencies were sent a Notice of Application for review and comment:

City of Leavenworth: Public Works Department

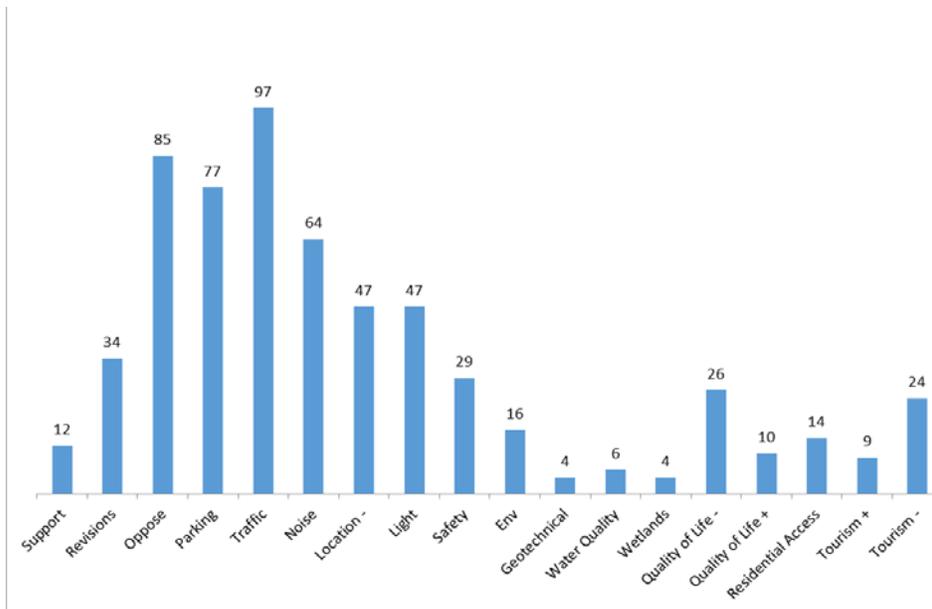
Chelan County: Chelan County PUD#1; Chelan County Fire District #3; Chelan County Planning Department; Chelan County Sherriff's Department; Chelan County Assessor; Chelan County Auditor; Chelan County Treasurer; Chelan County Public Works Department; Port of Chelan County

State of Washington: Washington State Department of Ecology; Washington State Department of Fish and Wildlife; Washington State Department of Archaeology & Historic Preservation; Washington State Department of Natural Resources; Washington State Department of Transportation; SEPA Register; Chelan-Douglas Health District;

Additional Agencies/Organizations: Yakima Nation of Confederated Tribes; Colville Tribes; FEMA; Cascade Medical Center; Cascade School District; Icicle Irrigation District; LINK Transit; Leavenworth Mosquito District.

Comments were received from the public and agencies, as noted in the file of record.

**Comment Consideration:** There were comments in favor of the proposed development and comments with concerns or opposed to the development. After the Notice of Application comment period concluded, staff reviewed the nature of comments and graphed responses in an effort to clarify primary concerns as well as identifying which concerns are regulatory in nature (parking/traffic/noise/light/safety/environment) and which are subjective in nature (tourism/quality of life). The following table represents the initial summary of comments.



Comments were carefully considered as part of the SEPA determination and in review of the code requirements for this staff report. Project mitigation has been required by the MDNS issued February 8, 2019 and further addressed within the Staff recommended conditions of approval below.

**SEPA Determination:** Under the provisions of the State Environmental Policy Act (SEPA) and LMC 16.04, the City of Leavenworth is the Lead Agency and is responsible for entering a threshold determination into the record in accordance with Washington Administrative Code (WAC) Chapter 197-11. The Applicant submitted an environmental checklist at time of application. The City reviewed the checklist and all public comments received on the proposed project for probable significant environmental impacts and issued a Mitigated Determination of Non-significance (MDNS) on February 8, 2019 with a 14-day comment period and an additional appeal period. Additional public comments were received on the SEPA determination.

On March 1, 2019, the Friends of Leavenworth appealed the MDNS determination. On March 4, 2019 the SEPA appeal was noticed to surrounding property owners and parties of record. On March 14, 2019 continued to March 22, 2019, the required pre-hearing conference was held by all parties. It was determined that the SEPA appeal hearing will be held prior to the Conditional Use and Variance Hearing on April 30, 2019. The Hearing Examiner issued a Notice and Order on March 26, 2019 outlining the Hearing process and timelines and an amended order on April 2, 2019.

**Public Hearing Pursuant to the Leavenworth Municipal Code:** The staff report was completed and available to the public and was e-mailed to the Applicant and Hearing Examiner on April 16, 2019.

#### IV. ANALYSIS

The applicant has presented a detailed conceptual development plan. The final development may require minor modifications to address the mitigation measures required in the MDNS and any conditions of approval, including demonstrating compliance with the LMC Titles 12 Streets, Sidewalks and Public Property, 13 Water and Sewer, 14 Development Standards, 15 Buildings and Construction, 16 Environment and 18 Zoning. All modifications shall require review and approval by either the Development Services Manager and/or the Hearing Examiner, per the conditions of approval.

Regarding the requested Conditional Use Permit, staff finds that the project does not have significant adverse probable impacts on the environment, as conditioned by the MDNS. Additional conditions of approval are recommended to ensure the best interest of the community's comfort and convenience. The project is consistent with the Comprehensive Plan Goals and Objectives and the with the conditions identified, addressed and mitigated for, and the project is consistent with the Development Standards of the City.

Regarding the requested variance, the requested side yard setback variance for the alpine coaster variance, is most likely established due to the structure design constraints and the topography of the site for the alpine coaster.

The Hearing Examiner has the ability to condition variances, LMC 18.56.050, as determined appropriate.

## **V. RECOMMENDED CONDITIONS OF APPROVAL**

If Conditional Use Permit No. 2018-04 and Variance No. 2018-02 as to the coaster are approved, City of Leavenworth Staff recommends the following Conditions of Approval:

1. All conditions composed herein shall be binding on the "Applicant," which term shall include the owner or owners of the property, heirs, assigns, and successors.
2. All conditions of the permit shall continue to apply throughout the life of the use.
3. All development shall proceed in substantial conformance with the application materials as modified by this decision.
4. The Applicant shall comply with all federal, State, and local laws and regulations.
5. The Applicant shall comply with the Mitigated Determination of Non-significance and its conditions, issued by the City on January 8, 2019.
6. Pursuant to LMC 18.52.090, any approval of an application for a conditional use shall:
  - a. Automatically be for a period of one year from the date of approval;
  - b. At the expiration of its time period of approval, and after review by the City of Leavenworth Development Services Manager and assurance by the Manager that all Conditions of Approval have been or are being met, any such approved conditional use may be continued. At any time, the City may at its discretion require that the Conditional Use Permit be reviewed by the Hearing Examiner who will have the authority to revise the initial conditions of the approval if need for mitigation is determined. All conditions of the permit shall continue to apply throughout the life of the use.
7. Pursuant to LMC 21.09.030, the Development Services Manager may review under either the limited-administrative review process (LMC 21.09.030) or the full-administrative review process (LMC 21.09.040), as determined by the City of Leavenworth Development Services Manager, *minor amendments or modifications to approved developments or permits which may affect the precise dimensions or location of buildings, accessory structures and driveways, but do not affect the overall project character, increase the number of lots, dwelling units or density, or decrease the quality or amount of open space*; all other amendments or at any time the Administrator may require, pursuant to LMC 18.52.090, this *conditional use permit be reviewed by the hearing examiner, who will have the authority to revise the initial conditions of approval if need for mitigation is determined*.
8. The Applicant shall provide a Landscaping Plan, consistent with LMC 14.12.190, for Administrative review and approval, prior to development of the site.
9. The Applicant shall ensure emergency access, approved by the Fire District, to all areas of the proposed development, prior to issuance of a City permit.

10. The property owner shall enter into a “No Protest Agreement” regarding the future development of intersection improvements at Highway 2 and Icicle Road, including but not limited to streets, sidewalks, utilities and/or lighting in the area, or the formation of a Local Improvement District. Said agreement shall be approved by the City as a notice to title recorded with the Chelan County Auditor’s Office. The Applicant’s participation shall be in accordance with reasonable methods established by Washington State law and/or by the Leavenworth City Council and shall be for a pro-rata share of improvements in the geographic area as established by a benefits assessment or other mechanism. The notice shall bind all future property owners to the agreement.
11. The applicant shall require ticketed parking for patrons and employees. Parking shall be limited to the duration of the stay at the Adventure Park and shall be monitored for compliance by the applicant. A report shall be submitted to the City at the end of the first year of operations, per LMC 18.52.090, documenting the number of spaces occupied during peak visitor days/times.
12. The applicant shall develop a marked crosswalk with appropriate signage, as approved by the City, prior to final occupancy of the first building permit.
13. The applicant shall provide bike racks, prior to final occupancy of the first building permit.
14. The applicant shall provide additional sidewalk, road, and access improvements, determined necessary by the City for Phase 2 parking.
15. Water and sewer tap and System Development Charges are applicable, and shall be calculated by the City based on the development.
16. Prior to construction, the Applicant shall contact Chelan Public Utility District to receive power service and appropriate line extensions.
17. The applicant shall obtain all required City Permits, including but not limited to:
  - a. On-site water extensions for potable, irrigation (separately metered), fire connections and hydrants shall be required. Mains shall be dedicated to the City and within an easement of at least 15-feet in width. Utility/Civil plans shall be prepared and stamped by a professional Washington State licensed engineer.
  - b. A Right of Way permit may be required if work is performed within right of way. All disturbance to right-of-way shall be repaired/replaced to the City's satisfaction.
  - c. Prior to installation of any permanent signs for the proposed project, the Applicant shall apply for and receive a sign permit from the City pursuant to LMC Title 14.10.
  - d. Design Review Permit is required for the proposed development.
  - e. Design of stormwater facilities in conformance with the Stormwater Management Manual for Eastern Washington shall be required. Stormwater plans shall be prepared by a professional, and shall address all required Core elements. Operation and maintenance of private stormwater facilities shall be privately maintained by the property owner. Operations and Maintenance plans (O&Ms), Construction Stormwater Plans, and other plans as required by the SMMEW shall be included within the Stormwater Plan for review by the City.
18. According to LMC Section 14.14.090, all projects shall provide infrastructure to support the development in conformance with the standards contained in this chapter; and 14.14.160 (B), in cases of limited infill development, the standard can be partially waived by the City of Leavenworth Development Services Manager working in consultation with the Public Works Director.
  - a. The Applicant shall be required to sign a waiver of protest for participation in a future Local Improvement Districts (LID) and/or similar funding measure for improvements of the

streets, sidewalks, utilities and/or lighting in the area. The applicant's participation shall be in accordance with reasonable methods established by Washington State law and/or by the Leavenworth City Council, and shall be for a pro-rata share of improvements in the geographic area as established by the City.

19. Engineering may be required if the storage area does not appear large enough to accommodate plowing and snow blowing on-site.

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Attachment:

- A. Index of Record, as of April 16, 2019