



## Crow’s Nest Zoning Variance File Number VA-23-00009

### FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

#### I. GENERAL INFORMATION

Requested Action: Crow’s Nest Ranch LLC (landowner) and Frank Ho & Lissy Hamm (authorized agents) are requesting a five-foot increase to the 35-foot structural height limitation required by KCC 17.56.070 to build a 40-foot-tall fire tower. If the variance is approved, a 40-foot-tall structure would be permissible.

Location: The subject property is parcel # 19401, located off Goat Peak Ranch Rd. in Cle Elum, WA, approximately 0.65 miles northwest from the intersection of Nelson Creek Road and Zrebiec Road. The property is in Section 33, Township 20, Range 14 in Kittitas County. Map number 20-14-33000-0021. The property is 25.74 acres and is zoned Forest & Range with a Rural Working land use designation.

#### II. SITE INFORMATION

Total Property Size:	25.74 acres
Number of Lots:	1 (no new lots are being proposed)
Fire Protection:	Fire District 7 (Cle Elum)
Irrigation District:	N/A

Site Characteristics:

North: Primarily privately owned forested vacant land or residential development

South: Primarily privately owned forested vacant land or residential development

East: Primarily privately owned forested vacant land or residential development

West: Primarily privately owned forested vacant land or residential development

Access: The site is accessed via Goat Peak Ranch Rd.

#### III. ZONING AND DEVELOPMENT STANDARDS

The subject property has a zoning designation of Forest and Range and 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 KCC 17.56.070. Title 17.84.010 of the Kittitas County Code outlines four criteria in which a variance may 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

*“We intend to maximize the height of the structure to put us over the current tree lines, so we don’t need to disturb their natural growth.”*

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. The property is located within Forest and Range zoning where forested property commonly exists. Neighboring properties and development experience similar tree growth and views on their properties. CDS does not find that unusual circumstances or conditions are occurring on the subject property which others in the same vicinity do not experience.

**The applicant has not 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 not demonstrated in a factual and meaningful way the existence of “undue hardship” caused by the application of maximum structure height requirements as stipulated in KCC 17.56.070. The variance, as presented, is not 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

*“The potential increase in height will increase the enjoyment and experience felt by the client. The views will not be hindered by the lower tree lines. Traditionally, fire towers are known for maximizing heights to help spot fires from far away.”*

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. An expansive view is not a substantial property right. Tree growth is common in the Forest and Range zoning designation and many of the properties within the vicinity of the subject property experience similar view limitations due to tree growth.

**The applicant has not demonstrated in a factual and meaningful way the existence of a “substantial property right” that may be negated by the application of the maximum structure height requirements as stipulated in KCC 17.56.070. The variance, as presented, is not consistent with KCC 17.84.010(2).**

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

Applicant Response

*“The variance will have zero impact on the public welfare or injurious to other properties in the vicinity.”*

Staff Response

CDS finds the proposal is unlikely to be detrimental to public welfare or injurious to property in the vicinity.

**The applicant has demonstrated in a factual and meaningful way that the proposed 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 such variance will not adversely affect the realization of the comprehensive development pattern. We believe that a project like this might spark more interest in the community.”*

Staff Response

CDS has concluded that the requested variance will not adversely affect the realization of the comprehensive development pattern of the area.

**The applicant has demonstrated in a factual and meaningful way that the proposed height variance 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 not** meet all four criteria outlined in KCC 17.84.010 as described above. Therefore, the zoning variance request is not consistent with the conditions necessary to grant a variance under KCC 17.84.

#### **IV. ADMINISTRATIVE REVIEW**

Deem Complete: The application was determined complete on December 27, 2023.

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 January 3, 2024, all in conformance with the Kittitas County Project Permit Application Process (Title 15A). The comment period ended at 5:00 pm on January 19, 2024, and all comments were transmitted to the applicant on January 22, 2024.

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

CDS performed a critical area review of the subject parcel and found there to be no critical areas or associated buffers near the proposed development. CDS issued a SEPA Determination of Non-Significance for this project on February 27, 2024.

**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: Kittitas PUD, WSDOT – Aviation, Confederated Tribes of the Colville Reservation, Kittitas County Public Health, Kittitas County Public Works. A review of these comments can be seen below.

Kittitas PUD

Kittitas PUD stated they have no facilities in the project area.

Applicant Response

No response provided.

Staff Response

Staff transmitted this comment to the applicants for review.

Washington State Department of Transportation - Aviation

WSDOT – Aviation stated they have no comments.

Applicant Response

No response provided.

Staff Response

Staff transmitted this comment to the applicants for review.

Confederated Tribes of the Colville Reservation

The Confederated Tribes of the Colville Reservation provided comments on cultural resources concerns. They requested a cultural resource survey to be conducted if ground disturbing activities are to be performed.

Applicant Response

No response provided.

Staff Response

Staff transmitted this comment to the applicants for review.

Kittitas County Public Health

Kittitas County Public Health stated they have no comment.

Applicant Response

No response provided.

Staff Response

Staff transmitted this comment to the applicants for review.

Kittitas County Public Works

Kittitas County Public Works provided comments regarding transportation concurrency and floodplain requirements.

Applicant Response

No response provided.

Staff Response

Staff transmitted this comment to the applicants for 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 the planning staff's analysis and consistency review for the subject application.

Consistency with the provisions of KCC 17A, Critical Areas:

Staff conducted an administrative critical area review in accordance with KCC 17A. There are no identified critical areas or associated buffers near the proposed development. A SEPA DNS was issued on February 27, 2024. This request is consistent with critical areas provisions.

Consistency with the provisions of KCC 17.56 Forest and Range:

This proposal, with approval of the zoning variance, is consistent with the requirements 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 **not** 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, WSDOT – Aviation, Confederated Tribes of the Colville Reservation, Kittitas County Public Health, Kittitas County Public Works. All comments are on file and available for public review.

Public Comments:

No timely public comments were received.

**VIII. FINDINGS OF FACT**

1. Crow’s Nest Ranch LLC (landowner) and Frank Ho & Lissy Hamm (authorized agents) are requesting a five-foot increase to the 35-foot structural height limitation required by KCC 17.56.070 to build a 40-foot-tall fire tower. If the variance is approved, a 40-foot-tall structure would be permissible.
2. The subject property is parcel # 19401, located off Goat Peak Ranch Rd. in Cle Elum, WA, approximately 0.65 miles northwest from the intersection of Nelson Creek Road and Zrebiec Road. The property is in Section 33, Township 20, Range 14 in Kittitas County. Map number 20-14-33000-0021. The property is 25.74 acres and is zoned Forest & Range with a Rural Working land use designation.
3. Site Information

Total Property Size:	25.74 acres
Number of Lots:	1 (no new lots are being proposed)
Fire Protection:	Fire District 7 (Cle Elum)
Irrigation District:	N/A
4. Site Characteristics:

North:	Primarily privately owned forested vacant land or residential development
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East:	Primarily privately owned forested vacant land or residential development
West:	Primarily privately owned forested vacant land or residential development

Access: The site is accessed via Goat Peak Ranch Rd.
5. The Comprehensive Plan land use designation is Rural Working within Forest and Range zoning.
6. The subject property has a zoning designation of Forest and Range and 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 KCC 17.56.070. 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 December 5, 2023.
8. The application was determined complete on December 27, 2023.

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 January 3, 2024, all in conformance with the Kittitas County Project Permit Application Process (Title 15A). The comment period ended at 5:00 pm on January 19, 2024, and all comments were transmitted to the applicant on January 22, 2024.
10. CDS performed a critical area review of the subject parcel and found there to be no critical areas or associated buffers near the proposed development. CDS issued a SEPA Determination of Non-Significance for this project on February 27, 2024.
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 variance.
13. The proposal is not consistent with the KCC 17.84 Variances. All four criteria in KCC 17.84.010 have not 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 PUD, WSDOT – Aviation, Confederated Tribes of the Colville Reservation, Kittitas County Public Health, Kittitas County Public Works. All comments are on file and available for public review.
17. No timely public comments were received.

**IX. STAFF CONCLUSIONS:**

1. This proposal has not satisfied all four criteria of KCC Title 17.84.010; therefore, it cannot be approved.

**X. DECISION:**

Kittitas County Community Development Services finds that the Crow’s Nest Zoning Variance (VA-23-00009) has not satisfied the requirements of a zoning variance pursuant to KCC 17.84.010 and is hereby **denied**.

**Responsible Official**



Chace Pedersen

**Title:** Planner I  
**Address:** Kittitas County Community Development Services  
 411 N. Ruby Street, Suite 2  
 Ellensburg, WA. 98926  
 Phone: (509) 962-7637  
**Date:** February 27, 2024

**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 5:00pm March 12, 2024. Aggrieved parties are encouraged to contact Community Development Services at (509) 962-7506 for more information on the appeal process.**