

Hoskins Zoning Setback Variance
File Number VA-21-00009
FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

I. GENERAL INFORMATION

Requested Action: Paul Hoskins, property owner, submitted a zoning setback variance requesting a 10-foot reduction from the 15-foot required rear setback in KCC 17.16.080. This variance is requested for the construction of a single-family house.

Location: Parcel # 567935 (Lot 20 of Conifer Estates Plat) located off of Kearney Drive, approximately 0.33 miles south from the intersection of Yellowstone Road and State Route 906, in Section 09, Township 22, Range 11. Map number 21-11-09050-0120.

II. SITE INFORMATION

| | |
|----------------------|------------------------------------|
| Total Property Size: | 0.13 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: Primarily residential development
- South: Primarily residential development
- East: Primarily residential development
- West: State Route 906/Forested Area/Ski Resort Areas

Access: The site is accessed via an easement off of Kearney Drive that is accessed by State Route 906.

III. ZONING AND DEVELOPMENT STANDARDS

The subject property has a zoning designation of Residential (R). 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 setback requirements in KCC 17.16.080 regarding required rear setbacks. 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

“Setbacks can’t be met due to setbacks from a stream that runs through the middle of the property that limits build area to less than required setback”

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 a stream running through roughly the middle of the property and due to the front setback and stream setback, the front portion of this parcel results in a prohibitively restricted building envelope. The lot is shorter in nature and would severely limit the building area in back with the current stream setback. There is one other structure that is within the required stream setback that is similar but other properties do not have this problem as the stream changes direction out of the development less than a quarter mile from the proposed development. Due to the lot’s small size and unique stream setbacks, 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

“Both adjacent parcels have residential buildings within the current setbacks and current setbacks would not support building of a dwelling”

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 structures appear to be in the current required stream and possibly within building setback. 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

“Discussion and assistance with Fish and Wildlife did not indicate any detrimental effect to the public welfare or injurious to property in the vicinity.”

Staff Response

CDS finds that the proposed setback reduction would not be injurious to adjacent property owners or the

public welfare in any material way as long as snow storage from the roof does not go onto adjacent property. CDS has conditioned this proposed setback to mitigate for that concern. 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 is one of the final lots to be developed in Conifer Estates and a variance would not affect the realization of the comprehensive development pattern”

Staff Response

CDS has concluded that the requested zoning rear setback variance reduction from 15 feet to 5 feet will not adversely affect the realization of the comprehensive development pattern of the area. The area contains many smaller parcels with single family residences and appurtenances on them with similar styles. The rear setback reduction to 5 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 September 30, 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 October 7, 2021, all in conformance with the Kittitas County Project Permit Application Process (Title 15A). The comment period ended at 5:00 pm on October 22, 2021 and all comments were transmitted to the applicant on October 25, 2021.

V. ENVIRONMENTAL REVIEW

CDS performed a critical area review of the subject parcel and found that despite no GIS knowledge of a stream on the property, a stream was identified on the site plan and verified in the field by County Staff and Department of Fish and Wildlife. The stream was identified as a Type 3 Stream. The current required setback is 20 feet from the Ordinary High Water Mark (OHWM) of the creek. The proposed structure is within the required setback and will require a buffer averaging plan to meet setback requirements of the stream. The variance would help to alleviate some concerns regarding the setback to the stream. CDS has

determined that the Hoskins 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. Despite no GIS knowledge of a stream on the property, a stream was identified on the site plan and verified in the field by County Staff and Department of Fish & Wildlife. The stream was identified as a Type 3 stream. The current setback requirement from this stream is 20 feet from the Ordinary High Water Mark (OHWM). The request for the 5-foot variance request helps to meet most of the required buffer but part of the proposed building is still within the required buffer which will require a buffer averaging plan. This request, as conditioned is consistent with critical areas provisions.

Consistency with the provisions of KCC 17.16 – 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 Health, Kittitas County Public Works, Washington Department of Fish & Wildlife, Community Development Services- Building

Department. 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 October 13, 2021. KCPH commented that they have no comments or concerns with the project.

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 October 21, 2021. KCPW commented that they recommend approval of the zoning variance application based on the following conditions:

- An access permit has been applied for and access will be constructed to current Kittitas County Road and Bridge Standards
- Any grading over 100 cubic yards of material will require a grading permit. Any work over 500 cubic yards would require engineered grading and stormwater plans to be submitted for review.
- Building footings, grading, overhangs and swinging doors cannot trespass into the neighboring parcel.

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 meet all Kittitas County Road and Bridge Standards. CDS has also conditioned this determination to not allow building footings, grading, overhangs and swinging doors into any neighboring parcel.

Washington State Department of Fish & Wildlife (WDFW)

Washington State Department of Fish & Wildlife provided comments on this application on October 11, 2021. They commented that they had no objections to the proposed setback on the non-streamside. WDFW commented that they are working with the applicant on a driveway crossing the creek through an HPA permit and a properly sized water crossing structure. They also gave guidance to preserve all riparian trees to the extent possible to maintain shade stability. They also wanted areas that preserving riparian tress was not possible, that replant streamside areas with shrubs or small trees

Staff Response

CDS has provided these comments to the applicant and conditioned this determination to follow all HPA permit requirements and guidelines and to replant streamside areas that can't be preserved with small shrubs and trees after construction is completed.

Community Development Services (CDS) – Building Department

CDS Building provided comments on October 11, 2021. CDS Building provided comments regarding concerns about the amount of snow in the area and the possibility of snow storage going onto adjacent properties. They recommended any approval should have the roof structure abutting the setback be flat or sloped in the opposite direction of the proposed 5 foot setback so that snow does not slide off the roof into this setback area and possibly into neighbors property.

Staff Response

CDS has provided these comments to the applicant and conditioned this determination to have the roof structure directly abutting the 5 foot proposed setback be flat or sloped in the opposite direction so snow does not slide off roof into neighboring property.

Public Comments:

There were no public comments for this variance request.

VIII. FINDINGS OF FACT

1. Paul Hoskins, property owner, has submitted a zoning setback variance request to reduce a 15-foot rear setback to 5 feet.
2. Parcel #567935 (Lot 20 of Conifer Estates Plat) located off of Kearney Drive, approximately 0.33 miles south from the intersection of Yellowstone Road and State Route 906, in Section 09, Township 22, Range 11. Map number 21-11-09050-0120.
3. Site Information

| | |
|----------------------|------------------------------------|
| Total Property Size: | 0.13 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: Primarily residential development
South: Primarily residential development
East: Primarily residential development
West: State Route 906/Forested Area/Ski Resort Areas

The site is accessed via an easement off of Kearny Drive that is accessed by State Route 906.

5. The Comprehensive Plan land use designation is “LAMIRD” with a zoning designation of LAMIRD 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 10-foot reduction from the 15-foot rear setback requirement in KCC 17.16.080, which would result in a 5-foot setback from the rear lot line. This variance is requested to build a house on the property. 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 September 27, 2021.

8. The application was determined complete on September 30, 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 October 7, 2021, all in conformance with the Kittitas County Project Permit Application Process (Title 15A). The comment period ended at 5:00 pm on October 22, 2021 and all comments were transmitted to the applicant on October 25, 2021.
10. CDS performed a critical area review of the subject parcel and found that despite no GIS knowledge of a stream on the property, a stream was identified on the site plan and verified in the field by County Staff and Department of Fish and Wildlife. The stream was identified as a Type 3 Stream. The current required setback is 20 feet from the Ordinary High Water Mark (OHWM) of the creek. The proposed structure is within the required setback and will require a buffer averaging plan to meet setback requirements of the stream. The variance would help to alleviate some concerns regarding the setback to the stream. CDS has determined that the Hoskins 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-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. 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, Washington Department of Fish & Wildlife and Community Development Services Building Department. 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 Hoskins Zoning Setback Variance (VA-21-00009) is hereby **approved**. The Hoskins 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 September 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 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. Building Footings, grading, overhangs and swinging doors cannot trespass into the neighboring parcels.
5. All roof structure directly abutting this 5-foot setback shall be flat or sloped in the opposite direction so that snow does not slide off the roof into this setback area.
6. The applicant shall obtain all necessary permits required by Kittitas County Community Development Services – Building Department
7. All current and future owners must comply with International Fire Code.
8. A buffer averaging plan consistent with KCC Title 17A shall be submitted to CDS as part of any building permit submittal.
9. 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.
10. This setback variance shall expire after one year of the decision date if no substantial construction has taken place. Substantial construction shall mean a foundation poured after approval of a building permit.

Responsible Official 
Jeremiah Cromie

Title: Planner I

Address: Kittitas County Community Development Services
411 N. Ruby Street, Suite 2
Ellensburg, WA. 98926
Phone: (509) 962-7046

Date: November 18, 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 December 6, 2021. Aggrieved parties are encouraged to contact Community Development Services at (509) 962-7506 for more information on the appeal process.