

Fuhr Zoning Setback Variance
File Number VA-20-00010
FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

I. GENERAL INFORMATION

Requested Action: Matthew Fuhr, property owner, submitted a zoning setback variance requesting a 25-foot reduction from the 25-foot front lot line setback requirement for the Residential Zone in KCC 17.16 on the west property line, which would result in a 0-foot front lot line structural setback. This variance is requested to build a 16 foot retaining wall.

Location: The subject property is parcel # 138435 located on Snoqualmie Drive, approximately 0.11 miles from the intersection of Snoqualmie Drive and Arlberg Place in Snoqualmie Pass, WA in Section 15, TWP 22, R 11. W.M. Map number 22-11-15050-0102.

II. SITE INFORMATION

Total Property Size:	.17 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
Fire Protection:	Snoqualmie Pass Fire and Rescue
Irrigation District:	N/A

Site Characteristics:

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

Access: The site is accessed via Snoqualmie Drive.

III. ZONING AND DEVELOPMENT STANDARDS

The subject property has a zoning designation of Residential within a LAMIRD Type 1 Land Use designation. The purpose and intent of the Residential 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. 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 17.16 R – Residential 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

“The project site features unique and unusual features that prevents us from being able to meet the site access requirements given the current front yard setback. Extremely steep topography off the edge of the pavement at a 1H:1V slope and a 20 ft drop within the 25 ft county right of way prohibits us from being able to meet all of the site access requirements without the use of a retaining structure. These unique circumstances do not seem to apply to the nearby houses which do not have front yard setbacks and are only 25 ft from the edge of pavement. In addition, many of the other nearby homes have retaining structures and parking within the county right of way. The combination of the unusually large county right of way between the edge of pavement and the front property line in addition to the steep topography make this site inaccessible without the use of a retaining structure within the front yard to deal with the grade change.”

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 extremely steep topography at the front lot line that would make the site completely inaccessible without a retaining structure. Due to the lot’s steep topography along with the large County right-of-way, 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

“A variance to the front yard setback requirement is necessary for residential use of this property because without the use of a retaining structure it is not possible to meet all of the county’s access, driveway, and parking requirements. We have done additional studies showing that a driveway at the maximum allowable grade of 16% would exceed the 2H:1V side slope requirements as well as the 1.5H:1V slope that our Geotech recommended with quarry spall to meet WSDOT standards (see exhibit B). A 40 ft long driveway at 16% grade would also be dangerously steep in the winter, require 1600 cubic yards of fill (160 dump trucks) and require a 21 ft tall retaining wall that according to our geotech engineer is structurally unfeasible (see exhibit D). Even at a 20% grade, which exceeds the maximum allowable driveway grade and would be unsafe and unusable during the peak winter months when we would be having our friends and family over, it would require 1,305 cubic yards of fill, have side slopes exceeding 2H:1V and require a 19 ft tall retaining wall which is structurally unfeasible (see exhibit C and D). The proposed variance would allow for the access, driveway, and parking requirements to be met in a consistent manner to the other nearby lots on Snoqualmie Drive and allow for single family residential development that is consistent with others in the neighborhood while meeting the zonings intent. The current front yard setback places an undue burden on us and if the variance is not granted, would prevent our substantial property right to build a single family residence. Without this front yard setback zoning variance to allow for a retaining structure we would not be able to meet the access, driveway, and parking requirements necessary to build a single family residence and would suffer undue hardship from purchasing an unbuildable lot that we would have to sell at a substantial loss. A retaining structure is necessary for meeting the access requirements required for a residential house and would provide a large

number of parking spaces that are at a gradual grade making them safe to use in the winter and ensuring that no cars would be in the street hindering snow removal.”

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. CDS agrees that without this variance, the applicant would not be able to safely access their parcel or have anywhere to safely park their vehicles due to the 20 foot drop between the road, the county-right-of-way, and their parcel. The applicant demonstrated that there would be no feasible access to their lot if they were to adhere to the current required setbacks. 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

“The authorization of this front yard variance would not be materially detrimental to the public welfare or in any way injurious to property in the area. In fact, the authorization of the front yard setback would provide numerous safe and easily accessible parking spaces in the winter that if unused could be utilized by other neighbors who lack accessible parking in the winter. This could help reduce the amount of cars parked in the street and help facilitate snow removal. This front yard setback variance would also be more consistent with the driveways and accesses of the nearby properties which were grandfathered in and do not have front yard setbacks. Furthermore, the authorization of the front yard setback variance would not be injurious to properties in the area because the proposed single family residence would still adhere to the existing setbacks. The two neighboring properties on each side are currently vacant but having this variance granted and being able to provide access could prove that their lots are feasible as well and could materially increase the value of their property. In their current state they appear to be too steep and without any precedence for how to provide access on such a steep lot they may detract buyers. However, if we were unable to get the variance granted, the amount of fill needed to construct a driveway at 16% grade to provide parking past the 25 ft right of way and the 25 ft front yard setback would be in excess of 1600 cubic yards and potentially pose a hazard due to the steep slopes, long term erosion and settling. The zoning variance would allow us to access the site and provide the greatest amount of level and safe parking spaces with the least amount of site impact from fill and a retaining wall.”

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 agrees that the granting of this variance would in fact be beneficial to the public, as it would allow for a safe place for the property owners to park their vehicles that is not encroaching on the County road or right-of-way, and interfering with snow removal efforts. 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

“The granting of the front yard setback variance will not adversely affect the realization of the comprehensive development plan because the current properties in the vicinity do not have a front yard setback and are 25 ft from the edge of pavement. This variance would allow for the retaining wall, parking, and covered walkway to be 25 ft from the edge of pavement and make the project's access consistent with the nearby properties but because we are only requesting the minimum deviation from the standards the proposed single family residence would still meet the 25 ft front yard setback requirements and be consistent with the comprehensive development plan. The variance request is merely to provide site access and does not change any of the setbacks, height, location, and scale of the proposed single family residence. The granting of the variance would also provide more level and accessible parking spaces in the winter than a 40 ft long driveway at a steep 16% grade and would eliminate any situations where parked cars could inhibit snow removal”

Staff Response

CDS has concluded that the requested zoning setback variance reduction from 25 to 0 feet will not adversely affect the realization of the comprehensive development pattern of the area. The residential structure that will be built will still adhere to the 25’ setback requirement. The variance will allow for a retaining wall that will provide access to the parcel. The Residential setback reduction to 0 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 October 6, 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 22, 2020, all in conformance with the Kittitas County Project Permit Application Process (Title 15A). The comment period ended at 5:00 pm on November 6, 2020 and all comments were transmitted to the applicant on November 12, 2020.

V. ENVIRONMENTAL REVIEW

CDS performed a critical area review of the subject parcel and found there to be no critical areas. Based upon review of the geotechnical report submitted by the applicant, CDS acknowledges that there is a hazardous slope on the parcel. CDS determined that the Fuhr 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 and identified no critical areas located on the property. However, CDS acknowledges that there is a hazardous slope on the parcel based on the geotechnical report submitted by the applicant. This request is consistent with critical areas provisions.

Consistency with the provisions of KCC 17.16 R – Residential Zone:

This proposal, with approval of the zoning setback variance, is consistent with the setbacks outlined in Kittitas County Zoning Code 17.16 Residential 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 Public Works, Kittitas County Public Health, and Kittitas County CDS Building Department. All comments are on file and available for public review.

Kittitas County Public Works (KCPW)

Kittitas County Public Works provided comment on this application on November 3, 2020. KCPW commented that they recommend approval of the zoning variance application based on the following conditions:

- An access/address 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.

- The site plan does not explicitly show all of the details called out in the Geotech report. Please be sure to implement the recommendations provided by Icicle Creek Engineering for the wall drainage, retaining wall details, material types used, etc.
- Please have the retaining wall certified by the design engineer after construction to ensure it was built to the plan outlined shown in the geotechnical report.
- With the 16' drop off on three sides of the wall please implement a barrier to protect vehicles and pedestrians from the vertical drop off.
- The contours design contours show that this design will alter the existing drainage by pushing water onto the neighboring properties. Please adjust the grading or provide other BMPs to prevent increasing runoff onto the neighboring lots.
- Please refer to the Eastern Washington Stormwater Manual and address each of the Core Elements that apply.

Staff Response

CDS has provided these comments to the applicant and has conditioned this determination to ensure the applicant shall: obtain all necessary permits required by KCPW for this development, the structure will not encroach upon any easement or right-of-way, implement the recommendations provided by Icicle Creek Engineering, have the retaining wall certified by the design engineer after construction, adjust the grading or provide, other BMPs to prevent increasing runoff onto the neighboring lots, and refer to the Eastern Washington Stormwater Manual and address each of the Core Elements that apply.

Kittitas County Public Health (KCPH)

Kittitas County Public Health provided comments on this application on November 4, 2020. KCPH commented that they have no comments or concerns with the application.

Staff Response

CDS has provided these comments to the applicant.

Kittitas County Community Development Services-Building Department (CDS-Building)

Kittitas County CDS- Building provided comments on this application on October 23, 2020. KCCDS Building commented that they have no opposition to the proposed variance and prefer the option of the shorter retaining wall.

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. Matthew Fuhr, property owner, has submitted a zoning setback variance request to reduce a 25-foot front lot line setback within the Residential zone to zero feet.
2. Parcel # 138435 located on Snoqualmie Drive, approximately 0.11 miles from the intersection of Snoqualmie Drive and Arlberg Place in Snoqualmie Pass, WA in Section 15, TWP 22, R 11. W.M. Map number 22-11-15050-0102

3. Site Information

Total Property Size:	.17 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
Fire Protection:	Snoqualmie Pass Fire and Rescue
Irrigation District:	N/A

4. Site Characteristics:

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

The site is accessed via Snoqualmie Drive.

5. The Comprehensive Plan land use designation is “LAMIRD” within Residential zoning.
6. The purpose and intent of the Residential 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. The application is requesting a 25-foot reduction from the 25-foot front lot line setback requirement on the west property line requirement in KCC 17.16, which would result in a 0-foot front lot line structural setback. This variance is requested to construct a retaining wall to support parking area and covered walkway. 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 24.
8. The application was determined complete on October 6, 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 22, 2020, all in conformance with the Kittitas County Project Permit Application Process (Title 15A). The comment period ended at 5:00 pm on November 6, 2020 and all comments were transmitted to the applicant on November 12, 2020.
10. Staff conducted an administrative critical area review in accordance with KCC 17A and identified no critical areas located on the property. However, CDS acknowledges that there is a hazardous slope on the parcel based on the geotechnical report submitted by the applicant. CDS determined that the Fuhr 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 17.16, R-Residential 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 Public Works, Kittitas County Public Health, and Kittitas County CDS Building. 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 Fuhrer Zoning Setback Variance (VA-20-00007) is hereby **approved**. The Fuhrer 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 August 10, 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 and refer to Public Works' conditions of approval as described in their comment letter dated November 3, 2020.
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.