



Thorp Sign Height AKA Shree Holdings Sign Variance VA-19-00002

FINDINGS OF FACT, CONCLUSIONS OF LAW AND REMAND DECISION

I. APPEAL AND REMAND INFORMATION

The Findings of Fact and Administrative Decision Denial for the Thorp Sign Height AKA Shree Holdings Sign Variance (VA-19-00002) was issued on September 12, 2019. On September 26, 2019, a timely appeal was filed by the applicant's representative, Mr. James Carmody of Meyer, Fluegge & Tenney, P.S. A public appeal hearing was held by the Kittitas County Hearing Examiner at 6:00 pm on Thursday, February 13, 2020. During the appeal hearing, the Applicant/Appellant submitted a number of exhibits demonstrating how they believed their sign variance request met the requirements of Kittitas County Code (KCC) 17.84 Variances. At the conclusion of the hearing, the Hearing Examiner left the record open until 5:00 pm on February 28, 2020 for the County to respond to the exhibits submitted by the Applicant/Appellant at the appeal hearing; and until 5:00 pm on March 13, 2020 for the Applicant's rebuttal specifically to any argument specific to the County's responsive materials. During the respective response period, the County stated that enough information was provided during the appeal hearing for the sign variance to be approved. On February 28, 2020, the Hearing Examiner contacted both the County and the Applicant asking if there was any objection to the Hearing Examiner remanding this matter back to the County for a new decision. Both the Applicant and the County requested that the Hearing Examiner issue a decision of approval of the variance, however the Hearing Examiner issued a Notice of Remand to Kittitas County to revise their original decision and set any conditions of approval as necessary. This updated Findings of Fact, Conclusions of Law and Remand Decision Document implements the Hearing Examiner's Remand Decision.

Staff Note: Throughout the document, information will be updated as it pertains to the Appeal Hearing Information and new rationale for meeting variance conditions will be prefaced with the heading "*Information provided during appeal*". Other parts of the document have been updated as necessary and are not necessarily called out as a change.

II. GENERAL INFORMATION

Requested Action: Shree Holdings LLC, property owners, have submitted a zoning variance request to exceed the sign dimension limits. This variance is requested to accommodate a freestanding sign at Shree's gas station. The height limit for freestanding outdoor advertising signs in Kittitas County Code is 35' for this zoning district (Highway Commercial, KCC 17.44.060, in the Thorp Type III LAMIRD), while the proposed sign height is 87.5'. The face area limit in Kittitas County Code is 325 square feet, while the proposed sign face is approximately 1176 square feet.

Location: The subject property is parcel # 953186 located off of Highway 90 in the Thorp Type 3 LAMIRD, in Section 13, T 18N, R 17E. Map number 18-17-13051-0002.

III. SITE INFORMATION

Total Property Size:	2.39 acres
Number of Lots:	1 (no new lots are being proposed)
Domestic Water:	WSLC
Sewage Disposal:	On Site Septic (Commercial)
Power/Electricity:	Kittitas PUD District 2
Fire Protection:	Fire District 1 (Rural Thorp)
Irrigation District:	West Side

Site Characteristics:

- North: single-family residence, agriculture lands
- South: I-90 Corridor and agriculture lands
- East: residential and agriculture lands
- West: retail agriculture sales and highway interchange

Access: The site is accessed via Gladmar Rd., a paved county road off of the Thorp I-90 interchange.

IV. ZONING AND DEVELOPMENT STANDARDS

The subject property has a zoning designation of Highway Commercial within the Thorp Limited Area of More Intense Rural Development – Type 3. The purpose and intent of this zone is provide for motorist- tourist dependent businesses having little interdependence and requiring convenient access to passing traffic pursuant to KCC 17.44 Highway Commercial Zone. The applicant is requesting to utilize the variance process pursuant to KCC 17.84 Variances, to deviate from the prescribed sign dimensions requirements in KCC 17.70.070(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 or not each criterion has been satisfactorily demonstrated:

KCC 17.84.010 Granting Criteria (all four must be met):

On April 10, 2019 CDS sent a request for additional information letter to the applicant. The letter instructed the applicant to clarify several items including a revised narrative for variance criteria 1-3, demonstrating how their proposal is consistent with these requirements as mandated in KCC 17.84.010. Items 1-3 listed below are drawn from the applicant response to this request, while item 4 is drawn from the original application.

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 property location, interstate boundaries topography, elevation of exist –vs- overpass, approach and access negatively affects the recognition and timely reaction to take advantage of the services and benefits provided by the businesses located at the site it limits the full utilization of the property to attract customers, thus it would have a negative impact on income. In regards to the WSDOT motorized information has always been debated as to its affect and the actual impact on driver decisions. If you need to understand the faith businesses have in the WSDOT program, please not pictures attached at south interchange where each major company has chosen to spend and install their signs and logos high into air and visible from the interstate. There are 18 such signs at this location.”

Staff Response

CDS staff have reviewed the applicants response above in reference to the first of four requirements necessary to obtain a variance under KCC17.84.010. This criterion requires that the applicant demonstrate “unusual circumstances or conditions applying to the property and/or intended use that do not apply generally to other property in the same vicinity or district.” CDS does not interpret potential impacts on income as “unusual circumstances or conditions” that would not apply to neighboring properties. The questionable efficacy of WSDOT motorized information signs as a means of advertising does not qualify as “unusual circumstances or conditions,” as they are a common practice for informing motorists of upcoming services throughout the State. Finally the applicant cites the common use of large free standing signs within the jurisdiction of the City of Ellensburg, which administers its own zoning regulations, informed by different criteria and regulations than the Kittitas County Code. CDS staff finds that there are not unusual circumstances or conditions applying to this property and/or the intended use that do not apply generally to other property in the same vicinity or district. Full utilization of a properties’ income potential is not a sufficient reason to grant a zoning variance under this criteria. CDS staff finds that criterion 1 of the KCC 17.84.010 has not been met.

Information provided during appeal

Information was provided during the appeal hearing, namely a declaration by Mr. Risk who gave a clear explanation of an industry standard as to why the sign needs to be 87.5 feet tall and have the requested face size. This declaration included an explanation of a flag test that is performed by using a boom truck and flag to determine how tall a sign and how large a face of sign must be to be seen from one (1) mile away. Additionally, Ms. Saini testified to the need of having a sign visible to the traveling public and truck drivers to advertise the daily fuel prices which is why the WSDOT service signs are not sufficient advertisement for the fuel station. The information provided at the appeal hearing (written and photo evidence) demonstrates that an unusual circumstance or condition applies to this request based on topography, overpass height, and the adjacent building. Staff concurs that the proposed variance request meets this condition.

The applicant has now demonstrated in a factual and meaningful way the existence of “unusual circumstances or conditions” that do not generally apply to other property in the same vicinity as required under KCC17.84.010(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

“When property rights are viewed as an attribute of economic good the needs of the applicant and those in area will be greatly improved upon approval. Given the above not having the proper signage puts this property at a definite disadvantage. Competitively, the proper signage will enhance the success of all the businesses at this location plus provide additional traffic into Thorp’s developing tourist business and better traffic flow especially for trucks coming into Ellensburg.”

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 does not contest the potential economic benefit the proposed sign could generate. However, under KCC17.84.010(2) the applicant must demonstrate a 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.” The free standing sign dimensional standards outlined in KCC17.70.070(2) apply to all proposed free standing signs within the County jurisdiction since ordinance 2014-015 was enacted, establishing a revised sign

code. CDS does not understand potential economic advantage to be a “substantial property right.” CDS disagrees with the assertion that the applicant will be put at a definite disadvantage without a substantial sign variance, as any perspective business choosing to locate in the same LAMIRD would be held to the same free standing sign dimension standards under KCC17.70.070(2). CDS staff finds that a variance is not necessary for the preservation and enjoyment of a substantial property right of the applicant possessed by owners of other properties in the same vicinity. CDS staff finds that criterion 2 of KCC 17.84.010 has not been met.

Information provided during appeal

Again, Mr. Risk’s declaration as described in the previous criteria review provides evidence as to a property right that this applicant does not have without approval that others in the area are afforded. Additionally, Ms. Saini testified the need of fuel stations to advertise fuel prices to the traveling public and truck drivers and that these prices change daily. Also the neighboring Fruit and Antique Mall building blocks the view of the fuel station from those traveling eastbound on I-90. Staff concurs that the proposed variance request is the minimum necessary to afford the applicant a similar property right as those in the vicinity have and meets this condition.

The applicant has now demonstrated in a factual and meaningful way the existence of a “substantial property right” that may be negated by the application of the free standing sign dimensional requirements as stipulated in KCC17.84.010 (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 height of the sign has been reduced from 120’ to 100’ to 87.5’ Placement is on the applicant’s property within the fall zone radius. Please note exhibit attached. We will comply with requirements that only one sign allowed per frontage. The current sign will be replaced and removed and not be relocated and thus avoid another variance request. Also please note that in the direction and in consideration of the NW winds the fall zone to NW is totally fenced and will deny any pedestrian access. The NW fall zone in between fire storage pond and stormwater detention ponds and non-business area.

Installation: will be in control of the YESCO engineers. They will be applying for permit, controlling the installation of the sign. This company is well known, been in business since 1920 has over 85 sign centers and has 1000 employees. Each sign will carry an engineer stamp plus liability coverage.

One of the stated concerns was compliance with the 17.70.030 of free standing and outdoor sign currently in place will be removed.”

Staff Response

Upon receiving an updated site plan by the applicant on June 6, 2019, demonstrating the potential fall radius and property setbacks, CDS finds that the applicant has demonstrated that the project will likely not be materially detrimental to the public welfare or injurious to property in the vicinity.

The applicant has demonstrated in a factual and meaningful way that the project would not be “materially detrimental to the public welfare or injurious to property in the vicinity” as stipulated 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 request will not adversely affect the realization of the comprehensive development pattern and may assist other property owners with a reason to further develop existing properties or expand their business. This is a request for a sign on our own property that does not interfere with at all. All of this would be consistent with the comprehensive development pattern for the County and Thorp in particular. The applicants have assisted their communities over the past years and would like to add the following information and rationale for your consideration. The applicant respectfully requests the County’s approval of their variance request. ”

Staff Response

CDS has concluded that the requested proposed sign would not impact the comprehensive development pattern of the area. The subject property exists in a Type 3 LAMIRD which allows for a certain amount of more intense development.

The applicant has demonstrated in a factual and meaningful way that the project would not “adversely affect the realization of the comprehensive development pattern of this area” as stipulated in KCC17.84.010 (4).

Staff Conclusions

Staff finds that the zoning variance based on the additional information provided during the appeal hearing meets all four criteria outlined in KCC 17.84.010 as described above. Therefore, the zoning variance request should be approved.

V. ADMINISTRATIVE REVIEW

Project Submittal: A Zoning Variance Application was submitted to Kittitas County Community Development Services department on March 22, 2019.

Deem Complete: The application was determined incomplete and additional information was requested on April 10, 2019. On June 6, 2019 the applicant submitted additional information. On June 19, 2019 the application was deemed complete.

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 July 1, 2019, all in conformance with the Kittitas County Project Permit Application Process (Title 15A). The comment period ended at 5:00 pm on July 16, 2019 and all comments were transmitted to the applicant on July 17, 2019.

VI. ENVIRONMENTAL REVIEW

Based upon review of the submitted application materials and an initial critical areas review CDS determined that the Shree Sign Variance is exempt from SEPA review pursuant to WAC 197-11-800(6)(e).

VII. 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.

VIII. PROJECT ANALYSIS

In review of this proposal it is important to consider 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. GIS information indicates no known critical areas on the subject property. This request is consistent with critical areas provisions.

Consistency with the provisions of KCC 17.70 Signs:

This proposal, with approval of the sign variance, is consistent with Kittitas County Zoning Code 17.70.

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, with the additional information provided during the appeal hearing is consistent and does meet criteria 1 through 4 as described above in Section III of this staff report.

Consistency with the provisions of the KCC Title 14.04, Building Code:

All buildings and/or structures 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:

Substantive comments were received from the following agencies: Washington State Department of Transportation and Kittitas County CDS Building. All comments are on file and available for public review.

Kittitas County CDS Building

In email correspondence received by CDS on July 16, 2019, the Kittitas County Building Official provided the following comments:

1. My comments are based on the 87.5 maximum sign height listed in the Variance request.
2. The sign construction drawings and calculations shall bear the stamp of a Washington State licensed engineer. Wind speed is 110 vUlt. All design shall be per the current Kittitas County adopted International Building Code with Washington State Amendments.
3. Setbacks to property lines should provide a sufficient fall zone should the sign fail.

Staff Response

Staff agrees that the proposed sign variance would require the building details noted above to protect public safety if the variance request were approved.

Washington State Department of Transportation

The Washington State Department of Transportation provided the following comments:

1. The subject property is adjacent to Interstate 90 (I-90), a fully-controlled limited access facility with a posted speed limit of 70 miles per hour. No direct access to I-90 will be allowed.
2. Outdoor advertising and motorist signing must comply with state criteria.

Staff Response

CDS staff acknowledge the WSDOT requirements as standard requirements for any sign proposal along a State controlled highway.

Public Comments:

- No public comments were submitted during the comment period.

IX. FINDINGS OF FACT

1. Shree Holdings LLC, property owners, have submitted a zoning variance request to exceed the sign dimension limits. This variance is requested to accommodate a freestanding sign at Shree’s gas station. The height limit for freestanding outdoor advertising signs in Kittitas County Code is 13’, while the proposed sign height is 87.5’. The face area limit in Kittitas County Code is 325 square feet, while the proposed sign face is approximately 1176 square feet.

2. The subject property is parcel # 953186 located off of Highway 90 in the Thorp Type 3 LAMIRD, in Section 13, T 18N, R 17E. Map number 18-17-13051-0002.

3. Site Information

Total Property Size:	2.39 acres
Number of Lots:	1 (no new lots are being proposed)
Domestic Water:	WSLC
Sewage Disposal:	On Site Septic (Commercial)
Power/Electricity:	Kittitas PUD District 2
Fire Protection:	Fire District 1 (Rural Thorp)
Irrigation District:	West Side

4. Site Characteristics:

- North: single-family residence, agriculture lands
- South: I-90 Corridor and agriculture lands
- East: residential and agriculture lands
- West: retail agriculture sales and highway interchange

The site is accessed via Gladmar Rd., a paved county road off of the Thorp I-90 interchange.

5. The subject property has a zoning designation of Highway Commercial within the Thorp Limited Area of More Intense Rural Development – Type 3. The purpose and intent of this zone is provide for motorist- tourist dependent businesses having little interdependence and requiring convenient access to passing traffic pursuant to KCC 17.44 Highway Commercial Zone. The applicant is requesting to utilize the variance process pursuant to KCC 17.84 Variances, to deviate from the prescribed sign dimensions requirements in KCC 17.70.070(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.**

6. A Zoning Variance Application was submitted to Kittitas County Community Development Services department on March 22, 2019.

7. The application was determined incomplete and additional information was requested on April 10, 2019. On June 6, 2019 the applicant submitted additional information. On June 19, 2019 the application was deemed complete.

8. 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 July 1, 2019, all in conformance with the Kittitas County Project Permit Application Process (Title 15A). The comment period ended at 5:00 pm on July 16, 2019 and all comments were transmitted to the applicant on July 17, 2019.
9. Based upon review of the submitted application materials and an initial critical areas review CDS determined that the Shree Sign Variance is exempt from SEPA review pursuant to WAC 197-11-800(6)(e).
10. The proposal is consistent with the provisions of KCC 17A, Critical Areas.
11. The proposal is consistent with the provisions of KCC 17.70 Signs, with the approval of the sign variance.
12. The proposal is consistent with all four criteria outlined in KCC 17.84 Variances.
13. This proposal is consistent with the provisions of the KCC Title 14.04, Building Code, assuming all required building permit(s) are obtained.
14. The proposal is consistent with the provisions of KCC Title 20, Fire and Life Safety:
15. Comments were received from the following agencies: Kittitas County CDS Building and Washington State Department of Transportation. All comments are on file and available for public review.
16. No public comments were received.
17. The original Administrative Decision of Denial was issued by CDS on September 12, 2019.
18. The applicant's authorized agent, James Carmody, filed a timely appeal on September 26, 2019.
19. An appeal hearing was held before the Kittitas County Hearing Examiner on February 13, 2020.
20. The Hearing Examiner issued a Notice of Remand to Kittitas County to revise their original decision and set any conditions of approval as necessary.

X. STAFF CONCLUSIONS:

1. This proposal does meet all four criteria of KCC Title 17.84.010, Variances, with the additional information provided during the appeal hearing.
2. The proposal is consistent with applicable federal and state laws and regulations.
3. The proposal is consistent with Kittitas County Code Title 14.04 Building and Construction, Title 17 Zoning, Title 17A Critical Areas, and Title 20 Fire and Life Safety.

XI. DECISION AND CONDITIONS OF APPROVAL:

After receiving the Hearing Examiner's Remand on appeal for Kittitas County to make a new decision on this matter, Kittitas County Community Development Services finds that the Shree Sign Variance (VA-19-00002)

is hereby **approved**. The Shree Sign Variance does adequately meet the requirements of a variance pursuant to KCC 17.84.010.

The following condition(s) apply:

1. The height of the overall sign shall not be greater than 87.5 feet.
2. The sign face square footage shall not exceed 1,176 sq. ft.
3. The sign will be located within 50 feet from the nearest fueling island and appropriate distance from all property lines.

Responsible Official

Lindsey M Ozbolt

Lindsey Ozbolt

Title: CDS Planning Official

Address: Kittitas County Community Development Services
411 N. Ruby Street, Suite 2
Ellensburg, WA. 98926
Phone: (509) 962-7506

Date: March 24, 2020

Issuance of this land use decision may be appealed by parties with standing, by filing a land use petition (LUPA) in Superior Court, and serving said petition on all required parties pursuant to RCW 36.70C and KCC 15A.08, within twenty-one days of the land use decision. The last day to file a LUPA is April 14, 2020.