

Malsam Zoning Setback Variance
File Number VA-21-00005
FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

I. GENERAL INFORMATION

Requested Action: Jeremy Malsam, property owner, submitted a zoning setback variance requesting an 120-foot reduction from the 200-foot setback from the Commercial Forest Zone requirement in KCC 17.30.055 which would result in an 80 foot lot line structural setback from the Commercial Forest Zone. This variance is requested for the construction of a single-family house, garage and 2 story shop.

Location: Parcel # 20344 located on Breckenridge Drive, approximately 3.29 miles NW of Ronald, in Section 34, Township 21N, Range 14E. Map number 21-14-34010-0025.

II. SITE INFORMATION

| | |
|----------------------|------------------------------------|
| Total Property Size: | 3.02 |
| Number of Lots: | 1 (no new lots are being proposed) |
| Domestic Water: | Shared Well (Class B) |
| Sewage Disposal: | Septic |
| Power/Electricity: | PSE |
| Fire Protection: | Fire District 6 (Ronald) |
| Irrigation District: | N/A |

Site Characteristics:

North: Commercial Forest Area
South: Primarily residential development
East: Primarily residential development
West: Primarily residential development

Access: The site is accessed via Breckenridge Drive.

III. ZONING AND DEVELOPMENT STANDARDS

The subject property has a zoning designation of Rural Recreation. The purpose and intent of the Rural Recreation zone is to provide areas where residential development may occur on a low-density basis or in residential clusters. A primary goal and intent in siting rural recreation zones is to promote rural recreation residential development associated with the many natural amenities found within Kittitas County. The applicant is requesting to utilize the variance process pursuant to KCC 17.84 Variances, to deviate from the prescribed setback requirements in KCC 17.30.055 regarding setbacks from zones adjacent to Commercial Forest Zones. 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

“Our Unusual Circumstances apply to this property, We have Steep Hazardous slope on the lower section of the property that the 200’ setback would push us into. Building in the typical code required setbacks would allow building in less steep area that has a flat bench below, and is a far safer location to build, both for erosion, drainage and access around the building.”

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 throughout the site including slopes over 35% in the entire area making up the 200-foot required setback. This would make accessing the site difficult and potentially dangerous especially during winter months and erosion could be a concern for neighbors below. Due to the lot’s steep topography on the southern end, 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

“Such variance is necessary for the preservation and enjoyment of the substantial property right of the applicant, which will essentially match the next-door neighbor’s house location on the adjacent property directly to the west.”

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 have the enjoyment of a substantial property right exercised by owners in the near vicinity. The neighbors’ existing houses to the west and to the east is approximately only 130 feet away from the commercial forest zone. 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

“Authorization of such variance will not materially be detrimental to public welfare or injurious to property in the vacuity. In fact, one could argue that by requiring the 200’ setback and building in the steepest Hazardous slope on this

property, that would be a safety concern for both this property owner and the below property with increased risk of erosion and drainage failures.”

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. CDS staff agrees that erosion or drainage failures could be injurious to the property below due to the steep slopes of over 35% on the property, especially on the southern end. 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

“This Variance would be consistent with the Comprehensive development pattern in the area, essentially matching the house location next door.”

Staff Response

CDS has concluded that the requested zoning setback variance reduction from 200 feet to 80 feet will not adversely affect the realization of the comprehensive development pattern of the area. The area contains many larger parcels with single family residences and appurtenances and the variance will allow for a more uniform view of the single-family houses in the area which is similar to neighboring properties. The setback reduction to 80 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 April 21, 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 April 29, 2021, all in conformance with the Kittitas County Project Permit Application Process (Title 15A). The comment period ended at 5:00 pm on May 14, 2021 and all comments were transmitted to the applicant on May 17, 2021.

V. ENVIRONMENTAL REVIEW

CDS performed a critical area review of the subject parcel and found there to be hazardous slopes across most of the property and over 35% slope completely where the 200-foot structural setback would be required. Development would likely need additional geotechnical engineering to prevent erosion as seen in KCC 17A.06.015. The variance would help to alleviate some concerns regarding dangerous slopes and erosion. CDS has determined that the Malsam 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 hazardous slopes of over 35% within the required 200 foot setback and on most of the parcel. There are still hazardous slopes within the proposed 80-foot setback that likely can be geotechnically engineered to suit development and prevent erosion. This request, as conditioned is consistent with critical areas provisions.

Consistency with the provisions of KCC 17.56 – Forest & Range Zone:

This proposal, with approval of the zoning setback variance, is consistent with the setbacks outlined in Kittitas County Zoning Code 17.56 Forest & 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 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 Public Health, Kittitas County Public Works, and Washington State Department of Archaeology & Historic Preservation. All comments are on file and available for public review.

Kittitas County Public Health (KCPH)

Kittitas County Public Health provided comments on this application on May 13, 2021. KCPH commented that they have no comments or concerns with the application after additional information was provided that the lot is served by a Group B public water system.

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 May 11, 2021. KCPW commented that they recommend approval of the zoning variance application based on the following conditions:

- An access/address 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.

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 not encroach upon any easement or right-of-way.

Washington State Department of Archaeology & Historic Preservation (DAHP)

Washington State Department of Archaeology & Historic Preservation provided comments on this application on May 13, 2021. DAHP commented that there is a high probability of encountering cultural resources within the project area. They are requesting an Inadvertent Discovery Plan (IDP).

Staff Response

CDS has provided these comments to the applicant and conditioned this determination to ensure the applicant is aware of Cultural Resource regulations and obligations under RCW 27.44.055 prior to any ground disturbing activities.

Public Comments:

There were no public comments for this variance request.

VIII. FINDINGS OF FACT

1. Jeremy Malsam, property owner, has submitted a zoning setback variance request to reduce a 200-foot setback from the Commercial Forest zone to 80 feet.
2. Parcel #20344 located on Breckenridge Drive, approximately 3.29 miles NW of Ronald, in Section 34, Township 21N, Range 14E. Map number 21-14-34010-0025
3. Site Information

| | |
|----------------------|------------------------------------|
| Total Property Size: | 3.02 |
| Number of Lots: | 1 (no new lots are being proposed) |
| Domestic Water: | Shared Well (Class B) |
| Sewage Disposal: | Septic |
| Power/Electricity: | PSE |
| Fire Protection: | Fire District 6 (Ronald) |
| Irrigation District: | N/A |

4. Site Characteristics:

| | |
|--------|-----------------------------------|
| North: | Commercial Forest Land |
| South: | Primarily residential development |
| East: | Primarily residential development |
| West: | Primarily residential development |

The site is accessed via Breckenridge Drive.

5. The Comprehensive Plan land use designation is “Rural Recreational” with a zoning designation of Rural Recreational.
6. The purpose and intent of the Rural Recreation zone is to provide areas where residential development may occur on a low-density basis or in residential clusters. A primary goal and intent in siting rural recreation zones is to promote rural recreation residential development associated with the many natural amenities found within Kittitas County. The application is requesting a 120-foot reduction from the 200-foot setback requirement in KCC 17.30.055, which would result in an 80-foot setback from the Commercial Forest Zone to the North. This variance is requested to build a house, garage, and two-story shop. 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 April 12, 2021.
8. The application was determined complete on April 21, 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 April 29, 2021, all in conformance with the Kittitas County Project Permit Application Process (Title 15A). The comment period ended at 5:00 pm on May 14, 2021 and all comments were transmitted to the applicant on May 17, 2021.
10. CDS performed a critical areas review of the subject parcel and found there to be hazardous slopes across most of the property requiring geotechnical engineering to prevent erosion as seen in KCC 17A.06.015. Based upon review of the submitted application materials and a critical areas review, CDS determined that the Malsam 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 as conditioned.
12. The proposal is not consistent with the provisions of KCC 17.30, R-R- Rural Recreational 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. The proposal is consistent with the provisions of KCC Title 12, Roads and Bridges as conditioned.
17. Comments were received from the following agencies: Kittitas County Public Health, Kittitas County Public Works, and Washington State Department of Archaeology & Historic Preservation. All comments are on file and available for public review.
18. No public comment was received.

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 12 Roads and Bridges, 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 Malsam Zoning Setback Variance (VA-21-00005) is hereby **approved**. The Malsam 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 April 21, 2021; the site plan submitted June 4, 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 obtain all necessary permits required by Kittitas County Public Works for this development, and no structure shall encroach upon any easement or right-of-way.
4. Should ground disturbing or other activities related to this proposal 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), Yakama Nation, and the Snoqualmie Tribe. 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 setback variance shall expire after one year of the decision date if no substantial construction has taken place.

Responsible Official  _____
Jeremiah Cromie

Title: Planner I

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

Date: June 10, 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 June 24, 2021. Aggrieved parties are encouraged to contact Community Development Services at (509) 962-7506 for more information on the appeal process.