



KITTTITAS COUNTY COMMUNITY DEVELOPMENT SERVICES

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"Building Partnerships – Building Communities"

FINDINGS OF FACT AND CONCLUSIONS OF LAW Mostofi Zoning Setback Variance VA-16-00001

This matter having come before the Kittitas County Community Development Services for the Mostofi Zoning Setback Variance (VA-16-00001) submitted by Aaron Mostofi to reduce 200 foot setbacks within the Commercial Forest Zone to 50 feet on the northwest and southeast borders and 10 feet on the southwest border. This variance is in order to facilitate construction of a cabin, a garage, and a shed/workshop, along with associated wells and septic systems.

1. Community Development Services finds that Aaron Mostofi submitted a Zoning Setback Variance application on August 23rd, 2016. A Notice of Application was issued on August 30, 2016. This notice was mailed to government agencies, adjacent property owners, and the applicant as required by law.
2. Community Development Services finds that the site proposed for the Zoning Setback Variance is located approximately 9.5 miles Southeast of Roslyn off of I-90, and on Kachess Dam Road along Lake Kachess in a portion of Section 27, T21N, R13E, WM in Kittitas County, bearing Assessor's map number 21-13-27000-0005 and tax parcel # 951720 .
3. Comments were received from the Washington Department of Ecology, the Washington Department of Fish and Wildlife, the United States Forest Service, Kittitas County Public Works, Kittitas County Environmental Health, Kittitas County Building Department and the Kittitas County Fire Marshall's Office responded.
4. The Department of Ecology responded with a letter dated September 12th, 2016. The letter states, in part :
"Approval of this development may require a shoreline variance permit if any development (including any appurtenances such as garages or sheds) occurs within the 100-foot setback from the OHWM of Lake Kachess or within required buffers from wetland areas. The project will require a shoreline permit exemption action if the development will occur within 200 feet of the OHWM. No mention is made regarding what the shoreline designation of this shoreline area is. The submitted map shows only that the setbacks will be "a minimum of 100 feet back" from the OHWM. A map that is adequate for shoreline review and filing purposes should show actual distances. Measurements taken via a google earth pro application show the cleared area being a little bit more than 200 feet from the visible lake level. The managed Lake level will be lower in elevation and below the OHWM due to wind and wave action. It takes a foot or more of water underneath large woody debris to move it. Therefore, the OHWM is typically higher in elevation than the debris line."

Staff Response

Staff used the wetland edge in County GIS files as the OHWM, landward of the edge of Lake Kachess, and a parcel file derived from engineer's CAD Files created during a 2008 boundary line adjustment to analyze the property. Analysis shows the proposed addition .47 feet outside of the 200 foot buffer from the edge of the wetland. In order to add the proposed addition to the GIS files, the site plan was georeferenced with a Root Mean Square Error of +/- 0.78 feet. This level of precision means that the proposed addition could infringe on setbacks from the actual OHWM. In order to ensure that setbacks are respected, the variance is modified to a 12 foot setback from the property line on the west edge of the property from a 10 foot setback.

5. The United States Forest Service responded with a request for a copy of the Landowner Option Plan (LOP). After further review of the LOP and the site plan, the agency had no specific comments, provided that development remained away from areas bordering USFS lands.
6. Kittitas County Public Works responded with no specific comments.
7. Kittitas County Environmental Health responded with a concern as to the grade, which could complicate the installation of the septic tank. This concern was also reflected in Building's request for full soils and geotechnical engineering.
8. Kittitas County Building required full soils and geotechnical engineering. The applicant responded with his own field surveys depicting the grade along the planned construction area. Building accepted the surveys as fulfilling its requirements.
9. The Washington Department of Fish and Wildlife responded with comments concerning Bull Trout, a listed species. WDFW requests that 100 foot setbacks from the perennial stream on the site be observed. As proposed, the variance observes these setbacks.
10. The Kittitas County Fire Marshall's office requires that any new driveway comply with Kittitas County Code with driveway lengths over 150 feet to have widths no less than 16 feet. In addition, all new construction must meet the Wildland Urban Interface Code for building components and defensible space.
11. Community Development Services finds that based on the criteria outlined in Title 17.84.010 of the Kittitas County Code, the proposed setback variance application has demonstrated that:
 - a. Unusual circumstances or conditions apply to the property and/or the intended use that do not apply to other property in the general area.

Applicant Response:

"The majority of the 90.57 acres lies to the East of Kachess Dam Road and is not available for development at this time due to a Landowner Option Plan ("LOP") filed by the previous owner with the State of Washington. The shape of the buildable portion of the property (the portion west of the road) that meets the 100' setback from the property border (as visible in the Site Plan and specifically the section denoted by the brown-colored dotted line) and 100' back from the stream that lies to the north in extremely small and effectively unbuildable. Furthermore, it lies on a steeper portion of the land and close to the road. Furthermore, it lies in the shadow of tall trees whose bases are higher than the structure (i.e. up the steep hill) such that they would need to be all cut/removed (which would be bad for the hill upon which the road sits) or pose an exceptionally serious risk to any structure (more so than normal tall trees because of the momentum that would be gained by falling more than 90 degrees before striking any structure). Furthermore, with required setbacks for well and septic, there would be no possible way to develop the land for such use. Even if such setbacks and conditions were not present, the land is very steeply sloped at that portion".

- b. 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 general purpose and use for such land in the vicinity is as private, part-time use cabins "in the woods". Cutting all the trees between any structure and the cabin would drastically reduce the privacy of such a cabin and harm the natural beauty of the area as seen from Kachess Dam Road. Clearing and constructing into the hill so close to the road may cause considerable physical risk and aesthetic damage to Kachess Dam Road and the existing driveway".

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

Applicant Response

The minimum impact to all three neighboring properties would be to develop in the already-cleared section of the land previously forested by the previous owner (and current owner of Lots A and B to the northwest and southeast, respectively). In fact, building anywhere else (on the west side of Kachess Dam Road) would be considerably more injurious to the other properties as it would require privacy as currently aided by the untouched trees between the cleared section and the road. Lot A also has an easement to use the existing driveway and any other location would likely impede the use of that driveway to service Lot A.

- d. 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 this variance will not adversely affect the realization of the comprehensive development pattern as it is as far as possible from each of the other two buildable lots (Lots A and C) and Kachess Dam Road and only close to the small forested strip of land owned by the State around the Lake which is unlikely to be intended for any other use besides forest.

12. Community Development Services finds that the granting of the proposed Zoning Setback Variance **will not**:
 - a. Be detrimental to the public health, safety, and general welfare;
 - b. Adversely affect the established character of the surrounding vicinity and planned uses; nor
 - c. Be injurious to the uses, property, or improvements adjacent to, and in the vicinity of, the site upon which the proposed use is to be located.
13. Community Development Services finds that the granting of the proposed Zoning Setback Variance **is** consistent and compatible with the intent of goals, objectives and policies of the comprehensive plan, and any implementing regulation.

Based upon above mentioned Findings of Facts and Conclusion of Law the Mostofi Zoning Setback Variance (VA-16-00001) is hereby **approved** with the following conditions of approval:

1. Setback on the west side of the parcel is extended from 10' to 12' in order to accommodate shoreline and wetland buffers.
2. Any new driveway shall comply with Kittitas County Code with driveway lengths over 150 feet to have widths no less than 16 feet. In addition, all new construction must meet the Wildland Urban Interface Code for building components and defensible space.
3. A 100' minimum setback from the fish bearing stream to the north of the property shall be observed.

**Responsible
Official:**


Dan Carlson

Title: Director, Kittitas County Community Development Services

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Date: Thursday, September 13th, 2016

An appeal of this land use decision may be filed within 10 working days by submitting specific factual objections and a fee of \$500 to the Kittitas County Board of Commissioners at 205 West 5th, #108 Ellensburg, WA 98926. The appeal and deadline is 5:00 pm September 27th, 2015.