

Niczyporuk Zoning Setback Variance
File Number VA-20-00005
FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

I. GENERAL INFORMATION

Requested Action: Tomek Niczyporuk, property owner, submitted a zoning setback variance requesting a 20-foot reduction from the 25-foot front lot line setback requirement in KCC 17.16, which would result in a 5-foot front lot line structural setback on three of the four front lot lines, if the variance is approved. This variance is requested to build a new 26'X34' residence on the property.

Location: Parcel 418035, located off of Snoqualmie Village Drive, approximately 1.08 miles Northwest of I90 Exit 54, in Section 09, T22N, R11E, WM, Assessor's Map Number 22-11-09051-0045.

II. SITE INFORMATION

Total Property Size:	.08 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: Residential Zoning, primarily residential development
- South: Residential Zoning, primarily residential development
- East: Residential Zoning, primarily residential development
- West: Residential Zoning, primarily residential development

Access: The site is accessed via Innsbruck Drive.

III. ZONING AND DEVELOPMENT STANDARDS

The subject property has a zoning designation of LAMIRDS Type 1 - Residential Zoning 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 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

“Parcel ID 418035 is an "Irregular Lot" having 5 angled sides. The lot is bordered to the North and Northeast on 3 sides by a private road, Snoqualmie Village Drive, which makes it also a "Corner Lot". As shown in Attachment B, Page 4, when the 25' Front Yard Setbacks are applied to the side designated as the "Front" and also to the two sides on the North/Northeast boundary of the lot, which are between the "Front" and "Rear", this lot is left with only a 9' wide buildable area. The unique combination of the "Irregular Lot" and "Corner Lot" designation, along with the 25' setbacks for Snoqualmie Pass LAM I RD do not preserve the enjoyment of a substantial property right possessed by the owners of other properties in the same vicinity; prompting this Zoning Variance Request.”

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 four front lot lines, limiting the buildable space. CDS also recognizes that the proposed location of the residence is the only location a residence could be placed on the property. 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

“The subject property is Lot 45 of Snoqualmie Summit Village, a neighborhood comprised of residential lots of varying shapes and lengths but almost all of them are roughly 50' wide. The most relevant example of the substantial property right possessed by another owner is the closest neighbor to this lot, Lot 47, 2421 SR 906. This is a recently completed new residence based on the exact same floor plan that is proposed to be built on the subject property; Hiline Homes Plan 1768. The irregular shaped boundaries of the subject property will require modifications to be made to Plan 1768 reducing it significantly in size. The reductions include the 34' x 10' Covered Porch and the 26' x 22' Garage - both of which would normally be included and come standard with this plan. If this variance request is granted then the remaining much smaller footprint of the original plan (without the Covered Porch and without the Garage) will fit within the proposed buildable area as shown in Attachment B, Page 1. This will allow a substantial property right as per other property owners; in particular as per the property at 2421 SR 906.”

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. The parcel has four front lot lines according to the lot line front definition, which greatly limits the buildable space on the lot to the point of being unbuildable, which greatly impact the preservation and enjoyment of a substantial property right. The proposed placement of the 26' x 34' residence is centrally located on the property. 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).

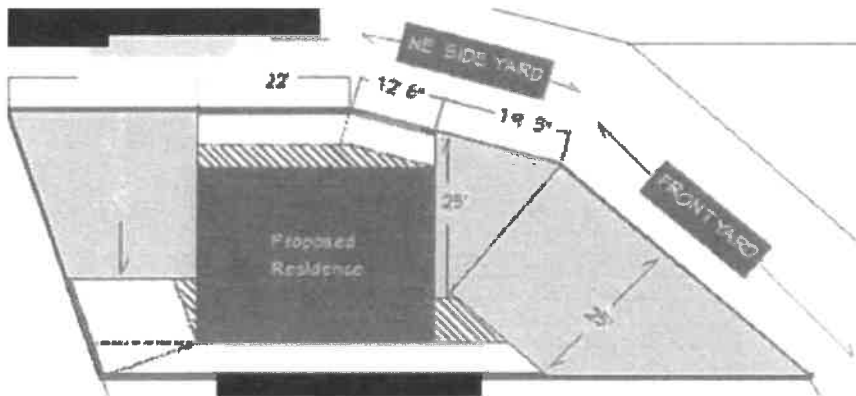
3. Authorization of such variance will not be materially detrimental to the public welfare or injurious to property in the vicinity.

Applicant Response

“This variance request is to bring the subject property more in line with other lots in the vicinity, to allow similar use as is currently available to other properties in the vicinity, and to be neutral to public welfare with no injury to property in the vicinity. This variance will allow for continued development of the neighborhood keeping the same design as the most recent and nearest completed residence.

This variance request would primarily impact only 2 of the 5 sides of the lot; and less than half of those two sides. The Proposed Residence would remain within the remaining buildable area and more than the 5' along these two sides. Please reference Figure 1. and Attachment B Page 3.

1. *The North Side Yard Setback would have a 25' setback extending over half of its length.*
2. *The Northeast Side Yard Setback would have a 25' setback extending over 60% of its length.*
3. *The Front Yard Setback would have a 25' setback extending its full length.*



Yard Setback - Side {South}. The subject property is bordered by a similar residential lot with a standard 5' Side Yard Setback. The proposed Site Plan, Attachment B, Page 1, to this variance request, proposes the exact same 5' setback on the boundary to the adjacent lot to the South. This would allow both lots to appear as expected along the sides of their respective houses and is in line with other properties in the neighborhood.

Yard Setback- Rear. As depicted in the Site Plan in Attachment B, Page 1, what is considered the rear of the subject property shares the exact same angled property line to the West as the adjacent lot. The neighboring lot, and any other lot in this neighborhood, can enjoy the same 15' setback on the rear of their lot as is desired for the subject property as part of this variance request. This would be neutral to the adjacent and other properties in the neighborhood.

Yard Setback - Front. What is considered the front of this irregular lot will have a 25' setback as proposed in Attachment B, Page 1, to this variance request. This will have a neutral impact on any nearby property as all Snoqualmie Pass properties are required to have a 25' setback in the front.

Yard Setback - Side I North/Northeast}. The two sides that remain would have a 5' side yard setback along the actual side of the proposed residence. These side yards will intersect the front and rear sides of the lot as proposed in the Site Plan in Attachment B, Page 1. By allowing the construction of the proposed residence, which is based on the exact same plan as the closest neighbor, this variance request brings the subject property much more in line with the spirit and the actual intended use of the properties in the vicinity. With this lot having the same side yard setback as the adjacent property; having the same front and rear setbacks as the other properties in the vicinity; and with the buildable space having a 5' side yard setback along the North/Northeast; the end result renders no materially detrimental impact to the public welfare and it is not injurious to property in the vicinity. Granting this variance request would support the true spirit of the side yard setback - having it along the actual side of the house - and will enable the original intended use for this property which would seem to be to the benefit to the other property in this vicinity."

Staff Response

CDS has concluded that the requested zoning setback variance reduction from 25 feet to 5 feet, will not be materially detrimental to the public welfare or injurious to the property in the vicinity. The proposed residential structure will come with the improved plowing of the roadway up to the new residence during winter month. Currently the private road is impassable while snow is on the ground. The project will be 5 feet from the existing one lane roadway known as Snoqualmie Village Drive. The project will not be injurious to the public welfare. 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 and will have limited ecological impacts by utilizing a previously cleared area. 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 subject property, while irregular, is almost exactly the same width and is similar in length to the other properties in this neighborhood. As mentioned above, all of the lots are about 50' wide and vary in length. Most of the lots have angled characteristics as does the subject property. The subject property shares a common property line with an adjacent lot and shares the exact same angled property line along the West side of the property and a similar angled side along the East side of the property. This variance will provide for the realization of the original and current intended use of these residential properties. The comprehensive development pattern will be supported, not detracted from, by the granting of this variance.”

Staff Response

CDS has concluded that the requested zoning setback variance reduction from 25 to 5 feet will not adversely affect the realization of the comprehensive development pattern of the area. The area contains many small parcels with a few single family residences and appurtenances. The Residential setback reduction to 5 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 June 26, 2020.

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 14, 2020, all in conformance with the Kittitas County Project Permit Application Process (Title 15A). The comment period ended at 5:00 pm on July 29, 2020 and all comments were transmitted to the applicant on August 6, 2020.

V. ENVIRONMENTAL REVIEW

CDS performed a critical area 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 Niczyporuk 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 Public Works, Kittitas County Public Health, and Kittitas County CDS Building Department. All comments are on file and available for public review.

Kittitas County Public Works (KCPW)Kittitas County Public Works provided comment on this application on July 22, 2020. KCPW commented that an access/address application would be required prior to building.

Applicants Response

No Response provided

Staff Response

CDS has provided these comments to the applicant to ensure they are aware of the need to apply for an access/address application prior to building permit.

Kittitas County Public Health (KCPH)Kittitas County Public Health commented that they have no comments or concerns with the proposal.

Applicants Response

No response provided

Staff Response

CDS has provided these comments to the applicant.

Kittitas County Community Development Services (Building)

Kittitas County CDS – Building commented that they do not have any comments

Applicants Response

No response provided

Staff Response

CDS has provided these comments to the applicant.

Public Comments:

Public comments were received by Joann and Gary Beard and Charlie Bee LLC. Copies of the comments are on file in CDS and available for review. Joann and Gary Beard commented their only concerns was if the proposal encroaches on or uses in any way the private road and its current location. Carlie Bee LLC. Commented their concern that the existing Snoqualmie Village Drive not be encroached upon or hinder the use of the road in anyway, since it is the only access road for the Snoqualmie Village subdivision. They would also like to see the roadway brought up to county standards, by individuals proposing to build in the vicinity, up to their proposed project at their own expense.

Applicants Response

The applicant provided pictures and details stating that the project will not impact Snoqualmie Village Drive as it is today, as the roadway passes on the northern side of the property and outside the property boundary lines.

Staff Response

The Publics Comments have been taken into consideration during the review of the variance. The applicant provided detailed photos showing that the existing Snoqualmie Village Drive does not cross through the property in question. The existing roadway is a one lane dirt road that runs along the property line. The placement of the proposed residence would be five feet off the property line. Kittitas County Public Works handles road improvement requirements and they have required that an access and address permit be applied for prior to building permit.

VIII. FINDINGS OF FACT

- 1. Tomek Niczyporuk, property owner, has submitted a zoning setback variance request to reduce a 25-foot front lot line setback within the Residential zone to 5 feet.
- 2. Parcel 418035 located off of Snoqualmie Village Drive, approximately 1.08 miles Northwest of I90 Exit 54, in Section 09, T22N, R11E, WM, Assessor’s Map Number 22-11-09051-0045.

3. Site Information

Total Property Size:	.08 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: Residential Zoning, primarily residential development
- South: Residential Zoning, primarily residential development
- East: Residential Zoning, primarily residential development
- West: Residential Zoning, primarily residential development

The site is accessed via Snoqualmie Village Drive.

- 5. The Comprehensive Plan land use designation is “LAMIRD”.
- 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 20-foot reduction from the 25-foot front lot line setback requirement in KCC 17.16, which would result in a 5-foot front lot line structural setback. This variance is requested to situate a new residence in the center of the lot.
- 7. A Zoning Variance Application was submitted to Kittitas County Community Development Services department on June 2, 2020.

8. The application was determined complete on June 26, 2020.
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 July 14, 2020, all in conformance with the Kittitas County Project Permit Application Process (Title 15A). The comment period ended at 5:00 pm on July 29, 2020 and all comments were transmitted to the applicant on August 6, 2020.
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,
11. CDS determined that the Niczyporuk Zoning Setback Variance is exempt from SEPA review pursuant to WAC 197-11-800(6)(e).
12. The proposal is consistent with the provisions of KCC 17A, Critical Areas.
13. The proposal is not consistent with the provisions of KCC 17.16, R-Residential zoning without 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: Kittitas County Public Works, Kittitas County Public Health and Kittitas County CDS Building. All comments are on file and available for public review.
18. Public comments were received by the following: Joann Beard and Charlie Bee LLC. 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 17A Critical Areas, and Title 20 Fire and Life Safety.

X. DECISION AND CONDITIONS OF APPROVAL:

Kittitas County Community Development Services finds that the Niczyporuk Zoning Setback Variance (VA-20-00005) is hereby **approved**. The Niczyporuk 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 June 2, 2020 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. This front lot line setback variance shall expire after one year of the decision date if no substantial construction has taken place.

Responsible Official



Jeremy Johnston

Title: Kittitas County Interim Planning Official

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

Date: September 8, 2020

Pursuant to Chapter 15A.07 KCC, this determination may be appealed by submitting specific factual objections in writing with a fee of \$1540 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 22, 2020. Aggrieved parties are encouraged to contact Community Development Services at (509) 962-7506 for more information on the appeal process.