

Everaert Zoning Setback Variance
File Number VA-20-00009
FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

I. GENERAL INFORMATION

Requested Action: Ken and Anne Everaert, property owners, submitted a zoning setback variance requesting a 10-foot reduction from the 25-foot front lot line setback requirement for the Agriculture 5 Zone in KCC 17.28A on the east side of the south property line, which would result in a 15-foot front lot line structural setback. This variance is requested to build a 1200 square foot residence.

Location: Parcel 952803, located at 1071 Lower Peoh Point Rd, Cle Elum, WA approximately 0.7 miles east of the City of South Cle Elum, WA in Section 35, TWP 20, R 15. Map number 20-15-35062-0001.

II. SITE INFORMATION

Total Property Size:	3 acres
Number of Lots:	1 (no new lots are being proposed)
Domestic Water:	Shared well
Sewage Disposal:	On-site septic
Power/Electricity:	PSE
Fire Protection:	Fire District 7 (Cle Elum)
Irrigation District:	KRD

Site Characteristics:

North: Primarily residential development
South: Primarily residential development
East: Primarily residential development
West: Primarily residential development

Access: The site is accessed via Lower Peoh Point Road.

III. ZONING AND DEVELOPMENT STANDARDS

The subject property has a zoning designation of Agriculture 5 within a Rural Residential Land Use designation. The purpose and intent of the agriculture (A-5) zone is to provide for an area where various agricultural activities and low density residential developments co-exist compatibly. A-5 zones are predominately agricultural-oriented lands and it is not the intent of this section to impose further restrictions on continued agricultural activities therein. The applicant is requesting to utilize the variance process pursuant to KCC 17.84 Variances, to deviate from the prescribed front setback requirements in KCC 17.28A A-5 – Agriculture Zone. 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

“To the north side of the building site there is a steep slope and a geo report recommending a 25 foot setback from the top of the slope. We would prefer not to encroach on the slope setback for obvious reasons of not wanting to build in a potentially hazardous area on the property.”

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. CDS recognizes that the parcel involved has a limited building envelope due to steep topography as demonstrated in the geotechnical report. Due to the lot’s steep topography limiting accessible buildable areas, CDS agrees that unusual conditions exist on the parcel that are prohibitive for building outside of the area outlined in this variance application. CDS finds that the applicant has satisfied the criteria outlined in KCC17.84.010(1).

The applicant has demonstrated in a factual and meaningful way the existence of “unusual circumstances or conditions” that does not generally apply to other property in the same vicinity. Further the applicant has demonstrated in a factual and meaningful way the existence “undue hardship” caused by the application of the yard requirements as stipulated in KCC 17.57.050(1). The variance, as presented, is consistent with KCC 17.84.010(1).

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

“We are not making the request so we build a large home or shop. We are only looking for room to build a 1200sqft, 2 bedroom home with a small attached garage”

Staff Response

CDS staff have reviewed the complete file information, including but not limited to, the applicants submitted information and comments received during the comment period. The parcel involved has a limited building envelope due to steep topography, as demonstrated in the geotechnical report, which is unique to this parcel. The applicant demonstrated on their site plan that there would not be an adequate building envelope if they were to adhere to the current required setbacks, even for a modest 1200 square foot residence. CDS staff finds that criterion 2 of KCC 17.84.010 has been met.

The applicant has demonstrated 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 17.57.050(1). The variance, as presented, is consistent with KCC 17.84.010(2).

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

Applicant Response

“This variance will not affect any neighboring properties and will fit in with other structures in the area.”

Staff Response

CDS could not find any reason that the proposed setback reduction would be injurious to adjacent property owners or the public welfare in any material way. CDS finds that the applicant has demonstrated the project to be consistent with KCC 17.84.010(3).

The applicant has demonstrated in a factual and meaningful way that the proposed build site will maintain substantial property line setbacks despite granting of the variance. The variance will not be “materially detrimental to the public welfare or injurious to property in the vicinity” as required in KCC 17.84.010(3).

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

Applicant Response

“This variance will not affect any neighboring properties and will fit in with other structures in the area.”

Staff Response

CDS has concluded that the requested zoning setback variance reduction from 25 to 15 feet will not adversely affect the realization of the comprehensive development pattern of the area as the area contains many residential and accessory structures. The Ag-5 setback reduction to 15 feet will not have any meaningful impact on the comprehensive development pattern.

The applicant has demonstrated in a factual and meaningful way that the proposed build site will “not adversely affect the realization of the comprehensive development pattern.” The variance, as presented, is consistent with KCC 17.84.010(4).

Staff Conclusions

Staff finds that the zoning variance request **does** meet all four criteria outlined in KCC 17.84.010 as described above. Therefore, the zoning variance request is consistent with the conditions necessary to grant a variance under KCC 17.84.

IV. ADMINISTRATIVE REVIEW

Deem Complete: The application was determined complete on September 21, 2020.

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 October 1, 2020, all in conformance with the Kittitas County Project Permit Application Process (Title 15A). The comment period ended at 5:00 pm on October 16, 2020 and all comments were transmitted to the applicant on October 27, 2020.

V. ENVIRONMENTAL REVIEW

CDS performed a critical area review of the subject parcel and found there to be a section of the parcel in the 100 year floodplain. The proposed project does not encroach upon the flood zone in any way. The application materials included a Geotechnical Engineering Report which determined there to be a hazardous slope on the parcel. The proposed variance will allow a structure to meet the recommended slope setback of 25 feet. Based upon review of the submitted application materials and a critical areas review, CDS determined that the Everaert Zoning Setback Variance is exempt from SEPA review pursuant to WAC 197-11-800(6)(e).

VI. 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.

VII. PROJECT ANALYSIS

In review of this proposal it is important to consider the 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 provisions of KCC 17A, Critical Areas:

Staff conducted an administrative critical area review in accordance with KCC 17A. There is an area of the parcel that is in the 100 year floodplain, and areas of hazardous slope. The proposed variance will not be affected by either. This request is consistent with critical areas provisions.

Consistency with the provisions of KCC 17.28A – A-5 Agriculture Zone:

This proposal, with approval of the zoning setback variance, is consistent with the setbacks outlined in Kittitas County Zoning Code 17.28A – A-5 Agriculture Zone.

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 consistent with the required variance criteria 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 Fire Marshall, Kittitas County Public Works, Kittitas Reclamation District, and Kittitas County Public Health. All comments are on file and available for public review.

Kittitas County Fire Marshall

Responded with “no comments” on October 2, 2020.

Staff Response

CDS has provided this response to the applicant.

Kittitas County Public Works (KCPW)

Kittitas County Public Works provided comment on this application on October 12, 2020. KCPW commented that they recommend approval of the zoning variance application based on the following conditions:

- An access permit would be required when a building permit is applied for;
- The structure will not encroach upon any easement or right-of-way;
- Any grading over 100 cubic yards of material will require a grading permit from Public Works; and
- The lower elevation portion of the property is within the FEMA-designated 100-year floodplain. Public Works recommends that all development remain outside of the floodplain and be set back to the maximum extent possible to minimize flood hazard and erosion risks. The proposed variance would enable development to occur outside the floodplain and maintain the 25-foot setback from the top of slope recommended in the geotechnical engineered letter provided by the applicant.

Staff Response

CDS has conditioned this determination to ensure the applicant shall obtain all necessary permits required by KCPW for this development. Development will not encroach on any easements or right-of-ways, will remain outside the floodplain, and will maintain a 25 foot setback from the top of the slope.

Kittitas Reclamation District (KRD)

Kittitas Reclamation District provided comments on this application on October 14, 2020. KRD commented that while this project lies within the KRD, their lateral lies on the south side of Peoh Point Rd, so this project should not have any impact. They have no further comments or requirements for this application.

Staff Response

CDS has provided these comments to the applicant.

Kittitas County Public Health (KCPH)

Kittitas County Public Health provided comments on this application on October 15, 2020 requesting additional information from the applicant. After that information was provided, KCPH commented further on November 6, 2020 that they have no comments or concerns with the application.

Staff Response

CDS has provided these comments to the applicant.

Public Comments:

There were no public comments received for this application.

VIII. FINDINGS OF FACT

1. Ken and Anne Everaert, property owners, have submitted a zoning setback variance request to reduce a 25-foot front lot line setback within the A-5 Agriculture zone to 15 feet.
2. Parcel # 952803, located at 1071 Lower Peoh Point Rd, Cle Elum, WA approximately 0.7 miles east of the City of South Cle Elum, WA in Section 35, TWP 20, R 15. Map number 20-15-35062-0001.
3. Site Information

Total Property Size: 3 acres
Number of Lots: 1 (no new lots are being proposed)
Domestic Water: Shared well
Sewage Disposal: On-site septic
Power/Electricity: PSE
Fire Protection: Fire District 7 (Cle Elum)
Irrigation District: KRD

4. Site Characteristics:

North: Primarily residential development
South: Primarily residential development
East: Primarily residential development
West: Primarily residential development

The site is accessed via Lower Peoh Point Road.

5. The Comprehensive Plan land use designation is Rural Residential within A-5 Agriculture zoning.
6. The purpose and intent of the agriculture (A-5) zone is to provide for an area where various agricultural activities and low density residential developments co-exist compatibly. A-5 zones are predominately agricultural-oriented lands and it is not the intent of this section to impose further restrictions on continued agricultural activities therein. The application is requesting a 10-foot reduction from the 25-foot front lot line setback requirement in KCC 17.28A on the south property line, which would result in a 15-foot front lot line structural setback. This variance is requested to construct a 1200 square foot Single Family Residence. 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 September 14, 2020.
8. The application was determined complete on September 21, 2020.
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 October 1, 2020, all in conformance with the Kittitas County Project Permit Application Process (Title 15A). The comment period ended at 5:00 pm on October 16, 2020 and all comments were transmitted to the applicant on October 27, 2020.
10. Staff conducted an administrative critical area review in accordance with KCC 17A. There is an area of the parcel that is in the 100 year flood zone, and areas of hazardous slope. The proposed variance will not be affected by either. CDS determined that the Everaert Zoning Setback Variance is exempt from SEPA review pursuant to WAC 197-11-800(6)(e).
11. The proposal is consistent with the provisions of KCC 17A, Critical Areas.
12. The proposal is not consistent with the provisions of KCC 17.28A, A5 - Agriculture zoning without approval of the zoning setback variance.
13. The proposal is consistent with the KCC 17.84 Variances. All four criteria in KCC 17.84.010 have been satisfied.

14. This proposal is consistent with the provisions of the KCC Title 14.04, Building Code.
15. The proposal is consistent with the provisions of KCC Title 20, Fire and Life Safety:
16. Comments were received from the following agencies: Kittitas County Fire Marshall, Kittitas County Public Works, Kittitas Reclamation District, and Kittitas County Public Health. All comments are on file and available for public review.
17. No public comments were received.

IX. STAFF CONCLUSIONS:

1. This proposal has satisfied all four criteria of KCC Title 17.84.010.
2. The proposal is consistent with state and federal regulations.
3. The proposal is consistent with local regulations including Kittitas County Code Title 14.04 Building Code, Title 17 Zoning, Title 17A Critical Areas, and Title 20 Fire and Life Safety.

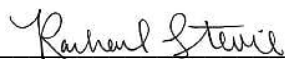
X. DECISION AND CONDITIONS OF APPROVAL:

Kittitas County Community Development Services finds that the Everaert Zoning Setback Variance (VA-20-00009) is hereby **approved**. The Everaert Zoning Setback Variance has satisfied the requirements of a zoning setback variance pursuant to KCC 17.84.010.

CONDITIONS OF APPROVAL:

1. The project shall proceed in substantial conformance with the plans and application materials on file with CDS dated September 14, 2020 and subsequent information included in the complete file index except as amended by the conditions herein.
2. The applicant shall comply with all local, State and Federal environmental standards and regulations in place at the time of building application submittal.
3. The applicant shall obtain all necessary permits required by Kittitas County Public Works for this development as noted in the Public Works comment letter dated October 12, 2020. Development will not encroach on any easements or right-of-ways, will remain outside the floodplain, and will maintain a 25 foot setback from the top of the slope.
4. This front lot line setback variance shall expire after one year of the decision date if no substantial construction has taken place.

Responsible Official



Rachael Stevie

Title:

Planner I

Address: Kittitas County Community Development Services
411 N. Ruby Street, Suite 2
Ellensburg, WA. 98926
Phone: (509) 962-7637

Date: January 14, 2021

Pursuant to Chapter 15A.07 KCC, this determination may be appealed by submitting specific factual objections in writing with a fee of \$1540 to the Kittitas County Community Development Services at 411 N Ruby St Ste. 2, Ellensburg, WA 98926. Timely appeals must be received no later than 5:00pm January 29, 2021. Aggrieved parties are encouraged to contact Community Development Services at (509) 962-7506 for more information on the appeal process.