

Roeder Zoning Setback Variance
File Number VA-22-00001
FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

I. GENERAL INFORMATION

Requested Action: Katherine Keidel and Eric Roeder, property owner, submitted a zoning setback variance requesting a 5-foot reduction from the 5-foot required side setback in KCC 17.16.070. This variance is requested for the construction of a 21' x 32' 2-car garage.

Location: Parcel # 038635 (Lot 30 of Hyak Estates #4) located off Rampart Drive, approximately 0.6 miles from the intersection of Hyak Drive East and State Route 906 in Snoqualmie Pass, WA in Section 15, Township 22, Range 11. Map number 22-11-15053-0030

II. SITE INFORMATION

Total Property Size:	0.18 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: Forested Lands
East: Primarily residential development/ Snoqualmie Pass Utility District Ponds
West: Primarily residential development/Forested Lands

Access: The site is accessed via Rampart Drive

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 property borders a Commercial Forest Zone on the south side which requires a 200-foot setback. This setback is not feasible on this property as the lot is only 120' long. When this setback is not feasible, development shall comply with KCC 17.57.050(2) which states "*No dwelling units or accessory structures shall be placed within two hundred (200) feet of the Commercial Forest Zone boundary delineation unless this requirement together with standard front, rear, and side yard setbacks as identified in the underlying zoning district reduces the buildable area of the parcel to a dimension that is less than one hundred (100) (100) feet in width and/or in depth. In this instance, the setback requirement from the Commercial Forest Zone boundary shall be reduced to a point that allows for a maximum building area of one hundred (100) feet in width and/or one hundred (100) feet in depth.*" As the lot is only 60' x 120' at maximum. The whole lot would be considered the 100' by 100' building area. The normal setbacks would still apply to this property which are the following under KCC 17.16:

Front: 25 ft.

Side: 5 ft.
Rear: 15 ft.

The applicant is requesting to utilize the variance process pursuant to KCC 17.84 Variances, to deviate from the prescribed setback requirements in KCC 17.16.070 regarding required side 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

“The intended use is residential. The extreme winter weather in Snoqualmie Pass presents unusual circumstances and conditions that make site access difficult. Due to the location of the house (i.e., built at an angle) within the site and the current setbacks we cannot feasibly construct a garage without a zoning variance. Nearby properties have been granted comparable setback variances for similar logic. By not allowing consistent accommodations, the zoning code is putting an undue hardship on us by not providing an accommodation allowing for access to home in the Winter.”

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 amount of snow in the Snoqualmie Pass area can be extremely great but it is not unique to any particular property in the Snoqualmie Pass area. The angle of the house does create a restricted building envelope, but the Snoqualmie Pass area has many small properties with restricted building envelopes that have accommodations but none with zero-foot lot line setbacks. There is room on the property for a smaller garage within the required setbacks.

The applicant has failed to demonstrate 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 failed to demonstrate in a factual and meaningful way the existence “undue hardship” caused by the application of the yard requirements as stipulated in KCC 17.16.070 The variance, as presented, is inconsistent 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

“Given the extreme snow accumulation (>400” annually) in Snoqualmie Pass there is risk to life safety of shedding or falling snow for your cars parked outside without a garage. Without a garage we can’t safely store and maintain vehicles which are necessary for transportation due to no public transit. Lastly, without a garage we don’t have storage required for equipment that ensures safety, and the preservation and enjoyment of the property including: snow blowers for snow removal especially during emergencies, generator and incremental storage (i.e., Food) for use during annual power outages and highway closures.

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 disagrees that without this variance, the applicant would not have the enjoyment of a substantial property right exercised by owners in the near vicinity. The orientation of the house resulted in a restricted building envelope for the size of a 2-car garage. There is space on the property to build a smaller garage within the required setbacks.

The applicant has failed to demonstrate 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 17.16.070. The variance, as presented, is inconsistent 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

“The variance will not be materially detrimental to the public welfare or injurious to property in the vicinity. The house next door is built in the middle of a double lot which they combine into one parcel. The snow shed will be minimal from our home and greater than 50 feet away from their house. In addition to the signed approval by the neighboring owner (letter attached) in support of the variance approval, they have volunteered to provide any support the county requires to formally convey their approval. Furthermore, measures will be taken during the design of the roof to minimize the amount of snow shed onto their property. Lastly, given the angle of our current house, a majority of the snow shed/storage will be contained within our property.”

Staff Response

CDS finds that the proposed setback reduction be injurious to the adjacent property owner as snow storage from the roof could potentially shed onto neighboring property even with designs to try and minimize the shedding. In addition, if CDS were to grant a 0’ side lot setback, the neighboring property owner would have to put in fire rated walls if they wanted to build to their allowed 5’ side yard setback. CDS finds that the applicant has failed to demonstrate the project to be consistent with KCC 17.84.010(3).

The applicant has failed to demonstrate 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 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 granting of such variance will not adversely affect the realization of the comprehensive development pattern and fits the intend because our neighbors house is great than 50 feet away which is more than the counties minimum (5 feet) setback. Therefore, there will be more than adequate separation between structures and enough room for snow storage.

Staff Response

CDS has concluded that the requested zoning side setback variance reduction from 5 feet to 0 feet will not adversely affect the realization of the comprehensive development pattern of the area. The area contains houses with garages in or next to them. The side yard setback reduction to 0 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 not** meet all four criteria outlined in KCC 17.84.010 as described above and that only criteria 4 can be satisfied. Therefore, the zoning variance request cannot be approved.

IV. ADMINISTRATIVE REVIEW

Project Submittal: A Zoning Variance Application was submitted to Kittitas County Development Services departments on February 7, 2022.

Deem Complete: The application was determined complete on February 11, 2022.

Notice of Application: A 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 17, 2022, all in conformance with the Kittitas County Project Permit Application Process (Title 15A). The comment period ended at 5:00 pm on March 7, 2022 and all comments were transmitted to the applicant on March 8, 2022.

V. ENVIRONMENTAL REVIEW

CDS performed a critical area review of the subject parcel and found that no critical areas exist on the property. There is a type Ns stream approximately 100 feet from the back of the property. This is outside the required 65-foot buffer. Washington Department of Fish & Wildlife commented that if the variance is approved, that the trees on the back lot line should not be removed as those trees provide shade for the creek. Nothing in County Code requires this. CDS has determined that the Roeder Zoning Setback Variance is exempt from SEPA review pursuant to WAC 197-11-800(6)(e) and WAC 197-11-800(1)(b)(i).

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. CDS performed a critical area review of the subject parcel and found that no critical areas exist on the property. There is a type Ns stream approximately 100 feet from the back of the property. This is outside the required 65-foot buffer. Washington Department of Fish & Wildlife commented that if the variance is approved that the trees on the back lot line should not be removed as those trees provide shade for the creek. Nothing in County Code requires this and this variance request is consistent with Title 17A.

Consistency with the provisions of KCC 17.16 – Residential Zone:

This proposal, without the approval of the zoning setback variance, is not 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 not consistent and cannot meet criteria 1, 2 and 3 as described above in Section 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. This proposal is not consistent with KCC Title 14.04 regarding roof eaves and projections as established in the building codes referenced in KCC 14.04.010(1).

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, and 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 February 23, 2022. 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 March 3, 2022 and then revised those comments on March 4, 2022. KCPW commented that they recommend approval of the zoning variance application based on the following conditions:

- Any modification to the existing access would require an access permit from Public

Works

- 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.
- All Stormwater generated by the structure must be retained on the parcel. No stormwater shall be shed onto the neighboring property.
- Stated that a permanent (5) foot storage and drainage easement is required from the neighboring property owner in the revised March 4 comments. CDS received an e-mail from Public Works on March 14, 2022 stating that they would not require the snow storage easement as long as the roof was sloped away from the property line, meets standards and is verified.

They also mentioned the following about the project/survey:

- A zero feet setback poses constructability problems without trespassing into the neighboring parcel. A written statement from the neighboring landowner approving a short-term construction easement would suffice.
- Building footings, grading, overhangs and swinging doors cannot trespass into the neighboring parcel.
- Given the tight tolerances required, having the boundary line staked by a land surveyor prior to construction should be required.
- All elements of map should meet the requirements of WAC: 332-130-145
- Legend is missing from map

Staff Response

CDS shares concerns with Public Works about snow shed, stormwater and trespassing onto the neighboring property. While there are ways to remedy these situations, the applicant has not demonstrated unique circumstances that would warrant them.

Applicant Response

“The neighboring property owner (Steve) and I have had extensive conversations on this. After reviewing with lawyers, real estate agents, etc. we have decided that given he already has one easement granted to another neighbor (driveway easement) and the negative impacts it has on his home value he would not be able to grant any kind of easement. However, he is willing to provide any other formal approval needed. Lastly, since the house is at an angle there is only a very small portion of the shedding that will go onto his property, the rest of it will remain on my property, and we will design the roof to limit shedding off my property. How do you recommend I address this with the Department of Public Works?”

Washington State Department of Fish & Wildlife (WDFW)

Washington State Department of Fish & Wildlife provided comments on this application on February 17, 2022. They mentioned the stream behind the lot proposed for the variance and that the removal of trees on the back lot line could influence shade on the tree and wanted to ensure that no trees are removed on the back lot line

Staff Response

CDS has provided these comments to the applicant and the mentioned trees are outside of the required 65' setback. CDS strongly urges no trees be removed from the back property line.

Community Development Services (CDS) – Building Department

CDS Building provided comments on February 24, 2022. CDS Building provided comments regarding building code (IRC specific) and location to lot lines. They mentioned that the International Residential Code (IRC) does not allow roof eaves, overhangs or any projections closer than 24 inches to a lot line. They also stated exterior walls located less than five (5) feet from a lot line must be one-hour fire-resistant rated. The last thing they mentioned was that window and door opening in walls less than three (3) feet from a lot line are not allowed.

Staff Response

CDS Planning staff shares the concerns regarding the residential code and views the fire rated walls at the property line to be injurious to the neighboring property and any future landowner of the neighboring property.

Applicant Response

“My understanding is that houses in the Pass require a 24 inch overhang. The department's comment is that the edge of the overhang needs to be 24 inches from the lot line. If a 24 inch overhang is needed as well, my exterior wall would be a minimum of 4 feet from the proposed lot line variance which would make the garage 17 feet wide and the minimum recommended width for a two car garage is 18 - 24 feet. This is the primary reason for the variance request. Also important to note, the house is on an angle so only a small portion of the house would violate this. As part of this application, am I able to request a 0 ft set back for the eaves, overhang? Or, how do you recommend I address this?”

Public Comments:

There were no public comments for this variance request. A letter of support was provided from the adjacent neighbor to the west as part of the application submittal, but no comments were made by the neighbor during the public comment period.

VIII. FINDINGS OF FACT

1. Katherine Keidel and Eric Roeder, property owners, submitted a zoning setback variance requesting a 5-foot reduction from the 5-foot required side setback in KCC 17.16.070. The variance requested is for the construction of a 21’ x 32’ 2-car garage.
2. Parcel #038635 (Lot 30 of Hyak Estates #4) located off Rampart Drive, approximately 0.6 miles from the intersection of Hyak Drive East and State Route 906 in Snoqualmie Pass, WA in Section 15, Township 22, Range 11. Map number 22-11-15053-0030
3. Site Information

Total Property Size:	0.18 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: | Forested Lands |
| East: | Primarily residential development/ Snoqualmie Pass Utility District Ponds |
| West: | Primarily residential development/Forested Lands |

The site is accessed via Rampart Drive

5. The Comprehensive Plan land use designation is “LAMIRD” with a zoning designation of LAMIRD Type 1 Residential.
6. The property is adjacent to the Commercial Forest Zone, requiring a 200-foot setback as seen in KCC 17.16.085.
7. Due to the size of the lot (120’ x 60’), the Commercial Forest Zone setbacks can’t be met, and the development must fall within the 100 foot by 100 foot building envelope as described in KCC 17.57.050.
8. The entire lot is less than 100’ by 100’, making the entire parcel the buildable area. The normal Residential Zone setbacks still apply.
9. 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 5-foot reduction from the 5-foot side setback requirement in KCC 17.16.070, which would result in a 0-foot setback from the side lot line. This variance is requested to build a two car garage 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**.
10. A Zoning Variance Application was submitted to Kittitas County Community Development Services department on February 7, 2022.
11. The application was determined complete on February 11, 2022.
12. 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 17, 2022, all in conformance with the Kittitas County Project Permit Application Process (Title 15A). The comment period ended at 5:00 pm on March 7, 2022 and all comments were transmitted to the applicant on March 8, 2022.
13. CDS performed a critical area review of the subject parcel and found that no critical areas exist on the property. There is a type Ns stream approximately 100 feet from the back of the property. This stream is outside the required 65-foot buffer. WDFW commented that if the variance were to be approved that the trees on the back lot line should not be removed as they provide shade to the stream. CDS has determined that the Roeder Zoning Setback Variance is exempt from SEPA review pursuant to WAC 197-11-800(6)(e) and WAC 197-11-800(1)(b)(i).
14. The proposal is consistent with the provisions of KCC 17A, Critical Areas.
15. The proposal is not consistent with the provisions of KCC 17.30, R-Residential zoning without approval of the zoning setback variance.

16. The proposal is not consistent with the KCC 17.84 Variances, more specifically all four criteria in KCC 17.84.010 must be met and criteria 1, 2 & 3 have not been satisfied.
17. This proposal is not consistent with the provisions of the KCC Title 14.04, Building Code.
18. The proposal is consistent with the provisions of KCC Title 20, Fire and Life Safety.
19. The proposal is not consistent with the provisions of KCC Title 12, Roads and Bridges.
20. 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.
21. No public comment was received.

IX. STAFF CONCLUSIONS:

1. This proposal does not meet all four criteria of KCC Title 17.84.010, therefore it cannot be approved.
2. A variance cannot be authorized as there is no unusual circumstances that cause undue hardship in the application of Title 17.

X. DECISION

Kittitas County Community Development Services finds that the Roeder Zoning Setback Variance (VA-22-00001) is hereby **Denied**. The Roeder Zoning Setback Variance does not adequately meet the requirements of a zoning setback variance pursuant to KCC 17.84.010.

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: March 31, 2022

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 April 14, 2022. Aggrieved parties are encouraged to contact Community Development Services at (509) 962-7506 for more information on the appeal process.