

**Fielder Zoning Setback Variance**  
**File Number VA-20-00014**  
**FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION**

**I. GENERAL INFORMATION**

Requested Action: Brian Fielder and Lisa Simpson, property owners, submitted a zoning setback variance requesting a 22-foot-8-inch reduction from the 25-foot front lot line setback requirement for the Forest and Range Zone in KCC 17.56, which would result in a 2-foot-4-inch front lot line structural setback. This variance is requested to build a detached garage.

Location: Parcel# 486835 located off of Via Kachess Rd, approximately 2.5 miles from Kachess Lake Road in Easton, WA and bears Assessor's map number 21-13-17051-0022.

**II. SITE INFORMATION**

Total Property Size:	.29 acres
Number of Lots:	1 (no new lots are being proposed)
Domestic Water:	Kachess Community Users Association
Sewage Disposal:	On-site septic
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 Kachess Lake  
West: Primarily residential development

Access: The site is accessed by Via Kachess Rd.

**III. ZONING AND DEVELOPMENT STANDARDS**

The subject property has a zoning designation of Forest and Range within a Rural Working Land Use designation. The purpose and intent of the Forest and Range zone is to provide for areas of Kittitas County wherein natural resource management is the highest priority and where the subdivision and development of lands for uses and activities incompatible with resource management are discouraged. 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 17.56 Forest and Range 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

*“Due to the slope of the lot from the edge of right-of-way the proposed connection will require a certain amount of retaining which will be in the street side setback as well as the non-trafficked right-of-way of Via Kachess Road. The property line of PN 486835 is located approximately 19'-21' from the edge of Via Kachess Road. No alterations to the existing access to the property will be required.*

*The existing site size of 0.29 acres (12,632 square feet), location of existing residence, septic drain field and septic tanks there is limited area that would be acceptable for a detached accessory garage except to build within the setbacks of 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 existing structures and utilities on the parcel, in addition to sloped topography and Shoreline Jurisdiction, result in the buildable area of the lot being extremely limited. 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

*“By allowing this variance it gives the owners the ability to have the same use of their property as other residential lots have along Via Kachess Road. You can see examples of these other approved variances in the attached exhibits (A & B) of the two properties to the north, both of which are located very close to their street property lines and also utilizing a build area within the street side setback.*

*This will not only give the owners a place to park their vehicles in the winter months, out of the snow, but also giving them a place to store the equipment to enjoy lake Kachess in summer. For the longevity of use of the site a garage with access off Via Kachess would allow the owners the ability to use this residence going forward through retirement and beyond.”*

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 construct a garage to store their equipment and vehicles out of the snow, due to the size of the parcel, existing structures and utilities, and a large portion of the parcel being within the 200' Shoreline of Kachess Lake. The applicant demonstrated on their site plan that there is no other location to place a garage without the granting of this variance. 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

*“I do not believe that the granting of this variance from the setback code will materially be detrimental to the public welfare or be at all injurious to the properties in the same vicinity since there are other homes with the same amenities. According to the neighbor who also has an approved garage within the street side setback, ‘Kachess Village, has a reputation within the upper county of being a model community with well thought out covenants regarding design, construction materials, layout and amenities augmented by county service and building guidance.’”*

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 recognizes that there have been similar variances granted in the vicinity to address the parking issues that the steep slope from the road creates as well as the vicinity to the Shoreline reducing buildable area. 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

*“Granting of this variance to the street side setback per KCC 17.26.060 conforms with the approvals of the previous setback reduction by other neighboring parcels and will not deter from the development pattern envisioned by the county and enjoyed by the many residents. It will further enhance the neighborhood by allowing the residence to park their vehicles inside so that it makes for a more pleasing view to all that visit the area.”*

Staff Response

CDS has concluded that the requested zoning setback variance reduction from 25 to 2-feet-4-inches will not adversely affect the realization of the comprehensive development pattern of the area. The area contains many small parcels with single family residences and appurtenances and the variance will allow for a garage for safe parking and equipment storage, which is similar to neighboring properties. The Residential setback reduction to 2-feet-4-inches 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 February 2, 2021.

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 February 4, 2021, all in conformance with the Kittitas County Project Permit Application Process (Title 15A). The comment period ended at 5:00 pm on February 19, 2021 and all comments were transmitted to the applicant on March 1, 2021.

#### **V. ENVIRONMENTAL REVIEW**

CDS performed a critical area review of the subject parcel and found that the entire parcel is within Shoreline jurisdiction. The project site sits outside of the 200' setback from ordinary high water mark (OHWM) of the Shoreline of Kachess Lake.

CDS has determined that the Fielder 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. While the entire parcel is within Shoreline jurisdiction, the project site sits outside of the 200' setback from ordinary high water mark (OHWM) of the Shoreline of Kachess Lake. This request is consistent with critical areas provisions.

Consistency with the provisions of KCC 17.56 – Forest and Range Zone:

This proposal, with approval of the zoning setback variance, is consistent with the setbacks outlined in Kittitas County Zoning Code 17.56 Forest and Range 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: Washington Department of Fish and Wildlife, Kittitas County Public Health, and Department of Archaeology & Historic Preservation. All comments are on file and available for public review.

Washington Department of Fish and Wildlife (WDFW)

Washington Department of Fish and Wildlife provided comment on this application on February 10, 2021. WDFW commented that they have no issues with the proposed project and prefer that the applicant maintain the proposed setbacks so as not to encroach upon the riparian area.

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 February 16, 2021. KCPH commented that they have no comments on the application at this time.

Staff Response

CDS has provided these comments to the applicant.

Department of Archaeology & Historic Preservation (DAHP)

Department of Archaeology & Historic Preservation provided comment on this application on February 16, 2021. DAHP requested that the applicant prepare an inadvertent discovery plan (IDP) and prepare construction crews for the possibility of encountering archaeological material during ground disturbing activities. We also recommend consultation with the concerned Tribes' cultural committees and staff regarding cultural resource issues.

Staff Response

CDS has provided these comments to the applicant and has conditioned this determination to ensure the applicant is aware of the possibility of uncovering cultural resources and their obligations under State law when/if these resources are uncovered.

Public Comments:

There were no public comments received for this application.

**VIII. FINDINGS OF FACT**

1. Brian Fielder and Lisa Simpson, property owners, have submitted a zoning setback variance request to reduce a 25-foot front lot line setback within the Forest and Range Zone to 2-foot-4-inches.
2. 486835 located off of Via Kachess Rd, approximately 2.5 miles from Kachess Lake Road in Easton, WA

and bears Assessor's map number 21-13-17051-0022.

3. Site Information

Total Property Size: .29 acres  
Number of Lots: 1 (no new lots are being proposed)  
Domestic Water: Kachess Community Users Association  
Sewage Disposal: On-site septic  
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 Kachess Lake  
West: Primarily residential development

The site is accessed by Via Kachess Road.

4. The Comprehensive Plan land use designation is "Rural Working" within Forest and Range zoning.
5. The purpose and intent of the Forest and Range zone is to provide for areas of Kittitas County wherein natural resource management is the highest priority and where the subdivision and development of lands for uses and activities incompatible with resource management are discouraged. 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 17.56 Forest and Range 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**.
6. A Zoning Variance Application was submitted to Kittitas County Community Development Services department on December 14, 2020.
7. A request for information was sent on January 11, 2021 and an updated site plan was provided by the applicant on February 1, 2021.
8. The application was determined complete on February 2, 2021.
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 February 4, 2021, all in conformance with the Kittitas County Project Permit Application Process (Title 15A). The comment period ended at 5:00 pm on February 19, 2021 and all comments were transmitted to the applicant on March 1, 2021.
10. CDS performed a critical areas review of the subject parcel and found that the entire parcel is within Shoreline jurisdiction, however, the project site sits outside of the 200' setback from ordinary high water mark (OHWM) of the Shoreline of Kachess Lake. Based upon review of the submitted application materials and a critical areas review, CDS determined that the Fielder 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 17.56, Forest and Range 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: Washington Department of Fish and Wildlife, Kittitas County Public Health, and Department of Archeology and Historic Preservation. All comments are on file and available for public review.
17. No public comments were received for this project.

**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.

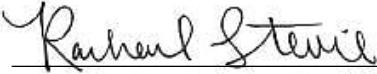
**X. DECISION AND CONDITIONS OF APPROVAL:**

Kittitas County Community Development Services finds that the Fielder Zoning Setback Variance (VA-20-00014) is hereby **approved**. The Fielder 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 December 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.
4. Should ground disturbing or other activities related to the proposed project result in the inadvertent discovery of cultural or archaeological materials, work shall be stopped in the immediate area and contact be made with the Washington State Department of Archaeology and Historic Preservation (DAHP). Work shall remain suspended until the find is assessed and appropriate consultation is conducted. Should human remains be inadvertently discovered, as dictated by Washington State RCW 27.44.055, work shall be immediately halted in the area and contact made with the coroner and local law enforcement in the most expeditious manner possible.

5. 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:** April 15, 2021

**Pursuant to Chapter 15A.07 KCC, this determination may be appealed by submitting specific factual objections in writing with a fee of \$1550 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 April 29, 2021. Aggrieved parties are encouraged to contact Community Development Services at (509) 962-7506 for more information on the appeal process.**