

KITTITAS COUNTY COMMUNITY DEVELOPMENT SERVICES

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Office (509) 962-7506

“Building Partnerships – Building Communities”

Pemsel Zoning Setback Variance File Number VA-22-00004 FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

I. GENERAL INFORMATION

Requested Action: Andreas Pemsel, property owner, submitted a zoning setback variance requesting a 25-foot reduction from the 25-foot front lot line required setback for the construction of a 16-foot-tall retaining wall that also goes into the County Right of Way. The request also includes a 21-foot and 17-foot reduction from the 25-foot front line setback for the construction of an entryway and garage to a new house respectively. The 25-foot front setback requirements come from KCC 17.16.060(b).

Location: The subject property is parcel # 458435 (Lot 42 of Hyak Estates) located off Snoqualmie Drive, approximately .18 miles southwest from the intersection of State Route 906 and Hyak Drive East as the crow flies. The property is in Section 15, Township 22, Range 11 in Kittitas County. Map number 22-11-15050-0042.

II. SITE INFORMATION

Total Property Size:	.17 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: Primarily residential development
- South: Primarily residential development
- East: Primarily residential development
- West: Primarily residential development

Access: The site is accessed via Snoqualmie Drive.

III. ZONING AND DEVELOPMENT STANDARDS

The subject property has a zoning designation of Residential within a LAMIRD Type 1 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

“The project site features unique and unusual features that prevent us from being able to meet the site access requirements given the zoning codes current front yard setback requirement of 25 ft. Extremely steep topography off the edge of the pavement at a 1.25H:1V slope and a 14 ft drop within the 17 ft county right of way prohibits us from being able to meet all of the site access requirements without the use of both a retaining structure and having the garage, house and entry deck sited closer to the front property line. These unique circumstances do not seem to apply to other nearby houses which were grandfathered in and built closer to the road, or which were required to have a zoning variance granted as well. In addition, many of the other nearby homes have retaining structures and parking within the county right of way such as parcel 438435 (2 lots South) which was recently granted a front yard setback variance and allowed to build a retaining wall within the county right of way. The combination of the unusually large county right of way between the edge of pavement and the front property line in addition to the steep topography make this site inaccessible without the use of a retaining structure and siting the garage, house, and entry deck within the front yard to deal with the grade change.”

Staff Response

CDS staff have reviewed the complete file information, including but not limited to, the applicant’s submitted information and comments received during the comment period. CDS recognizes that the parcel involved has steep topography at the front lot line that would make the site inaccessible without a retaining structure. Due to the lot’s steep topography, CDS agrees that unusual conditions exist on the parcel. 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

“A variance to the front yard setback requirement is necessary for residential use of this property because without the use of a retaining structure and locating the garage, house, and entry deck closer to the roadway it is not possible to meet all of the county’s access, driveway, and parking requirements. We have done additional studies of a driveway at the maximum allowable grade of 16% would exceed the 2H:1V side slope requirements as well as the 1.5H:1V slope that our Geotech recommended with quarry spall to meet WSDOT standards. A 42 ft long driveway at 16% grade would also be dangerously steep in the winter, require approximately 1500 cubic yards of fill (150 dump trucks) and require a 20 ft tall retaining wall that according to our geotech engineer is structurally unfeasible. Even at a 20% grade, which exceeds the maximum allowable driveway slope and would be unsafe and unusable during the peak winter months it would require 1,150 cubic yards of fill, have side slopes exceeding 2H:1V and require a 18 ft tall retaining wall which is still structurally unfeasible due to the back span for geogrid reinforcement fabric. The proposed variance would allow for the access, driveway, and parking

requirements to be met in a similar fashion to the other nearby lots on Snoqualmie Drive and allow for single family residential development that is consistent with others in the neighborhood that are closer to the roadway while meeting the zonings intent. The current front yard setback places an undue burden on us and if the variance is not granted, would prevent our substantial property right to build a single-family residence. Without this front yard setback zoning variance to allow for a retaining structure and the garage, house, and entry deck to be closer to the pavement edge we would not be able to meet the access, driveway, and parking requirements necessary to build a single-family residence and would suffer undue hardship from purchasing an unbuildable lot that we would have to sell at a substantial loss. A retaining structure and having the garage, house, and entry deck sited closer to the edge of pavement is necessary for meeting the access requirements required for a residential house and would provide a large number of parking spaces at a flat and even surface making them safe to use in the winter and ensuring that no cars would be in the street hindering snow removal. Being able to also have a garage with a low slope roof designed to hold the snow rather than an outdoor parking pad also allows us to store the cars out of the county right of way and reduce the amount of snow that needs to be snowblown or shoveled around them reducing the amount of space needed for snow storage.”

Staff Response

CDS staff have reviewed the complete file information, including but not limited to, the applicant’s submitted information and comments received during the comment period. CDS agrees that without this variance, the applicant would not be able to safely access their parcel. Properties in the vicinity have garages and some properties in the nearby vicinity have been granted similar variances for retaining walls in the setback and structures closer than 25 feet from the front property line. 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 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

“The authorization of this front yard variance would not be materially detrimental to the public welfare or in any way injurious to property in the area. In fact, the authorization of the front yard setback would provide numerous safe and easily accessible parking spaces in the winter as well as provide a garage to safely store the vehicles and snowblower, shovels, ice melt, etc. during the winter months that are critical for safely accessing a site. This variance would also help reduce the amount of snow that would need to be removed from a potentially otherwise longer driveway and create more additional space for snow storage from the county snow plows. Allowing a retaining wall in the county right of way to support the flat and level driveway would also increase the volume and space available for snow storage from the county plows as opposed to having imported fill off the sides of the driveway sloping at only a 2H:1V slope. This front yard setback variance would also be more consistent with that of nearby properties which were grandfathered in and have homes built closer to the road or which had a front yard setback zoning variance granted as well and retaining walls in the right of way for parking in the case of parcel 438435. The two immediately neighboring properties on each side are currently vacant but having this variance granted and being able to provide access could prove that their lots are feasible as well and could materially increase the value of their property. In their current state they appear to be too steep and without any precedence for how to provide access and build a house on such a steep lot they may detract buyers. However, if we were unable to get the variance granted, the amount of fill needed to construct a driveway at 16% grade to provide parking past the 17 ft right of way and the 25 ft front yard

setback would be an excessive amount of fill and potentially pose a hazard due to the steep slopes, long term erosion and settling. The zoning variance would allow us to safely access the site and provide the greatest amount of level and flat parking spaces with the least amount of site impact from fill and retaining walls while providing more volume of space for snow storage for the county plows.”

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 other than potential snow storage and plowing issues that can be overcome through conditions on the variance. Recent code changes increased front lot line setbacks in the Snoqualmie Pass LAMIRD from 15’ to 25’, so the proposed reduction would be consistent with the setbacks of many adjacent structures that were established before the code change. The proposed structure and retaining walls would be located at least 17 feet from the Snoqualmie Drive travelway. CDS also recognizes that there have been similar variances granted in the vicinity to address the parking, access and housing issues that the steep slope from the road creates. 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

“The granting of the front yard setback variance will not adversely affect the realization of the comprehensive development plan because the current properties in the vicinity do not have a front yard setback and have their homes sited typically 25 ft or less from the edge of pavement rather than from the front property line. This variance would allow for the retaining wall as well as the garage, house, and entry deck to be closer to the edge of pavement and make the project’s access consistent with the nearby properties but because we are only requesting the minimum deviation from the standards the primary residence would still meet the overall intent of a structure being located 25 ft back from a roadway and be consistent with the comprehensive development plan. The variance request is merely to provide feasible site access and does not change any of the side or rear setbacks, height, bulk, and scale of the proposed single-family residence. The granting of the variance would also provide more level and accessible parking spaces in the winter than a 42 ft long driveway at a steep 16% grade and would eliminate any situations where parked cars could inhibit snow removal.”

Staff Response

CDS has concluded that the requested zoning setback variance reduction will not adversely affect the realization of the comprehensive development pattern of the area. The area contains many small parcels with single family residences and appurtenances.

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 1, 2022.

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 September 8, 2022, all in conformance with the Kittitas County Project Permit Application Process (Title 15A). The comment period ended at 5:00 pm on September 23, 2022 and all comments were transmitted to the applicant on September 26, 2022.

V. ENVIRONMENTAL REVIEW

CDS performed a critical area review of the subject parcel and found there to be no critical areas. CDS has determined that the Pemsel 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. The following agencies provided comments: Kittitas County Code Enforcement, Kittitas County Public Health, Kittitas County Public Works and Kittitas County Building Department. A review of these comments can be seen below.

Kittitas County Code Enforcement

Code Enforcement commented saying they have no comments for the project

Staff Response

CDS has provided these comments to the applicant.

Kittitas County Public Health (KCPH)

Kittitas County Public Health provided comments saying they have no requirements for the setback variance.

Staff Response

CDS has provided these comments to the applicant.

Kittitas County Community Development Services-Building Department (CDS-Building)

Kittitas County CDS- Building provided comments on fire rated separation and construction requirements.

Applicant Response

"In terms of the entry deck the WUIC code requires us to have the entire house be noncombustible so we would use fiber cement, class a fire-resistant decking and intumescent paint or clear coat on all framing members so that entry deck should be fire and able to meet that 1-hour rating."

Staff Response

CDS has provided these comments to the applicant and conditioned this determination to ensure the applicant will provide fire separation for construction.

Kittitas County Public Works (KCPW)

KCPW commented that due to unusual hazardous slopes in the area, any grading performed on site will require an Engineered Grading Permit. Additional mitigation may be needed in the clear zone (10 ft from edge of pavement) and may impose limitations on the type of retaining wall used within Right of Way. They also recommended limiting the setback to 10 feet as maintenance of Hyak during the winter may require snow to be blown towards the edge of the county Right of Way.

Applicant Response

"I'm a little concerned about the comments from public works item #3 as having only a 10ft front yard setback variance would mean that our retaining walls for the driveway would be over 16 feet and more likely 20+ ft which our geotechnical engineer said is not possible. 16ft is the maximum height we can go with a retaining wall for our driveway and pushing this house further from the road and further down the hill makes it unbuildable. There's 17 feet of right of way between the edge of the pavement and the front property line and 25 feet to the garage so there shouldn't be any issues with snow storage or snow from the plows as this is consistent with many other homes in the neighborhoods who have their property line almost right on the edge of pavement and are only 25 feet from it. At a minimum we would need the entry deck to be able to be closer than 10ft to the front property line for accessing the front door of the home."

Staff Response

The proposed structure would be located eight feet from the front property line and 23 feet from the Snoqualmie Drive travelway. Staff finds that this will not be materially detrimental to the public welfare or injurious to property in the vicinity (KCC 17.84.010(3)) as discussed above. Staff also conditioned this determination to require all permits necessary from Public Works including grading and work in the Right-of-Way.

No public comments were received.

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, Kittitas County CDS Building Department, and Kittitas County Code Enforcement. All comments are on file and available for public review.

Public Comments:

There were no public comments received for this application.

VIII. FINDINGS OF FACT

1. Andreas Pemsel, property owner, has submitted a zoning setback variance request to reduce a 25-foot front lot line setback within the Residential zone to 0 feet for a retaining wall, 4 feet for an entryway and 8 feet for a garage.
2. Parcel # 458435 (Lot 42 of Hyak Estates) located on Snoqualmie Drive, approximately 0.03 miles from the intersection of Snoqualmie Drive and Innsbruck Drive in Snoqualmie Pass, WA in Section 15, TWP 22, R 11. W.M. Map number 22-11-15050-0042.

3. Site Information

Total Property Size:	.17 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:	Primarily residential development
South:	Primarily residential development
East:	Primarily residential development

West: Primarily residential development

The site is accessed via Snoqualmie Drive.

5. The Comprehensive Plan land use designation is “LAMIRD” within Residential zoning.
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 25-foot reduction from the 25-foot front lot line setback requirement on the lower west property line requirement in KCC 17.16.060(b), which would result in a 0-foot front lot line structural setback for the retaining wall. The request also includes a 21-foot and 17-foot reduction from the 25-foot front line setback for the construction of an entryway and garage to a new house respectively. This variance is requested to build a retaining wall, entryway and garage in the required setback area. 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 July 29, 2022.
8. The application was determined complete on September 1, 2022.
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 September 8, 2022, all in conformance with the Kittitas County Project Permit Application Process (Title 15A). The comment period ended at 5:00 pm on September 23, 2022 and all comments were transmitted to the applicant on September 26, 2022.
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, CDS determined that the Pemsel 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.
12. The proposal is not consistent with the provisions of KCC 17.16, 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 as conditioned.
15. The proposal is consistent with the provisions of KCC Title 20, Fire and Life Safety as conditioned.
16. Comments were received from the following agencies: Kittitas County Public Works, Kittitas County Public Health, Kittitas County CDS Building Department and Kittitas County Code Enforcement. All comments are on file and available for public review.
17. No public comments were 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 as conditioned including Kittitas County Code Title 14.04 Buildings & Construction, 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 Pemsel Zoning Setback Variance (VA-22-00004) is hereby **approved** subject to the conditions below. The Pemsel 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.
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. All structures and buildings shall be compliant with the International Fire Code.
4. The applicant shall obtain all necessary permits required by Kittitas County Public Works for this development including but not limited to a Right-of-Way permit and a grading permit with engineered plans. Any grading greater than 500 cubic yards shall require a SEPA checklist.
5. Should ground disturbing or other activities related to the proposed project 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). 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.
6. This front lot line setback variance shall expire after one year of the decision date if no substantial construction has taken place or an extension has not been applied for under KCC 17.84.010(4).

Responsible Official


Jeremiah Cromie

Title:

Planner II

Address: Kittitas County Community Development Services
411 N. Ruby Street, Suite 2
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Date: January 12, 2023

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 January 27, 2023. Aggrieved parties are encouraged to contact Community Development Services at (509) 962-7506 for more information on the appeal process.