



## Dempsey Zoning Setback Variance

### File Number VA-25-00007

## FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

### I. GENERAL INFORMATION

Requested Action: John Dempsey, property owner, is seeking a zoning variance to reduce the required front yard setback from 25 feet to 15 feet, and the side yard setback from 10 feet to 5 feet, as outlined in KCC 17.30A.050. This adjustment will allow for the construction of a single-family home and appurtenance on the frontmost portion of the property that is not obstructed by steep slopes.

Location: The subject property is parcel #797234 located at 281 Morrison Canyon Lane in Cle Elum, WA. Approximately 0.75 miles from the intersection of Sunlight Drive and Thorp Prairie Road. Section 24, Township 19, Range 16; Kittitas County parcel map number 19-16-24050-0110. The property is zoned Forest and Range and has a land use designation of Rural Working.

### II. SITE INFORMATION

Total Property Size:	0.28 acres
Number of Lots:	1
Sewage Disposal:	On Site-Sewage
Fire Protection:	Fire District 1 (Rural Thorp)
Irrigation District:	n/a

Site Characteristics:

North: Low-density residential and recreation development.

South: Low-density residential and recreation development.

East: Low-density residential and recreation development.

West: Low-density residential and recreation development.

Access: The site is accessed via Morrison Canyon Lane.

### III. ZONING AND DEVELOPMENT STANDARDS

The subject property has a zoning designation of Forest and Range with a Rural Working land use designation. The purpose and intent of this 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 and side yard setback requirements in KCC 17.56.060(1) and KCC 17.56.060(2). 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 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 subject property is exceptionally constrained due to its narrow configuration and the presence of steep slopes. These steep slopes cover nearly the entire site except for the frontmost part of the property, which significantly limits the buildable area. Additionally, the location of the existing septic system requires a 10-foot setback, further constraining the available space for development. These physical limitations push the feasible building envelope closer to the road, making compliance with standard setback requirements impractical.”*

Staff Response

CDS staff have reviewed the complete file information, including but not limited to, the applicant’s submitted information and comments received during the comment period. 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

*“Neighboring properties in the vicinity are permitted to construct single-family residences without similar constraints. Denial of this variance would deprive the applicant of a comparable use and enjoyment of their property due to the restrictive buildable area caused by natural and existing conditions.”*

Staff Response

CDS staff have reviewed the complete file information, including but not limited to, the applicant’s submitted information and comments received during the comment period. CDS agrees that without this variance, the applicant would “be deprived of a comparable use and enjoyment of their property due to the restrictive buildable area.” CDS finds that the applicant has satisfied the criteria outlined in KCC17.84.010(2).

**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 proposed residence will not negatively impact public welfare or neighboring properties. It will maintain adequate separation from adjacent parcels, comply with all other zoning and safety*

*requirements, and replace a previously vandalized RV setup that had become an eyesore. The new residence will contribute positively to the neighborhood's appearance and sense of security."*

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. The proposed structure will be located at least 15 feet from front and more than 7 feet from the side property lines. 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 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 project aligns with the neighborhood's residential character and supports the broader goal of encouraging stable, long-term housing. By replacing an RV with a permanent home, the project enhances the neighborhood's aesthetic and discourages vandalism."*

Staff Response

CDS has concluded that the requested zoning setback variance reduction will not adversely affect the realization of the comprehensive development pattern of the area. The area contains similarly sized lots with single family residences and appurtenances.

**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 17.84.000

#### IV. ADMINISTRATIVE REVIEW

Deem Complete: The application was deemed complete on December 11, 2025.

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 December 18, 2025, all in conformance with the Kittitas County Project Permit Application Process (Title 15A). The comment period ended at 5:00 pm on January 6, 2026, and all comments were transmitted to the applicant on January 7, 2026.

#### V. ENVIRONMENTAL REVIEW

A critical areas review was performed by CDS staff using GIS data and identified areas of hazardous slopes with grades of 33 percent or greater covering portions of the property. Footing setbacks from descending slopes shall be set at a sufficient distance from the slope to provide protection from slope

drainage, erosion, and shallow failures. The maximum setback distance is 40 feet unless a reduced distance is calculated by dividing the height of the slope by three (H/3).

Alternative setbacks and clearances are permitted, subject to approval by the Building Official. The Building Official may require an investigation and recommendation from a qualified engineer to demonstrate that the intent of this section has been satisfied. Such an investigation shall include consideration of slope material, slope height, slope gradient, load intensity, and erosion characteristics of the slope material.

A Geological Hazard Assessment for the subject property was completed by Anderson Geological Consulting, LLC on December 16, 2025. The report indicates that the project site is located near the top of a slope exceeding 70 percent grade. Although the slope appears to be reduced to approximately 10–15 percent where the site has been graded, filled, and terraced for the proposed multi-family housing (MFH), this graded area consists of loose, non-engineered fill. As a result, the report concludes that the top of the natural slope must be used for setback calculations, which coincides with the proposed MFH foundation location. Because the foundation is located at the top of the slope and cannot be set back far enough to meet International Building Code requirements, the report recommends either engineering a retaining wall to provide adequate slope stabilization or setting the foundation at sufficient depth to achieve the required setback.

## **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. The following agencies provided comments: Bonneville Power Administration (BPA), Kittitas County Fire Marshal (KCFM), Yakama Nation Fisheries, Confederated Tribes of the Colville Reservation (CTCR), Kittitas County Public Health, Kittitas County Public Works. A review of these comments can be seen below.

### Bonneville Power Administration

BPA stated this project will not directly impact BPA facilities located over 2 miles north of the subject property, BPA does not have any objections to the approval of this request currently.

*Applicant Response: No response.*

*Staff Response: CDS has provided these comments to the applicant.*

### Kittitas County Fire Marshal

KCFM stated no comments for this project.

*Applicant Response: No response.*

*Staff Response: CDS has provided these comments to the applicant.*

### Yakama Nation Fisheries

Yakama Nation Fisheries state the project does not yield any new information that would require further investigation of the potential impacts of Archaeological/Cultural Resources.

*Applicant Response: No response.*

*Staff Response: CDS has provided these comments to the applicant.*

Confederated Tribes of the Colville Reservation

CTCR stated that this proposal falls outside their delineated territories but they recognize that there may be other interested parties, particularly tribal partners, who have more immediate concerns for the potential effects of this undertaking or resource of historic, cultural, or religious significance.

*Applicant Response: No response.*

*Staff Response: CDS has provided these comments to the applicant.*

Kittitas County Public Health

KCPH requires a connection “Tank Placement” permit to connect proposed SFR to existing septic system.

*Applicant Response: No response.*

*Staff Response: CDS has provided these comments to the applicant.*

Kittitas County Public Works

Access:

- An approved access permit shall be required from the Kittitas County Department of Public Works prior to creating any new driveway access or alternative existing access.
- Maintenance of driveway approaches shall be the responsibility of the owner whose property they serve. The County will not maintain access.
- In addition to the above-mentioned conditions, all applicable Kittitas County Road Standards apply to this proposal. Access is not guaranteed to any existing or created parcel on this application.

Engineering:

- Except as exempted in Section KCC 14.05.060, no grading or filling upon a site involving more than one hundred (100) cubic yards shall be performed without a grading permit from the County Engineer or Public Works designee (KCC 14.05.050). An application for grading in excess of five hundred (500) cubic yards shall be accompanied by an engineered grading plan (KCC 14.05.080).

*Applicant Response: No response.*

*Staff Response: CDS has provided these comments to the applicant.*

**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:

A critical areas review was performed by CDS using GIS data and found hazardous slopes located on and near the property.

Consistency with the provisions of KCC 17.30A.050 Yard requirements:

This proposal is not consistent with the setback requirements specified in KCC 17.56.060(1) and KCC 17.56.060(2), thereby supporting the need for a zoning variance.

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:

The following agencies provided comments: Bonneville Power Administration (BPA), Kittitas County Fire Marshal (KCFM), Yakama Nation Fisheries, Confederated Tribes of the Colville Reservation (CTCR), Kittitas County Public Health, Kittitas County Public Works. A review of these comments can be seen below.

Public Comments:

No public comments were received during the designated comment period.

**VIII. FINDINGS OF FACT**

1. John Dempsey, property owner, is seeking a zoning variance to reduce the required front yard setback from 25 feet to 15 feet, and the side yard setback from 10 feet to 5 feet, as outlined in KCC 17.30A.050. This adjustment will allow for the construction of a single-family home and appurtenance on the frontmost portion of the property that is not obstructed by steep slopes.
2. The subject property is parcel # 797234 located at 281 Morrison Canyon Lane in Cle Elum, WA. Approximately 0.75 miles from the intersection of Sunlight Drive and Throp Prairie Road. Section 24, Township 19, Range 16; Kittitas County parcel map number 19-16-24050-0110. The property is zoned Forest and Range and has a land use designation of Rural Working.

3. Site Information

Total Property Size:	0.28 acres
Number of Lots:	1
Sewage Disposal:	On Site-Sewage
Fire Protection:	Fire District 1 (Rural Thorp)
Irrigation District:	n/a

4. Site Characteristics:

- North: Low-density residential and recreation development.
- South: Low-density residential and recreation development.

East: Low-density residential and recreation development.  
West: Low-density residential and recreation development.

5. The site is accessed via Morrison Canyon Lane.
6. The Comprehensive Plan land use designation is Rural Working in Forest and Range zoning.
7. The purpose and intent of this 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 and side yard setback requirements in KCC 17.56.060(1) and KCC 17.56.060(2). 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.
8. A Zoning Variance Application was submitted to Kittitas County Community Development Services department on December 9, 2025.
9. The application was deemed complete on December 11, 2025.
10. 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 December 18, 2025, all in conformance with the Kittitas County Project Permit Application Process (Title 15A). The comment period ended at 5:00 pm on January 6, 2026, and all comments were transmitted to the applicant on January 7, 2026.
11. A critical areas review was performed by CDS using GIS data and found hazardous slope located on and near the property.
12. The proposal is consistent with the provisions of KCC 17A, Critical Areas.
13. The proposal is not consistent with the setback requirements specified in KCC 17.56.060(1) and KCC 17.56.060(2), thereby supporting the need for a zoning variance.
14. The proposal is consistent with the KCC 17.84 Variances. All four criteria in KCC 17.84.010 have been satisfied.
15. This proposal is consistent with the provisions of the KCC Title 14.04, Building Code as conditioned.
16. The proposal is consistent with the provisions of KCC Title 20, Fire and Life Safety as conditioned.
17. Comments were received from the following agencies: Bonneville Power Administration (BPA), Kittitas County Fire Marshal (KCFM), Yakama Nation Fisheries, Confederated Tribes of the Colville Reservation (CTCR), Kittitas County Public Health, Kittitas County Public Works.
18. No public comments were received during the designated comment period.

**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 as conditioned including Kittitas County Code Title 14.04 Buildings & Construction, 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 Dempsey Zoning Setback Variance (VA-25-00007) is hereby approved subject to the conditions below. The Dempsey 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.
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 Community Development Services.
4. The applicant shall apply for an access permit through the Kittitas County Department of Public Works prior to creating any new driveway access or alternative existing access.
5. The applicant shall apply for a connection “tank placement” permit to connect the proposed MFH to the existing septic system.
6. The applicant shall submit building plans with the building permit application that demonstrate adequate slope stability, in compliance with International Building Code requirements for structures located on or near slopes, subject to approval by the Kittitas County Building Official.
7. All structures and buildings shall be compliant with the International Fire Code.
8. This front and side yard setback variance shall expire after one year of the decision date if no substantial construction has taken place or an extension has not been applied for under KCC 17.84.010(4).

**Responsible Official**



Ellie Myers

**Title:**

Planner 1

**Address:**

Kittitas County Community Development Services  
411 N. Ruby Street, Suite 2  
Ellensburg, WA. 98926  
Phone: (509) 962-7079

**Date:**

January 15, 2026

**Pursuant to Chapter 15A.07 KCC, this determination may be appealed by submitting specific factual objections in writing with a fee of \$1670 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 5:00 pm on January 30, 2026. Aggrieved parties are encouraged to contact Community Development Services at (509) 962-7048 for more information on the appeal process.**