

Casal Zoning Setback Variance
File Number VA-23-00001
FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

I. GENERAL INFORMATION

Requested Action: Michael Casal, Landowner, submitted a zoning setback variance requesting a 4-foot reduction to the 25-foot front lot line setback from the southern property line for construction of side retaining walls as well as a 4-foot deep overhang to protect the front door from the snow. The 25-foot front setback requirements come from KCC 17.16.060. This would result in a 21-foot front lot line structural setback from the southern property line.

Location: Parcel # 477935 (Lot 11 of Conifer Estates Subdivision) located on N. Olson Drive Snoqualmie Pass, WA 98940, approximately 0.03 miles north from the intersection of Kearny Drive and N. Olson Drive in Snoqualmie Pass, WA in Section 09, Township 22, Range 11. Map number 22-11-09050-0111.

II. SITE INFORMATION

| | |
|----------------------|------------------------------------|
| Total Property Size: | .12 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 |

Site Characteristics:

North: Residential/Commercial Development
South: Residential Development
East: Some Residential Development/ I-90
West: Residential Development

Access: The site is accessed via N. Olson Drive.

III. ZONING AND DEVELOPMENT STANDARDS

The subject property has a zoning designation of LAMIRDs type 1 - Residential within a LAMIRD 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 – Residential Zone for parcels within the Snoqualmie Pass LAMIRD. 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

“The back ½ of the lot is a steep continuous uphill slope (25%-30% slope as shown on site plan as contour lines) that would be very challenging and limiting to attempt to build on.”

Staff Response

CDS staff has reviewed the complete file information, including but not limited to, the applicant-submitted information and comments received during the comment period. CDS finds that there is steep slope on the back portion of the property which adds to the challenges of locating a residence. The proposed residence would be located outside the setback, and the variance is specifically for side retaining walls and roof overhand, to provide protection from snow sliding off the roof at the front of the house. 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

“The house still maintains the 25’ setback. The reduction in setback is only for snow mitigation at/near the front door and garage door, a common issue addressed by other houses at Snoqualmie Pass.”

Staff Response

Snoqualmie Pass winter conditions require residence to plan for snow mitigation. The four-foot overhang and retaining walls will allow for protection of the front door and garage door on the single family residence, while maintaining a 21-foot setback from the property line. These types of overhangs and retaining walls are common to the area, which receives large amounts of snow during the winter months. 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 17.57.050(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

“Side and rear setbacks remain as outlined in the Zoning code and plans for property will not interfere with snow plowing operations on N Olson Drive.”

Staff Response

CDS has concluded that the proposal will maintain side and rear setbacks, still provide off street parking and will maintain a 21-foot front setback allowing for continuation of snow plowing during the winter. 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 not be “materially detrimental to the public welfare or injurious to property in the vicinity”. The variance as presented, is consistent with 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

"We still maintain at least one off-street parking space and 25' from the front property line to the face of the house."

Staff Response

CDS has concluded that the requested zoning setback variance reduction from 25 to 21 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. The Residential setback reduction to 21 feet does not impact 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 January 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 February 2, 2023, all in conformance with the Kittitas County Project Permit Application Process (Title 15A). The comment period ended at 5:00 pm on February 17, 2023 and all comments were transmitted to the applicant on February 28, 2023 and March 2, 2023.

V. ENVIRONMENTAL REVIEW

CDS performed a critical area review of the subject parcel and found there to be no critical areas on the property.

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. No critical areas were found on the property.

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 for properties located within the Snoqualmie Pass LAMIRD.

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 and 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:

Comments were received from the following agencies: The Colville Tribes, Kittitas County Fire Marshal's Office, Kittitas County Public Health, Kittitas County Public Works, Snoqualmie Tribe, Snoqualmie Pass Utility District, Washington State Department of Transportation and Aviation. All comments are on file and available for public review.

Washington State Department of Transportation - Aviation

WSDOT Aviation Division provided comment that there doesn't appear to be airspace or compatibility issues in reference to nearby Bandera State airport. No FAA notification recommended.

Staff Response

CDS has provided these comments to the applicant.

Snoqualmie Pass Utility District

SPUD provided a comment stating this would be okay due to the water and sewer utilities being located in the road in front of the house.

Staff Response

CDS has provided these comments to the applicant.

Snoqualmie Tribe

The Snoqualmie Tribe commented that they have cultural resource concerns and defer to more proximate tribes but have no substantive comments at this time. They also commented that they reserve the right to modify comments if the scope of the project changes.

Staff Response

CDS has provided these comments to the applicant.

Colville Tribes:

The Colville Tribes provided comment requesting topographic and aerial maps, that the project has an IDP in place prior to implementation, if ground disturbing activities are to be conducted that they recommend a cultural resource surface survey and sub-surface testing, and that there is a known cultural resources of historic and pre-contact significance nearby and the project parcel is concerned High Risk for an inadvertent discovery, and recommended that during implementation there be an IDP in place to ensure compliance with Section 106 and relevant cultural resource laws.

Staff Response

CDS has provided these comments to the applicant.

Washington State Department of Transportation

WSDOT provided comment regarding the vicinity to SR 906 and access being limited to the current access located at milepost 0.99, the vicinity of the project to I-90 and the associated noise from both state maintained ROW, and stated that no snow removal shall be moved onto WSDOT rights-of-way and encourage the applicants to not underestimate the potential for large volumes of snow and designate a snow storage area on the property.

Staff Response

CDS has provided these comments to the applicant.

Kittitas County Fire Marshal's Office

Kittitas County Fire Marshal's Office provided comments stating that WUIC and KCC requires a minimum of 30' defensible space shall be installed or to the property line and that the reduction in front yard setback reduces this space and that snow load in this area causes concerns for local fire district for access and reducing the area for snow storage to be kept off the road is unacceptable.

Staff Response

CDS has provided these comments to the applicant. The front lot line abuts a private roadway (N. Olson Drive) a 40' easement as established in the Conifer Estates Plat (LP-64-00000). Combining a 40-foot access easement and the remaining 21-foot setback from the front property line, the defensible space would calculate to 61-feet. There are many locations within Kittitas County where the front lot line setback is a minimum of 15-feet. Staff believes the reduction in the front lot line setback by 4-feet in this location will not be detrimental to the defensible space. Additionally, KCC 20.10(1)(b), Table 503.1 allows for nonconforming defensible space when determining ignition resistant construction. This determination would be made at the time of building permit.

Kittitas County Public Health (KCPH)

KCPH stated they have no requirements for the Casal Setback project.

Staff Response

CDS has provided these comments to the applicant.

Kittitas County Public Works (KCPW)

KCPW provided comments regarding the need for the applicant to obtain a access permit, maintenance being the responsibility of the property owner, any further subdivision or lots to be served resulting in further access requirements, and all applicable road standards apply to this proposal.

Public Comments:

Public comments were received from Eric Hunter.

Eric Hunter

Eric provided comments regarding historic concerns with snow storage, but that this project seems to maintain a sufficient amount of snow storage space onsite at the front of the home.

Staff Response:

All comments were transmitted to the applicant on February 28, 2023 and March 2, 2023. The applicant responded on March 1, 2023 and March 2, 2023 saying he did not have any response to the comments received and to proceed with processing his application.

VIII. FINDINGS OF FACT

1. Michael Casal, Landowner, submitted a zoning setback variance requesting a 4-foot reduction from the 25-foot front lot line setback on the western property line for the construction of a covered patio and a 6.7-foot reduction from the 15-foot side lot line setback from the southern property line for construction of a side retaining walls as well as a 4-foot deep overhang to protect the front door from the snow. The 25-foot front setback requirements come from KCC 17.16.060. This would result in a 21-foot front lot line structural setback from the southern property line.

2. Parcel # 477935 (Lot 11 of Conifer Estates Subdivision) located on N. Olson Drive Snoqualmie Pass, WA 98940, approximately 0.03 miles north from the intersection of Kearny Drive and N. Olson Drive in Snoqualmie Pass, WA in Section 09, Township 22, Range 11. Map number 22-11-09050-0111.

3. Site Information

| | |
|----------------------|------------------------------------|
| Total Property Size: | .12 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 |

4. Site Characteristics:

| | |
|--------|------------------------------------|
| North: | Residential/Commercial Development |
| South: | Residential Development |
| East: | Some Residential Development/ I-90 |
| West: | Residential Development |

The site is accessed via N. Olson Drive.

5. The Comprehensive Plan land use designation is LAMIRD with a zoning designation of LAMIRDs Type 1, Residential.

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 4-foot reduction from the 25-foot front lot line setback on the southern property line for the construction of side retaining walls and a 4-foot

deep overhang to protect the front door from the snow. The 25-foot front setback requirements come from KCC 17.16.060. This would result in a 21-foot front lot line structural setback from the southern property line. 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 13, 2023.
8. The Zoning Variance Application was deemed complete on January 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 February 2, 2023, all in conformance with the Kittitas County Project Permit Application Process (Title 15A). The comment period ended at 5:00 pm on February 17, 2023 and all comments were transmitted to the applicant on February 28, 2023.
10. The applicant responded on March 1, 2023 saying they had no responses to the submitted comments and to proceed with processing the variance application.
11. CDS performed a critical areas review of the subject parcel and found there to be no critical areas on the property or nearby vicinity.
12. The proposal is consistent with the provisions of KCC 17A, Critical Areas.
13. The proposal is consistent with the provisions of KCC 17.16, R-Residential zoning with approval of the zoning setback 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.
16. The proposal is consistent with the provisions of KCC Title 20, Fire and Life Safety.
17. Comments were received from the following agencies and the public: Washington State Department of Transportation – Aviation, Snoqualmie Pass Utility District, Snoqualmie Tribe, Colville Tribes, Washington State Department of Transportation, Kittitas County Fire Marshal’s Office. All comments are on file and available for public review.
18. Public comments were received from Eric Hunter. 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

Kittitas County Community Development Services finds that the Casal Zoning Setback Variance (VA-23-00001) is hereby **approved**. The Casal 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 13, 20223 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 obtain all necessary permits required by Kittitas County Public Works for this development.
4. Should ground disturbing or other activities related to the proposed subdivision 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 
Kelly Bacon

Title: Planner I

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

Date: March 21, 2023

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 April 4, 2023. Aggrieved parties are encouraged to contact Community Development Services at (509) 962-7506 for more information on the appeal process.