

**Ward Zoning Setback Variance**  
**File Number VA-21-00003**  
**FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION**

**I. GENERAL INFORMATION**

Requested Action: Marcus Ward, property owner, submitted a zoning setback variance requesting a 5-foot reduction from the 25-foot front lot line setback requirement for the Residential Zone in KCC 17.16, which would result in a 20-foot front lot line structural setback. This variance is requested for the construction of a single family residence.

Location: Parcel # 398535 located on Chamonix Place, approximately 0.05 miles from the intersection of Chamonix Place and Snoqualmie Drive in Snoqualmie Pass, WA in Section 15, Township 22, Range 11. Map number 22-11-15050-0131.

**II. SITE INFORMATION**

Total Property Size:	.17 acres
Number of Lots:	1 (no new lots are being proposed)
Domestic Water:	Snoqualmie Pass Utility District
Sewage Disposal:	Snoqualmie Pass Utility District
Power/Electricity:	PSE
Fire Protection:	Snoqualmie Pass Fire and Rescue
Irrigation District:	N/A

Site Characteristics:

North: Primarily residential development  
South: Primarily residential development  
East: Primarily residential development  
West: Primarily residential development

Access: The site is accessed via Chamonix Place.

**III. ZONING AND DEVELOPMENT STANDARDS**

The subject property has a zoning designation of Residential within a LAMIRD Type 1 Land Use designation. The purpose and intent of the Residential zone is to provide for and protect areas for homesite development designed to meet contemporary building and living standards where public water and sewer systems are provided. 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 17.16 R – Residential 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

*Original Response: "Our variance is requested due to the unusual topography with a steep slope that is better mitigated by having the house closer to the street. Pushing the house back further compromises the positive flow and gravity drain to the existing side sewer."*

*Follow-up response: "There has been significant and non-sanctioned alteration to my lot by the previous owner that has created unusual circumstances and topography that is not shared by adjacent lots. Evidence for this has been confirmed on the walk through today by comparing the topography and slope of my lot 131 and lot 130 directly south (this lot is undisturbed and in its natural state).*

*My lot includes a large berm of deposited earth on the east portion of the lot, a large depression in the center of the lot and evidence of grading on the southern lot line that includes exposed roots and clearly identifiable dozer tracks.*

*The amount of work was so significant that it should have triggered a permit or an environmental review.*

*As a result, I am incurring additional building costs that adjacent lots 132 and 133 to the north did not; nor will lots 130, 129 and 128 to the south. This includes but isn't limited to:*

*-Brining [sic] in structural fill to replace the earth that was removed,*

*-Engineering of substantial foundation walls in height and thickness to compensate for the severely sloped lot*

*-Additional cost of concrete and rebar to construct these walls."*

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 steep topography at the front lot line that would make accessing the site difficult and potentially dangerous especially during winter months, as well as compromising the positive drain flow of residential sewage. CDS confirmed during a site visit that the parcel in question appears to have unique topography due to significant alteration by a previous owner. Due to the lot's steep topography at the point of access, and the location of the sewage drain, CDS agrees that unusual conditions exist on the parcel that are prohibitive for building outside of the area outlined in this variance application. CDS finds that the applicant has satisfied the criteria outlined in KCC17.84.010(1).

**The applicant has demonstrated in a factual and meaningful way the existence of "unusual circumstances or conditions" that does not generally apply to other property in the same vicinity. Further the applicant has demonstrated in a factual and meaningful way the existence "undue hardship" caused by the application of the yard requirements as stipulated in KCC 17.57.050(1). The variance, as presented, is consistent with KCC 17.84.010(1).**

2. Such variance is necessary for the preservation and enjoyment of a substantial property right of the applicant possessed by owners of other properties in the same vicinity.

Applicant Response

*Original Response: "The variance creates continuity with the adjacent dwellings and pattern of development in Hyak Estates."*

*Follow-up Response: “The house is currently designed with a 20' setback that incurs all of the costs and burden outlined above. A 25' setback will create even more need for engineering, structural fill and increased height/thickness of reinforced foundations and footings. Lot 130 that is directly south of lot 131 is undisturbed and represents the expected topography and grade. A home built there would see significantly less cost for excavation, no structural fill and standard foundation and footings for a typical 2-3 foot crawl space. Lots 132 and 133 to the north enjoyed the same topography and could be excavated as needed without the need to bring in structural fill. I feel I am prevented from enjoying a timely and economical build that adjacent lots 128, 129, 130, 132 and 133 received.”*

Staff Response

CDS staff have reviewed the complete file information, including but not limited to, the applicants submitted information and comments received during the comment period. CDS agrees that without this variance, the applicant would not be able to safely access their parcel or have anywhere to safely park their vehicles due to the steep slope between the road, the county-right-of-way, and their parcel. The applicant demonstrated on their site plan that there would not be an adequate access and parking area if they were to adhere to the current required setbacks. CDS recognizes that this parcel is in a situation different to many of the surrounding property owners due to a previous owner significantly altering the landscape and topography of the parcel. CDS staff finds that criterion 2 of KCC 17.84.010 has been met.

**The applicant has demonstrated in a factual and meaningful way the existence of a “substantial property right” that may be negated by the application of the yard requirements as stipulated in KCC 17.57.050(1). The variance, as presented, is consistent with KCC 17.84.010(2).**

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

Applicant Response

*“This variance does not negatively impact public welfare or property value in the subdivision. The proposed 20' setback is even with adjacent homes. The 25' setback reduces defensible space distance and infringes on native trees in the rear yard setback.”*

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. Recent code changes increased front lot line setbacks in the Snoqualmie Pass LAMIRD from 15' to 25', so the proposed reduction would be consistent with the setbacks of many adjacent structures that were established before the code change. 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

*“The variance does not adversely impact the realization of the comprehensive development pattern.”*

Staff Response

CDS has concluded that the requested zoning setback variance reduction from 25 to 20 feet will not

adversely affect the realization of the comprehensive development pattern of the area. The area contains many small parcels with single family residences and appurtenances and the variance will allow for a shorter driveway that will provide safe access to the parcel in place of a long steep driveway, which is similar to neighboring properties. The Residential setback reduction to 20 feet will not have any meaningful impact on the comprehensive development pattern.

**The applicant has demonstrated in a factual and meaningful way that the proposed build site will “not adversely affect the realization of the comprehensive development pattern.” The variance, as presented, is consistent with KCC 17.84.010(4).**

#### **Staff Conclusions**

Staff finds that the zoning variance request **does** meet all four criteria outlined in KCC 17.84.010 as described above. Therefore, the zoning variance request is consistent with the conditions necessary to grant a variance under KCC 17.84.

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

Deem Complete: The application was determined complete on February 18, 2021.

Notice of Application: Notice of Application was sent to property owners within 500 feet and all agencies with jurisdiction, published in the official newspaper of record for Kittitas County, and posted on the Kittitas County website on February 25, 2021, all in conformance with the Kittitas County Project Permit Application Process (Title 15A). The comment period ended at 5:00 pm on March 12, 2021 and all comments were transmitted to the applicant on March 15, 2021.

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

CDS performed a critical area review of the subject parcel and found there to be no critical areas. 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. There are no identified critical areas located on the property. This request is consistent with critical areas provisions.

##### Consistency with the provisions of KCC 17.16 R – Residential Zone:

This proposal, with approval of the zoning setback variance, is consistent with the setbacks outlined in Kittitas County Zoning Code 17.16 Residential 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 County Community Development Services- Building, 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 County Community Development Services – Building (CDS-Building)

CDS Building provided comments on this application on February 26, 2021 that they have no issues or concerns with the application but noted that the propane tank shown on the site plan needs to meet proper setbacks per NFPA 58.

Staff Response

CDS has provided these comments to the applicant.

Kittitas County Public Health (KCPH)

Kittitas County Public Health provided comments on this application on March 3, 2021. KCPH commented that they have no comments or concerns with the application.

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 March 10, 2021. KCPW commented that they recommend approval of the zoning variance application based on the following conditions:

- An access permit would be obtained when a building permit is applied for,
- The structure will not encroach upon any easement or right-of-way, and
- Any grading over 100 cubic yards of material will require a grading permit.
- Applicant is required to provide information on how the property line/right of way was determined.

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 no structures shall encroach upon any easement or right-of-way. The applicant provided CDS staff with a survey indicating the location of the property line. Public Works confirmed with CDS staff that their concerns were addressed by the survey.

Department of Archaeology & Historic Preservation (DAHP)

Department of Archaeology & Historic Preservation provided comment on this application on March 11, 2021. DAHP requested that the applicant prepare an inadvertent discovery plan (IDP) and prepare construction crews for the possibility of encountering archaeological material during ground disturbing activities. We also recommend consultation with the concerned Tribes' cultural committees and staff regarding cultural resource issues.

Staff Response

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

Public Comments:

There were three public comment received for this application. All comments are on file and available for public review.

William Powers

William Powers commented on March 5, 2021 in opposition to approval of the variance citing snow storage issues.

Stephanie McCabe

Stephanie McCabe commented on March 10, 2021 in opposition to approval of the variance citing snow storage issues.

Richard Grillo, Jr.

Richard Grillo, Jr. commented on March 11, 2021 in opposition to the approval of the variance citing an undue burden on neighbors, utility providers and road maintenance crews.

Staff Response

The Publics Comments have been taken into consideration during the review of the variance. Due to the placement of the county roadway within the county right of way, there is additional space between the edge of pavement and the property line, providing adequate room for snow removal.

**VIII. FINDINGS OF FACT**

1. Marcus Ward, property owner, has submitted a zoning setback variance request to reduce a 25-foot front lot line setback within the Residential zone to 20 feet.
2. Parcel # 398535 located on Chamonix Place, approximately 0.05 miles from the intersection of Chamonix Place and Snoqualmie Drive in Snoqualmie Pass, WA in Section 15, Township 22, Range 11. Map number 22-11-15050-0131.
3. Site Information

Total Property Size:	.17 acres
Number of Lots:	1 (no new lots are being proposed)
Domestic Water:	Snoqualmie Pass Utility District

Sewage Disposal:	Snoqualmie Pass Utility District
Power/Electricity:	PSE
Fire Protection:	Snoqualmie Pass Fire and Rescue
Irrigation District:	N/A

4. Site Characteristics:

North:	Primarily residential development
South:	Primarily residential development
East:	Primarily residential development
West:	Primarily residential development

The site is accessed via Chamonix Place.

5. The Comprehensive Plan land use designation is “LAMIRD” within Residential zoning.
6. The purpose and intent of the Residential zone is to provide for and protect areas for homesite development designed to meet contemporary building and living standards where public water and sewer systems are provided. The application is requesting a 15-foot reduction from the 25-foot front lot line setback requirement in KCC 17.16, which would result in a 10-foot front lot line structural setback. This variance is requested to build a 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 January 27, 2021.
8. The application was determined complete on February 18, 2021.
9. Notice of Application was sent to property owners within 500 feet and all agencies with jurisdiction, published in the official newspaper of record for Kittitas County, and posted on the Kittitas County website on February 25, 2021, all in conformance with the Kittitas County Project Permit Application Process (Title 15A). The comment period ended at 5:00 pm on March 12, 2021 and all comments were transmitted to the applicant on March 15, 2021.
10. CDS performed a critical areas review of the subject parcel and found there to be no critical areas. 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).
11. The proposal is consistent with the provisions of KCC 17A, Critical Areas.
12. The proposal is not consistent with the provisions of KCC 17.16, R-Residential zoning without approval of the zoning setback variance.
13. The proposal is consistent with the KCC 17.84 Variances. All four criteria in KCC 17.84.010 have been satisfied.
14. This proposal is consistent with the provisions of the KCC Title 14.04, Building Code.
15. The proposal is consistent with the provisions of KCC Title 20, Fire and Life Safety:
16. Comments were received from the following agencies: Kittitas County Community Development

Services- Building, 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.

17. Three 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 17 Zoning, Title 17A Critical Areas, and Title 20 Fire and Life Safety.

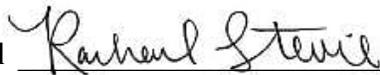
**X. DECISION AND CONDITIONS OF APPROVAL:**

Kittitas County Community Development Services finds that the Ward Zoning Setback Variance (VA-21-00003) is hereby **approved**. The Ward 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 January 27, 2021 and subsequent information included in the complete file index except as amended by the conditions herein.
2. The applicant shall comply with all local, State and Federal environmental standards and regulations in place at the time of building application submittal.
3. The applicant shall 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.
4. Should ground disturbing or other activities related to the proposed project result in the inadvertent discovery of cultural or archaeological materials, work shall be stopped in the immediate area and contact be made with the Washington State Department of Archaeology and Historic Preservation (DAHP). Work shall remain suspended until the find is assessed and appropriate consultation is conducted. Should human remains be inadvertently discovered, as dictated by Washington State RCW 27.44.055, work shall be immediately halted in the area and contact made with the coroner and local law enforcement in the most expeditious manner possible.
5. This front lot line setback variance shall expire after one year of the decision date if no substantial construction has taken place.

**Responsible Official**



Rachael Stevie

**Title:**

Planner I

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

**Date:** September 2, 2021

**Pursuant to Chapter 15A.07 KCC, this determination may be appealed by submitting specific factual objections in writing with a fee of \$1550 to the Kittitas County Community Development Services at 411 N Ruby St Ste. 2, Ellensburg, WA 98926. Timely appeals must be received no later than 5:00pm September 17, 2021. Aggrieved parties are encouraged to contact Community Development Services at (509) 962-7506 for more information on the appeal process.**