



Berlin Zoning Setback Variance

File Number VA-19-00001

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

I. GENERAL INFORMATION

Requested Action: Dan Berlin, property owner, has submitted a zoning setback variance request to reduce a 25 foot rear yard setback within the Residential zone to 15 feet. This variance is requested to situate a single-family residence away from the adjoining property owner’s existing single-family residence on the east side property line whose driveway is partially located on the subject property.

Location: Parcel 088335, located at 50 Kitzbuhel Place in the Snoqualmie Pass Limited Area of More Intensive Rural Development, in Section 15, T22N, R11E, WM, Assessor’s Map Number 22-11-15050-0005.

II. SITE INFORMATION

Total Property Size:	0.27 acres
Number of Lots:	1 (no new lots are being proposed)
Domestic Water:	Snoqualmie Pass Utility District
Sewage Disposal:	Snoqualmie Pass Utility District
Power/Electricity:	PSE and onsite propane
Fire Protection:	Snoqualmie Pass Fire and Rescue
Irrigation District:	N/A

Site Characteristics:

North: Powerlines, single-family residences, and wooded area

South: Single-family residences and wooded area

East: Single-family residences and wooded area

West: Single-family residences and wooded area

Access: The site is accessed via Kitzbuhel Place, a paved county road off of Snoqualmie Drive at Snoqualmie Pass.

III. ZONING AND DEVELOPMEN STANDARDS

The subject property has a zoning designation of Residential within the Snoqualmie Pass Limited Area of More Intense Rural Development – Type 1. The purpose and intent of this zone is to provide for and protect areas for homesite development designed to meet contemporary building and living standards where public water and sewer systems are provided pursuant to KCC 17.16 Residential Zone. The applicant is requesting to utilize the variance process pursuant to KCC 17.84 Variances to deviate from the prescribed setback requirements in KCC 17.16.060 through KCC 17.16.080. Title 17.84.010 of the Kittitas County Code outlines four criteria in which a variance can be granted. The applicant must demonstrate that the proposal **has met all four criteria**. The following is a summary describing whether or not each criterion has been satisfactorily demonstrated:

KCC 17.84.010 Granting Criteria (all four must be met):

1. Unusual circumstances or conditions applying to the property and/or the intended use that do not apply generally to other property in the same vicinity or district, such as topography;

Applicant Response

“The County has setbacks as follows: front 15’, side 5’ and rear 25’. The HOA has setbacks as follows: front 25’, side 10’, and rear 15’. We must meet both County and HOA setbacks. Our property is situated on the end of a culdesac which lacks a full circle turning radius because of a culvert that protrudes out into the culdesac which was created by the County. The property is 5 sided. Dan was informed by the County that it has 1 front, 2 sides and 2 rear setback requirements which do not apply to other properties in the vicinity. The typical property setbacks are 1 front, 2 sides and 1 rear. In order to meet both the County and HOA setbacks our property would need the following setbacks downsizing our property considerably: Front 25’ per HOA, 2 sides 10’ each per HOA, and 2 rear 25’ each per County. The west rear side (25’ setback) has a steep slope grade of 21.6’ from the east side to the west rear property line. (96.4” – 118”) requiring us to locate the house as far east as possible (10’ setback). Neighbor’s house to the south was approved by the County to be built on the surveyed property line indicating 0’ setback. This variance will allow us to accept a BLA with the neighbor in order to make his house legal. Other properties in the vicinity have use as large of a footprint with various setbacks incongruent with the County requirements.”

Staff Response

CDS staff have reviewed the complete file information, including but not limited to, the applicant submitted information and comments received during the comment period. Additionally, between the initial zoning setback variance request on February 28, 2019 and their second response to address the need for additional information on July 10, 2019, the Berlins applied for a building permit (BP-19-00157) with CDS on April 1, 2019. As part of this submittal packet, the Berlins provided a scaled site plan (included in the Masterfile for this variance request) demonstrating that their proposed single-family residence can and does meet all building setbacks as provided in KCC 17.16.060, 17.16.070, and 17.6.080. This building permit was issued on July 2, 2019 based in part on the site plan provided with the permit. Not only can the proposed single-family residence meet the setbacks prescribed in code, the site plan approved with the building permit and submitted to CDS on July 10th as additional information shows that they are also able to meet the HOA CC&R setback requirements of 25 feet from the front property line. CDS staff finds that there are not unusual circumstances or conditions applying to this property and/or the intended use that do not apply generally to other property in the same vicinity or district. A boundary line dispute is not a sufficient reason to grant a zoning setback variance and should be processed through its own review of either a boundary line adjustment or a boundary line dispute. CDS staff finds that criterion 1 of the KCC 17.84.010 has not been met.

The applicant has failed to demonstrate in a factual and meaningful way the existence of any “unusual circumstances or conditions that cause an undue hardship” that does not generally apply to other property in the same vicinity. Further the applicant has failed to demonstrate in a factual and meaningful way the existence of any “undue hardship” caused by the application of the yard requirements as stipulated in KCC 17.16.080.

2. Such variance is necessary for the preservation and enjoyment of a substantial property right of the applicant possessed by owners of other properties in the same vicinity.

Applicant Response

“Per survey, the neighbor to the south is encroaching on our property. The house has a 2’ bump out on

the second level and a 24" overhang making his roof line on the edge of our property. The bottom half of his entire driveway along with his side drive, is also our property which has affected the preservation and enjoyment of his property and ours. Granting a 15' setback on the north side will allow for both properties to meet the south side setback of 10' after a BLA is accepted. Granting a 15' setback would also correct the County's error from years ago. A greenbelt exists along this north side so no properties will be affected by the requested setback variance of 15'. After a variance approval, a BLA would be considered along the south side property line to create 2 separate properties which meet all County requirements, along with free and clear access to each property. This too, would enable both property owners the ability of preservation and enjoyment of their respective property as possessed by other owners of properties in the vicinity. 50 Kitzbuhel will be our full time primary family residence unlike many other homeowners who have a second home or use the property as a rental. Approving a variance rear setback of 15' will provide the required setbacks between neighbors, allow for ample snow removal for the County, and off-street parking since the County culvert protrudes into the culdesac."

Staff Response

CDS staff have reviewed the complete file information, including but not limited to, the applicant submitted information and comments received during the comment period. Additionally, between the initial zoning setback variance request on February 28, 2019 and their second response to address the need for additional information on July 10, 2019, the Berlins applied for a building permit (BP-19-00157) with CDS on April 1, 2019. As part of this submittal packet, the Berlins provided a scaled site plan (included in the Masterfile for this variance request) demonstrating that their proposed single-family residence can and does meet all building setbacks as provided in KCC 17.16.060, 17.16.070, and 17.6.080. This building permit was issued on July 2, 2019 based in part on the site plan provided with the permit. Not only can the proposed single-family residence meet the setbacks prescribed in code, the site plan approved with the building permit and submitted to CDS on July 10th as additional information shows that they are also able to meet the HOA CC&R setback requirements of 25 feet from the front property line. CDS staff finds that a variance is not necessary for the preservation and enjoyment of a substantial property right of the applicant possessed by owners of other properties in the same vicinity. A boundary line dispute is not a sufficient reason to grant a zoning setback variance and should be processed through its own review of either a boundary line adjustment or a boundary line dispute. CDS staff finds that criterion 2 of KCC 17.84.010 has not been met.

The applicant has failed to demonstrate in a factual and meaningful way the existence of a "substantial property right" that may be negated by the application of the yard requirements as stipulated in KCC 17.16.080.

3. Authorization of such variance will not be materially detrimental to the public welfare or injurious to property in the vicinity.

Applicant Response

"The authorization of such variance will not be detrimental to the public welfare or injurious to property in the vicinity. In fact, the variance would be beneficial to Kittitas County by providing more area for snow removal. According to Mark Cook, Director of Kittitas County Public Works, he stated at the HOA meeting June 2, 2018 that it would be beneficial for a 15' rear setback and they were going to be changing in the new year (2019)."

Staff Response

CDS has concluded that the requested zoning setback variance for the rear property line to 15 feet instead of the prescribed 25 feet will not be materially detrimental to the public welfare or injurious to the property in the vicinity.

4. The granting of such a variance will not adversely affect the realization of the comprehensive development pattern of this area.

Applicant Response

“The granting of such variance will not adversely affect the realization of the comprehensive development pattern since the property is located on a culdesac. It is the last piece of property to be developed on the culdesac and it has a greenbelt to its rear north side. The 25’ rear setback to the west will remain at 25’ so not to affect future construction on the lot above.”

Staff Response

CDS has concluded that the requested zoning setback variance for the rear property line to 15 feet instead of the prescribed 25 feet will not adversely affect the realization of the comprehensive development pattern of the area however, the zoning setback variance is not necessary because the prescribed setbacks in county code can be met based on the site plan provided and approved with BP-19-00157.

Staff Conclusions

Staff finds that the zoning variance request **does not** meet all four criteria outlined in KCC 17.84.010 as described above and that only criteria 3 and 4 can be satisfied. Therefore, the zoning variance request cannot be approved.

IV. ADMINISTRATIVE REVIEW

Project Submittal: A Zoning Variance Application was submitted to Kittitas County Community Development Services department on February 28, 2019.

Deem Complete: The application was determined incomplete and additional information was requested on March 18, 2019. On March 19th, 2019 the applicant submitted additional information. CDS staff sent a second deem incomplete and request for addition information letter on March 26, 2019. The applicant submitted additional information on July 10, 2019. On July 17, 2019 the application was deemed complete.

Notice of Application: Notice of Application was sent to property owners within 500 feet and all agencies with jurisdiction, published in the official newspaper of record for Kittitas County, and posted on the Kittitas County website on July 22, 2019, all in conformance with the Kittitas County Project Permit Application Process (Title 15A). The comment period ended at 5:00 pm on August 6, 2019 and all comments were transmitted to the applicant on August 9, 2019.

V. COMPREHENSIVE PLAN

This variance request is to reduce setbacks for a single-family residence located in the Snoqualmie Pass Type 1 Rural LAMIRD. A LAMIRD is a local area of more intense rural development that is allowed to occur consistent with the State’s Growth Management Act and is a way to preserve the County’s overall rural character. The following are Goals and Policies from the Kittitas County Comprehensive Plan Chapter 8, Rural and Resource Lands, that are pertinent to single family residences within LAMIRDs.

RR-G31: “Provide opportunity for residential infill which provides a variety of housing and yet maintains rural character.”

Staff Consistency Statement:

This zoning setback variance is requested on a parcel located within the existing Snoqualmie Pass Type 1 LAMIRD which allows for infill of housing. The applicant states one of the reasons the setback variance is necessary is to allow for the construction of their single family residence. Therefore, this request is consistent with this Comprehensive Goal.

RR-G32: “Provide for rural community settings which do not require urban level services and maintain existing rural development patterns that have existed for long periods.”

Staff Consistency Statement:

This zoning setback variance is requested on a parcel located within the existing Snoqualmie Pass Type 1 LAMIRD which allows for infill of housing within an existing plat from the 1980s. Therefore, this request is consistent with this Comprehensive Plan Goal.

RR-P98: The County should allow for designation of LAMIRDs in the rural area, consistent with the requirements of the GMA.

Staff Consistency Statement:

This zoning setback variance is requested on a parcel located within the existing Snoqualmie Pass Type 1 LAMIRD which allows for infill of housing within an existing plat from the 1980s. Therefore, this request is consistent with this Comprehensive Plan Policy.

VI. ENVIRONMENTAL REVIEW

Based upon review of the submitted application materials and an initial critical areas review CDS determined that the Berlin Zoning Setback Variance is exempt from SEPA review pursuant to WAC 197-11-800(6)(e).

VII. AGENCY AND PUBLIC COMMENTS

Applicable agencies, adjacent property owners, and interested parties have been given the opportunity to review this proposal. All comments are on file and available for public review.

VIII. PROJECT ANALYSIS

In review of this proposal it is important to consider the goals and policies of the comprehensive plan, applicable county code, public and agency comments, any identified environmental concerns and state and federal requirements. Identified below is planning staff’s analysis and consistency review for the subject application.

Consistency with the Comprehensive Plan:

The proposal is consistent with the goals and policies of the Kittitas County Comprehensive Plan. As referenced above in Section V of this staff report, the following Comprehensive Plan Goals and Policies apply to this proposal: RR-G31, RR-G32, and RR-P98.

The requested zoning setback variance related to constructing a single family residence on a parcel located within the existing Snoqualmie Pass Type 1 LAMIRD and within an existing platted community is not consistent with the Comprehensive Plan because it does not satisfy all requirements of KCC 17.84.010 which is an implementing

regulation of the Comprehensive Plan.

Consistency with the provisions of KCC 17A, Critical Areas:

Staff conducted an administrative critical area review in accordance with KCC 17A. GIS information indicates no known critical areas on the subject property. This request is consistent with critical areas provisions.

Consistency with the provisions of KCC 17.16 Residential zoning:

This proposal, without approval of the zoning setback variance, is not consistent with the setbacks outlined in Kittitas County Zoning Code 17.16.

Consistency with the provisions of KCC 17.84, Variances:

This proposal must meet all four of the criteria for granting a zoning variance. The four criteria are: 1) unusual circumstances or conditions applying to the property and/or the intended use that do not apply generally to other property in the same vicinity or district, such as topography; 2) Such variance is necessary for the preservation and enjoyment of a substantial property right of the applicant possessed by the owners of other properties in the same vicinity or district; 3) The authorization of such variance will not be materially detrimental to the public welfare or injurious to property in the vicinity or district in which the property is located; and 4) That the granting of such variance will not adversely affect the realization of the comprehensive development pattern. A variance so authorized shall become void after the expiration of one year if no substantial construction has taken place. This proposal is not consistent and cannot meet criteria 1 and 2 as described above in Section III of this staff report.

Consistency with the provisions of the KCC Title 14.04, Building Code:

All buildings must be consistent with International Building Codes and approved building plans as issued by Kittitas County.

Consistency with the provisions of KCC Title 20, Fire and Life Safety:

The proposal must be consistent with the provisions of KCC Title 20.

Agency Comments:

Comments were received from the following agencies: Kittitas County Public Works and Kittitas County Environmental Health. All comments are on file and available for public review.

Kittitas County Public Works

In email correspondence received by CDS on August 1, 2019, the Kittitas County Surveyor provided the following comments:

1. The documents on the server have not been prepared by a surveyor per Dusty Pilkington's request. From the information I can glean from the site plan, it appears that a surveyor was involved (ASIX – PLS#49916), but this is not their original work.
2. I would also be prudent to have the applicant confirm that the utility lines located at the back of the subject parcel do not have an easement they will be encroaching upon. Their surveyor should be able to confirm this from their title report.
3. The existing footprint can fit on the existing lot holding to the existing setbacks. (Sketch available in the Masterfile provided by Kittitas County Surveyor and attached to their comments).

Staff Response

Staff agrees that the proposed building footprint does fit on the property and can meet the existing setbacks, thereby this zoning variance is not necessary. Additionally, the applicant applied for a building permit (BP-19-00157) with CDS on April 1, 2019. As part of this submittal packet, the Berlins provided a scaled site plan (included in the Masterfile for this variance request) demonstrating that their proposed single-family residence can and does meet all building setbacks

as provided in KCC 17.16.060, 17.16.070, and 17.6.080. This building permit was issued on July 2, 2019 based in part on the site plan provided with the permit.

Kittitas County Environmental Health

Kittitas County Environmental Health submitted two comments dated August 1 and August 6, 2019 stating that the parcel is located within the Snoqualmie Pass water and sewer systems, therefore there is no concern with this proposal.

Staff Response

There are no conditions required or concerns regarding environmental health based on Kittitas County Environmental Health comments.

Public Comments:

Comments were also received from the following members of the public: Elizabeth Sharp and Michele McNeill of Skyline Law Group PLLC on behalf of David and Donna Crouse. The following are summaries of the public comments received:

- Elizabeth Sharp expressed concern that this variance request may directly affect her neighboring property.
- Michelle McNeill, Esq. provided comments on behalf of David and Donna Crouse stating that her clients do not object to the setback variance, but do have concerns regarding possible use by the Berlins of a portion of the Berlin property that her clients have allegedly acquired by adverse possession. Additionally she provided a copy of the Crouse's' Liz Pendens that was recorded with the Kittitas County Auditor's Office with recording no. 201907300018 and a survey with the alleged adversely acquired portion of the Berlin's property that is the subject of the Crouse lawsuit against Berlin.

IX. FINDINGS OF FACT

1. Dan Berlin, property owner, has submitted a zoning setback variance request to reduce a 25 foot rear yard setback within the Residential zone to 15 feet.
2. Parcel 088335, located at 50 Kitzbuhel Place in the Snoqualmie Pass Limited Area of More Intensive Rural Development, in Section 15, T22N, R11E, WM, Assessor's Map Number 22-11-15050-0005.

3. Site Information

Total Property Size:	0.27 acres
Number of Lots:	1 (no new lots are being proposed)
Domestic Water:	Snoqualmie Pass Utility District
Sewage Disposal:	Snoqualmie Pass Utility District
Power/Electricity:	PSE and onsite propane
Fire Protection:	Snoqualmie Pass Fire and Rescue
Irrigation District:	N/A

4. Site Characteristics:

North:	Powerlines, single-family residences, and wooded area
South:	Single-family residences and wooded area
East:	Single-family residences and wooded area
West:	Single-family residences and wooded area

The site is accessed via Kitzbuhel Place, a paved county road off of Snoqualmie Drive at Snoqualmie

Pass.

5. The Comprehensive Plan land use designation is “Limited Areas of More Intense Rural Development”.
6. The subject property has a zoning designation of Residential. The purpose and intent of this zone is to provide for and protect areas for homesite development designed to meet contemporary building and living standards where public water and sewer systems are provided pursuant to KCC 17.16 Residential Zone. The applicant is requesting to utilize the variance process pursuant to KCC 17.84 Variances to deviate from the prescribed setback requirements in KCC 17.16.060 through KCC 17.16.080. Title 17.84.010 of the Kittitas County Code outlines four criteria in which a variance can be granted. The applicant must demonstrate that the proposal **has met all four criteria**.
7. A Zoning Variance Application was submitted to Kittitas County Community Development Services department on February 28, 2019.
8. The application was determined incomplete and additional information was requested on March 18, 2019. On March 19th, 2019 the applicant submitted additional information. CDS staff sent a second deem incomplete and request for addition information letter on March 26, 2019. The applicant submitted additional information on July 10, 2019. On July 17, 2019 the application was deemed complete.
9. Notice of Application was sent to property owners within 500 feet and all agencies with jurisdiction, published in the official newspaper of record for Kittitas County, and posted on the Kittitas County website on July 22, 2019, all in conformance with the Kittitas County Project Permit Application Process (Title 15A). The comment period ended at 5:00 pm on August 6, 2019 and all comments were transmitted to the applicant on August 9, 2019.
10. The proposal is consistent with the goals and policies of the Kittitas County Comprehensive Plan. As referenced above in Section V of this staff report, the following Comprehensive Plan Goals and Policies apply to this proposal: RR-G31, RR-G32, and RR-P98.
11. Based upon review of the submitted application materials and an initial critical areas review CDS determined that the Berlin Zoning Setback Variance is exempt from SEPA review pursuant to WAC 197-11-800(6)(e).
12. The proposal is not consistent with the Kittitas County Comprehensive Plan.
13. The proposal is consistent with the provisions of KCC 17A, Critical Areas.
14. The proposal is not consistent with the provisions of KCC 17.16, Residential zoning without approval of the zoning setback variance.
15. The proposal is not consistent with the KCC 17.84 Variances, more specifically all four review criteria in KCC 17.84.010 must be met and criteria 1 & 2 have not been satisfied.
16. This proposal is not consistent with the provisions of the KCC Title 14.04, Building Code.
17. The proposal is consistent with the provisions of KCC Title 20, Fire and Life Safety:
18. Comments were received from the following agencies: Kittitas County Public Works and Kittitas County Environmental Health. All comments are on file and available for public review.

19. Comments were also received from the following members of the public: Elizabeth Sharp and Michele McNeill of Skyline Law Group PLLC on behalf of David and Donna Crouse.

X. STAFF CONCLUSIONS:

1. This proposal does not meet all four criteria of KCC Title 17.84.010, therefore it cannot be approved.
2. A variance cannot be authorized as there is no unusual circumstances that cause undue hardship in the application of Title 17.

XI. DECISION AND CONDITIONS OF APPROVAL:

Kittitas County Community Development Services finds that the Berlin Zoning Setback Variance (VA-19-00001) is hereby **denied**. The Berlin Zoning Setback Variance does not adequately meet the requirements of a zoning setback variance pursuant to KCC 17.84.010

Responsible Official


Lindsey Ozbolt

Title: Kittitas County Planning Official

Address: Kittitas County Community Development Services
411 N. Ruby Street, Suite 2
Ellensburg, WA. 98926
Phone: (509) 962-7506

Date: August 28, 2019

Pursuant to Chapter 15A.07 KCC, this DNS may be appealed by submitting specific factual objections in writing with a fee of \$1560 to the Kittitas County Board of Commissioners, Kittitas County Courthouse Room 110, Ellensburg, WA 98926. Timely appeals must be received no later than 5:00pm September 12, 2019. Aggrieved parties are encouraged to contact the Board at (509) 962-7508 for more information on the appeal process.