

Heidt Zoning Setback Variance
File Number VA-22-00002
FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

I. GENERAL INFORMATION

Requested Action: Devin Casto, Authorized Agent for Phillip & Alexia Heidt (Landowners) submitted a zoning setback variance requesting a 15-foot reduction from the 25-foot front lot line setback for the northern most property line for the construction of a house and a 20-foot reduction from the 25-foot front lot line setback from the southwestern property line for construction of a garage. The 25-foot front setback requirements come from KCC 17.30A.050. This would result in a 10-foot front lot line structural setback from the northern most property line and a 5-foot front lot line setback from the southwestern lot line.

Location: Parcel # 951186 (Lot 13 of The Ridge at Tillman Creek Plat) located on Pinnacle Ln, approximately 1.7 miles southwest from the intersection of Madison Ave and South Cle Elum Way in Cle Elum, WA in Section 04, Township 19, Range 15. Map number 19-15-04054-0013.

II. SITE INFORMATION

Total Property Size:	3.03 acres
Number of Lots:	1 (no new lots are being proposed)
Domestic Water:	Group A
Sewage Disposal:	Septic
Power/Electricity:	PSE
Fire Protection:	Fire District 7 (Cle Elum)
Irrigation District:	KRD

Site Characteristics:

North: Undeveloped Lot/Sparse Residential Development
South: Sparse Residential Development/Forested Land
East: Tillman Creek/Forested Land/Sparse Residential Development
West: Primarily residential development

Access: The site is accessed via Pinnacle Lane.

III. ZONING AND DEVELOPMENT STANDARDS

The subject property has a zoning designation of Rural 5 (R-5) within a Rural Residential Land Use designation. The purpose and intent of the Rural 5 zone is to provide areas where residential development may occur on a low density basis. A primary goal and intent in siting R-5 zones will be to minimize adverse effects on adjacent natural resource lands. 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 17.30A – Rural 5 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

“There are multiple unusual circumstances and conditions that apply to this property. This property is an odd shape and has an approved access point at the end of Pinnacle Lane with a cul de sac easement that runs through the front of the property. Kittitas County has made the determination that any property line that touches the cul de sac is considered a front property line. The property is zoned Rural 5. In a Rural 5 zone, front property line setbacks shall be 25 feet per County Code 17.30A.050. This determination and the shape of our property has now made two of our property lines "front yards". There are no other properties on Pinnacle Lane that have had to comply with having two front yard property lines at the time of their building permit submittals.

This property is essentially split into two areas (a lower area and an upper area) with the beginning of Pinnacle Lane dividing it. The lower area is not buildable due to Tillman Creek (a Type 2 stream) that runs through it and the setback requirements from that creek. Our approved access onto the property is on the upper area of the parcel. There is also hazardous slope topography on this upper area of the property which would cause financial hardship to build near due to the hiring of different engineer professionals and building design. Please see Attachment 3 for these critical area overlays.

The location of our septic system has also been staked out and permitted through Kittitas County Environmental Health under permit OS-21-00125. Please see Attachment 2.”

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 hazardous slope midway through the property and somewhat steep topography (approximately 7-10% grade) 105 feet from edge of the cul-de-sac as measured during a site visit on May 18, 2022 that limits the location of safely building on the lot (approximately 10,000 square feet) while protecting environmental functions. On the bottom side of the hazardous slope is Pinnacle Lane and across the road is Tillman Creek, A Type F stream, which essentially limits all building on the lower side of the lot with a 165’ setback. The surrounding lots to the North and southwest have less hazardous slope and creek limitations than this lot. Due to the lot’s topography, creek, and access point, 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 17.30A.050. 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 requesting a variance to the front yard requirements so that our house (approved plans have been issued under BP-21-00243) and accessory structure (under review for permitting under BP-21-00779) will both fit. We would like to use our residential property as such and enjoy it the way our neighbors on Pinnacle Lane have enjoyed theirs. There are no other properties on Pinnacle Lane that

have had to comply with having two front property lines at the time of their building permit submittals.”

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 reviewed the building permit application for parcel# 951185 (981 Pinnacle Ln) and did find that they were allowed a 15' setback in 2017 that would now be considered a front lot line requiring a 25' front lot line setback when the code changed in 2018 to say that “*“Lot line, front” means a lot line that abuts any public street, private street, right-of-way or other means of vehicular access, other than an alley.*” Without the requested variance, there would be little room for parking of vehicles or other equipment off the private drive (Pinnacle Ln) and allowing for fire access if necessary. In addition to this, the properties surrounding this lot have over 2,500 square foot homes with approximately 1,000 square foot garages. The applicant has proposed an 1,896 sq. ft. home and 720 square foot garage on their site plan which meets their CCR's and would be able to enjoy a substantial property right their surrounding neighbors have and fit in with the surrounding neighborhood. While the submitted building permits meet setback requirements, they would require extensive earthwork into the hillside and would have to bring in fill to stabilize the slope which causes environmental for future erosion as the only access road is below the slope. CDS recognizes that this parcel is in a situation that is very limited due to slope, environmental concerns and previous setbacks that neighboring landowners did not have to meet. 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 17.30A.050. 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 property line setback variance request will not be materially detrimental to the public welfare or injurious to property in the vicinity. Our request to reduce the setbacks to 5 feet and 10 feet still meet the minimum fire resistance of exterior walls per the International Residential Code. We will not be blocking any views from our neighbors through this request and will be able to maintain the rural look of the area.”

Staff Response

CDS finds that no fire rated walls would be required for neighboring property owners, but snow storage could end up on the neighboring property even with the roof sloped to have snow fall on this property. CDS also finds that work could take place in the neighboring property while building and that no grading, overhangs or doors can trespass onto the neighboring property. While these could be considered injurious, at least temporarily, these conditions can be overcome through temporary or permanent easement agreements with both neighbor's adjoining this property. Both neighbor's adjoining the property commented that they are unopposed to this variance request. 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 this variance will not adversely affect the comprehensive development pattern either. This parcel and area is zoned for residential use and we intend to keep it as residential use. The addition of a new home and accessory building complies with the comprehensive plan for the County and complies with the uses on neighboring properties.”

Staff Response

CDS has concluded that the requested zoning setback variance reduction will not adversely affect the comprehensive development pattern. The area is all residential and mostly built out. The area is intended for residential dwellings.

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 April 15, 2022.

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 April 21, 2022, all in conformance with the Kittitas County Project Permit Application Process (Title 15A). The comment period ended at 5:00 pm on May 6, 2022 and all comments were transmitted to the applicant on May 9, 2022.

V. ENVIRONMENTAL REVIEW

CDS performed a critical area review of the subject parcel and found there to be a Type F stream (Tillman Creek) and hazardous slope on the property. CDS has determined that the Ward 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. The proposed

building location is well beyond the 165 foot building setback requirement from the stream. The proposed building location is not in hazardous slope and actually keeps the building out of any part of slope on the property. This request is consistent with critical areas provisions.

Consistency with the provisions of KCC 17.30A R-5 Rural-5 Zone:

This proposal, with approval of the zoning setback variance, is consistent with the setbacks outlined in Kittitas County Zoning Code 17.30A Rural-5 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 PUD, Department of Natural Resources, Colville Tribe, Kittitas County Public Health, Kittitas County Public Works and Department of Archaeology and Historic Preservation. All comments are on file and available for public review.

Kittitas PUD

Kittitas PUD commented that they do not have power lines in the vicinity of the project and therefore does not have any comments

Staff Response

CDS has provided these comments to the applicant.

Department of Natural Resources (DNR)

DNR commented that the property is undeveloped, approximately 3 acres in size and appears to be forested. They noted that a Class IV-General Forest Practices Application (FPA) will be required prior to any timber harvest, stump pulling, road construction or similar ground disturbing activities.

Staff Response

CDS has provided these comments to the applicant. Staff visited the site on May 18, 2022 and trees had already been cleared where the proposed house and garage are to be built. This proposal has been conditioned to meet DNR requirements.

Colville Tribe

The Colville Tribe commented that this project lies outside of their traditional territories and any

concerns they have will be adequately represented by other affected tribes.

Staff Response

CDS has provided these comments to the applicant.

Kittitas County Public Health (KCPH)

KCPH commented that they have reviewed the application and have no comments or concerns with the proposed variance.

Staff Response

CDS has provided these comments to the applicant.

Kittitas County Public Works (KCPW)

Kittitas County Public Works provided comment on this application on May 6, 2021. KCPW commented that they recommend approval of the zoning variance application based on the following conditions:

- Any new access would require an access permit from Public Works,
- Distances on exhibit map do not match project description, this should be updated
- The 5' setback poses constructability problems without trespassing into the neighboring parcel and that a written statement from the neighboring landowner approving a short-term construction easement would be sufficient
- Building footings, grading, overhands and swinging doors cannot trespass into neighboring parcel
- Snow storage on shop/garage could end up on neighboring property. Agreement should be made with neighbor for snow storage/removal
- Any grading over 100 cubic yards of material will require a grading permit.
- Due to tight tolerances requires, boundary line, the boundary line should be required to be staked by a land surveyor prior to construction

Staff Response

CDS has provided these comments to the applicant and conditioned this determination to ensure the applicant shall obtain all necessary permits required by KCPW for this development and required agreements/easements are put in place. CDS has also conditioned to have the property staked by a land surveyor prior to building and that no footings, grading, overhangs or doors trespass into neighboring property.

Department of Archaeology & Historic Preservation (DAHP)

Department of Archaeology & Historic Preservation provided comment on this application on May 5, 2022. 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 two public comments received for this application. All comments are on file and available for public review.

Jeff & Judy Bohnet

Jeff & Judy Bohnet commented on April 30, 2022 in support of the variance request.

Bob & Dorriene Stoneman

Bob & Dorriene Stoneman commented on May 4, 2022 that they have no exception to the request if both of the following can be affirmed:

1. The grating of the 10-foot setback would not encumber them in any way from positioning a structure directly across the property line in accordance with appropriate setbacks
2. That it would not require a firewise concern which could result in removal of a 32” Fir Tree that sits 6’ off the property line. They mentioned they talked to the Fire Marshal on May 3, 2022 and that he notes that this would not affect their property or the tree on their lot

Staff Response

The granting of the 10 foot setback would not encumber them in putting in a building on their lot that meets setbacks. With a 10 foot setback, there are no additional fire wall related building restrictions. CDS concurs with the Fire Marshal’s comments in that the variance would not require the tree to be taken down. These issues were considered during the review of the variance.

All comments were transmitted to the applicant on May 9, 2022. The applicant responded on May 10, 2022 that they did not have any response comments to those submitted and set up a site visit for May 18, 2022 with County staff.

VIII. FINDINGS OF FACT

1. Devin Casto, Authorized Agent for Phillip & Alexia Heidt (Landowners) submitted a zoning setback variance requesting a 15-foot reduction from the 25-foot front lot line setback for the northern most property line for the construction of a house and a 20-foot reduction from the 25-foot front lot line setback from the southwestern property line for construction of a garage. The 25-foot front setback requirements come from KCC 17.30A.050. This would result in a 10-foot front lot line structural setback from the northern most property line and a 5-foot front lot line setback from the southwestern lot line.
2. Parcel # 951186 (Lot 13 of The Ridge at Tillman Creek Plat) located on Pinnacle Ln, approximately 1.7 miles southwest from the intersection of Madison Ave and South Cle Elum Way in Cle Elum, WA in Section 04, Township 19, Range 15. Map number 19-15-04054-0013.

3. Site Information

Total Property Size:	3.03 acres
Number of Lots:	1 (no new lots are being proposed)
Domestic Water:	Group A
Sewage Disposal:	Septic
Power/Electricity:	PSE
Fire Protection:	Fire District 7 (Cle Elum)
Irrigation District:	KRD

4. Site Characteristics:

North:	Undeveloped Lot/Sparse Residential Development
South:	Sparse Residential Development/Forested Land
East:	Tillman Creek/Forested Land/Sparse Residential Development

West: Primarily residential development

The site is accessed via Pinnacle Lane.

5. The Comprehensive Plan land use designation is “Rural Residential” with a zoning designation of Rural 5.
6. The purpose and intent of the Rural 5 zone is to provide areas where residential development may occur on a low density basis. A primary goal and intent in siting R-5 zones will be to minimize adverse effects on adjacent natural resource lands. The application is requesting a 15-foot reduction from the 25-foot front lot line setback for the northern most property line for the construction of a house and a 20-foot reduction from the 25-foot front lot line setback from the southwestern property line for construction of a garage. The 25-foot front setback requirements come from KCC 17.30A.050. This would result in a 10-foot front lot line structural setback from the northern most property line and a 5-foot front lot line setback from the southwestern lot line. This variance is requested to build a house and garage. 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 24, 2022.
8. The Zoning Variance Application was deemed incomplete on March 4, 2022.
9. Required and updated information was submitted on April 15, 2022
10. The application was determined complete on April 15, 2022.
11. 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 April 21, 2022, all in conformance with the Kittitas County Project Permit Application Process (Title 15A). The comment period ended at 5:00 pm on May 6, 2022 and all comments were transmitted to the applicant on May 9, 2022.
12. The applicant responded on May 10, 2022 saying they had no response comments and set up a site visit for May 18, 2022.
13. CDS performed a critical areas review of the subject parcel and found there to be a Type F stream (Tillman Creek) and hazardous slope on the property. Based upon review of the submitted application materials and a critical areas review, CDS determined that the Ward Zoning Setback Variance is exempt from SEPA review pursuant to WAC 197-11-800(6)(e).
14. The proposal is consistent with the provisions of KCC 17A, Critical Areas.
15. The proposal is not consistent with the provisions of KCC 17.30A, Rural 5 zoning without approval of the zoning setback variance.
16. The proposal is consistent with the KCC 17.84 Variances. All four criteria in KCC 17.84.010 have been satisfied.
17. This proposal is consistent with the provisions of the KCC Title 14.04, Building Code.

18. The proposal is consistent with the provisions of KCC Title 20, Fire and Life Safety.
19. Comments were received from the following agencies: Kittitas PUD, Department of Natural Resources, Colville Tribe, Kittitas County Public Health, Kittitas County Public Works and Department of Archaeology and Historic Preservation. All comments are on file and available for public review.
20. Two public comments were received. All comments are on file and available for public review.

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 12 Road and Bridges, Title 17 Zoning, Title 17A Critical Areas, and Title 20 Fire and Life Safety as conditioned.

X. DECISION AND CONDITIONS OF APPROVAL:

Kittitas County Community Development Services finds that the Heidt Zoning Setback Variance (VA-22-00002) is hereby **approved**. The Heidt 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 April 15, 2022 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 site plan shall be accurately to scale for all buildings and setbacks when submitting building permits or for any revisions of currently submitted plans thereof.
4. The applicant shall contact Kittitas County Public Works and obtain all necessary permits required for this development, and no structure shall encroach upon any easement or right-of-way.
5. A short-term construction easement shall be obtained from neighboring property owners. A copy of this easement shall be provided to CDS.
6. No building footings, grading, overhangs, or swinging doors shall trespass into neighboring parcels.
7. The boundary line shall be staked by a Washington State licensed land surveyor prior to construction and grading.
8. A snow storage plan/agreement shall be made with the neighboring property owner prior to construction. A copy of this agreement shall be submitted to CDS.

9. All development shall be consistent with Department of Natural Resources requirements.
10. 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.
11. This front lot line setback variance shall expire after one year of the decision date if no substantial construction has taken place. Substantial construction shall mean a poured foundation through an approved building permit(s).

Responsible Official  _____
Jeremiah Cromie

Title: Planner II

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

Date: May 26, 2022

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 June 10, 2022. Aggrieved parties are encouraged to contact Community Development Services at (509) 962-7506 for more information on the appeal process.