

KITTITAS COUNTY COMMUNITY DEVELOPMENT SERVICES

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"Building Partnerships – Building Communities"

Dunkley Zoning Variance File Number VA-24-00002 FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

I. GENERAL INFORMATION

Requested Action: Luke Dunkley, landowner, submitted a Zoning Variance application, pursuant to Kittitas County Code 17.84, on .2 acres of land zoned Rural 5 within a Rural Residential land use designation. The proposal requests a 14-foot reduction to the 15-foot side yard setback required by KCC 17.30A.050 to accommodate an existing structure. The 15-foot side lot line setback requirements come from KCC 17.30A.050. If the variance is approved, it would result in a 1-foot side lot line structural setback for the existing structure, respectively.

Location: The subject property is parcel # 736434, located at 1131 Oakmont Dr., approximately 0.69 miles southeast from the intersection of Oakmont Dr. and Golf Course Rd. The property is in Section 35, Township 20, Range 14 in Kittitas County. Map number 20-14-35052-0079.

II. SITE INFORMATION

Total Property Size:	0.2 acres
Number of Lots:	1 (no new lots are being proposed)
Sewage Disposal:	Individual Septic
Fire Protection:	Fire District 7 (Cle Elum)
Irrigation District:	N/A

Site Characteristics:

<u>North:</u>	Primarily residential development
<u>South:</u>	Forested land
<u>East:</u>	Primarily residential development
<u>West:</u>	Primarily residential development

Access: The site is accessed via Oakmont Drive.

III. ZONING AND DEVELOPMENT STANDARDS

The subject property has a zoning designation of Rural 5 and a Rural Residential land use designation. The purpose and intent of the Rural 5 zone is to provide areas where residential development may occur on a low density basis. A primary goal and intent in siting R-5 zones will be to minimize adverse effects on adjacent natural resource lands. The applicant is requesting to utilize the variance process pursuant to KCC 17.84 Variances, to deviate from the prescribed side lot line setback requirements in KCC 17.30A.050. 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 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

"I purchased the property as two parcels on 5/18/21 with my current neighbor Justin Albrecht. Our intentions were to split the properties via a quit claim deed so that I would retain the property with the existing structure, and Mr. Albrecht would take the vacant lot to build a cabin. The quit claim deed was recorded in December of 2021. As Mr. Albrecht commenced construction of his cabin about a year later, his contractor suspected that the structure on my property was sitting on the lot line between our properties. Unfortunately, county records did not have accurate lot lines and neither party thought to seek a survey when the property was quit claimed to Mr. Albrecht. Upon realizing the possibility of a lot line encroachment, I sought to resolve it with Mr. Albrecht to which he said he would be amiable to do so, but never did. In March of 2024, I listed my property for sale and became aware that Mr. Albrecht made a complaint to code enforcement regarding the lot line encroachment. The county then indicated they had no record of the structure being built which I had purchased in 2021, and admitted that this particular neighborhood is known to have many boundary issues between parcels. Unfortunately, Mr. Albrecht has declined to resolve the issue via a lot line adjustment and so I would like to proceed by removing the portion of my structure that is currently over the property line and am seeking a variance for the setbacks that would not be met due to the location of the cabin."

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. The subject parcel is involved in an active code enforcement case related to encroachment of the existing structure on the neighboring 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 is necessary to maintain a portion of my cabin for my enjoyment as the property owner, rather than demolish the entire structure that has existed for a decade or more. I would be removing only a portion of my cabin to make the variance work so that my whole cabin would be located on my property. This also satisfies the right of my neighbor Justin Albrecht for his enjoyment of his whole property. It would be a massive economic impact for me to remove my whole cabin."

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

Applicant Response

“The variance would not be a material detriment to the public welfare to property in the vicinity but would accomplish preservation of my cabin fully on my property. With minimal visual impact it would not substantially alter the appearance or character of the surrounding neighborhood. Once again completely removing the current portion that sits on my neighbor’s property to bring it to satisfy code enforcement and enjoyment for me and my neighbor. This would not have an impact on the community and the variance would not negatively affect property values or the overall quality of life for nearby residents.”

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. The existing structure will be modified to no longer encroach on the neighboring property and resolve an active code enforcement case. 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 variance would not negatively affect the community property values or the overall quality of life for nearby residents. It would also bring the lot line into compliance with code enforcement and compliance of the HOA.”

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 similarly sized lots 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 30, 2024.

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 3, 2024, all in conformance with the Kittitas County Project Permit Application Process (Title 15A). The comment period ended at 5:00 pm on October 18, 2024, and all comments were transmitted to the applicant on October 21, 2024.

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 Dunckley 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: Confederated Tribes of the Colville Reservation, Kittitas County Public Health, Kittitas County Public Works, Bonneville Power Administration, Kittitas County Building Official, Kittitas County Fire District #7. A review of these comments can be seen below.

Confederated Tribes of the Colville Reservation

The Confederated Tribes of the Colville Reservation stated there are known cultural resources nearby, this plat is high risk for inadvertent discovery, and requested an inadvertent discovery plan.

Applicant Response

"Should we find anything inadvertently we will report it to Kittitas County and the Confederated Tribes of Colville Reservation."

Staff Response

This application has been conditioned to prepare for the inadvertent discovery of cultural resources.

Kittitas County Public Health

KCPH stated they have no comments.

Applicant Response

"We have no comment."

Staff Response

Staff has no response.

Kittitas County Public Works

KCPW provided comments on grading requirements and survey concerns.

Applicant Response

No response provided.

Staff Response

Staff has conditioned the variance to meet local, state, and federal codes and regulations.

Bonneville Power Administration

BPA stated the variance will not impact BPA facilities and they have no objections.

Applicant Response

"We have no comment."

Staff Response

Staff has no response.

Kittitas County Building Official

The Kittitas County Building Official, Jeremy Larson, stated a building permit will be required and provided information on design and code requirements.

Applicant Response

"Spoke with Jeremy Larson via phone. His major concerns are life safety for the cabin. He agreed that we should be able to work through and meet necessary requirements."

Staff Response

Staff has conditioned the variance to meet local, state, and federal codes and regulations.

Kittitas County Fire District #7

Kittitas County Fire District #7 stated they have no concerns.

Applicant Response

"Chace, with Kittitas County Planning was clarifying with Aaron Lowe that this was not a request for a lot line adjustment to accommodate the small cabin. But a variance request to remove a portion of the cabin so that the remaining portion would be fully located on Mr. Dunckley's property."

Staff Response

Staff has no response.

Public Comments:

Comments were received from Justin Albrecht, Connie Shupp, and the Sun Country Maintenance Association.

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 the 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 17.30A Rural 5:

This proposal, with approval of the zoning setback variance, is consistent with the setbacks outlined in Kittitas County Zoning Code 17.30A Rural 5 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: Confederated Tribes of the Colville Reservation, Kittitas County Public Health, Kittitas County Public Works, Bonneville Power Administration, Kittitas County Building Official, Kittitas County Fire District #7. All comments are on file and available for public review.

Public Comments:

Comments were received from Justin Albrecht, Connie Shupp, and the Sun Country Maintenance Association.

VIII. FINDINGS OF FACT

1. Luke Dunckley, landowner, submitted a Zoning Variance application, pursuant to Kittitas County Code 17.84, on .2 acres of land zoned Rural 5 within a Rural Residential land use designation. The proposal requests a 14-foot reduction to the 15-foot side yard setback required by KCC 17.30A.050 to accommodate an existing structure. The 15-foot side lot line setback requirements come from KCC 17.30A.050. If the variance is approved, it would result in a 1-foot side lot line structural setback for the existing structure, respectively.
2. The subject property is parcel # 736434, located at 1131 Oakmont Dr., approximately 0.69 miles southeast from the intersection of Oakmont Dr. and Golf Course Rd. The property is in Section 35, Township 20, Range 14 in Kittitas County. Map number 20-14-35052-0079.
3. Site Information

Total Property Size: 0.2 acres
Number of Lots: 1 (no new lots are being proposed)
Sewage Disposal: Individual Septic
Fire Protection: Fire District 7
Irrigation District: N/A

4. Site Characteristics:

North: Primarily residential development
South: Forested land
East: Primarily residential development
West: Primarily residential development

The site is accessed via Oakmont Drive.

5. The Comprehensive Plan land use designation is Rural Residential within a Rural 5 zoning designation.
6. The purpose and intent of the Rural 5 zone is to provide areas where residential development may occur on a low density basis. A primary goal and intent in siting R-5 zones will be to minimize adverse effects on adjacent natural resource lands. The applicant is requesting to utilize the variance process pursuant to KCC 17.84 Variances, to deviate from the prescribed side lot line setback requirements in KCC 17.30A.050. 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 20, 2024.
8. The application was determined complete on September 30, 2024.
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 3, 2024, all in conformance with the Kittitas County Project Permit Application Process (Title 15A). The comment period ended at 5:00 pm on October 18, 2024, and all comments were transmitted to the applicant on October 21, 2024.
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 the Dunkley Zoning 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 consistent with the provisions of KCC 17.30A Rural 5 zoning with approval of the zoning 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: Confederated Tribes of the Colville Reservation, Kittitas County Public Health, Kittitas County Public Works, Bonneville Power Administration, Kittitas County Building Official, Kittitas County Fire District #7. All comments are on file and available for public review.
17. Public comments were received from Justin Albrecht, Connie Shupp, and the Sun Country Maintenance Association.

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.

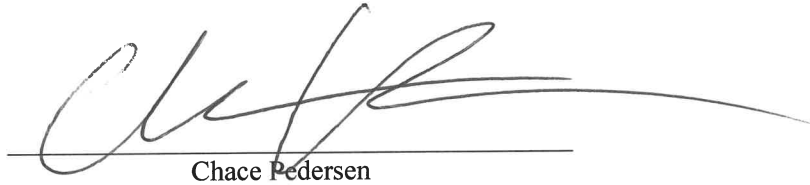
X. DECISION AND CONDITIONS OF APPROVAL:

Kittitas County Community Development Services finds that the Dunckley Zoning Variance (VA-24-00002) has satisfied the requirements of a zoning variance pursuant to KCC 17.84.010 and is hereby **approved** subject to the conditions below.

CONDITIONS OF APPROVAL:

1. The project shall proceed in substantial conformance with the plans and application materials on file.
2. No portion of the existing structure shall fall within the reduced setback.
3. The applicant shall comply with all Local, State, and Federal environmental standards and regulations in place at the time of building application submittal.
4. The applicant shall obtain all necessary permits as required by Kittitas County Community Development Services.
5. All structures and buildings shall be compliant with the International Fire Code.
6. 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) and the Confederated Tribes of the Colville Reservation. Work shall remain suspended until the findings are 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.
7. This side 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


Chace Pedersen

Title: Planner I

Address: Kittitas County Community Development Services
411 N. Ruby Street, Suite 2
Ellensburg, WA. 98926
Phone: (509) 962-7637

Date: November 19, 2024

Pursuant to Chapter 15A.07 KCC, this determination may be appealed by submitting specific factual objections in writing with a fee of \$1670 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 5, 2024. Aggrieved parties are encouraged to contact Community Development Services at (509) 962-7506 for more information on the appeal process.