

**COUNTY OF EL DORADO DEVELOPMENT SERVICES
PLANNING COMMISSION
STAFF REPORT**



Agenda of: October 8, 2009
Item No.: 7
Staff: Mel Pabalinas

VARIANCE

FILE NUMBER: V09-0003/Nelson Canyon Road

APPLICANT: Richard Rinehart

AGENT: Carlton Engineering

REQUEST: A Variance to allow a reduction in the side yard setback from 30 feet to 16.74 feet for the existing residence

LOCATION: The property is located at 6780 Nelson Canyon Road on the west side of Nelson Canyon Road, approximately 800 feet south of the intersection with Howard's Crossing Road, in the Kelsey area, Supervisorial District IV (Exhibit A).

APN: 084-040-45 (Exhibit B)

ACREAGE: 5.0 acres

GENERAL PLAN: Rural Residential (RR) (Exhibit C)

ZONING: Estate Residential - Ten Acre (RE-10) (Exhibit D)

ENVIRONMENTAL DOCUMENT: Categorically Exempt under Section 15305(a) of the CEQA Guidelines.

RECOMMENDATION: Staff recommends the Planning Commission take the following actions:

1. Certify the project to be Categorically Exempt pursuant to CEQA Guidelines Section 15305(a); and
2. Approve Variance V09-0003 subject to the Conditions in Attachment 1 based on the Findings in Attachment 2.

BACKGROUND

The historical building permits involving the subject residence is chronologically summarized in Table 1 below. Under a previous ownership, Building Permit No. 91075588-1 was originally applied for the construction of a new residence; however, the permit was never issued eventually becoming void due to inactivity. Building Permit No. 94088706-1 was issued in August 1994 for a construction of an agricultural barn. Based on the approved site plan for the permit, the barn was to be located approximately 50 feet from the nearest property (side) line (Exhibit E), which exceeds the 30-foot sideyard setback. Following permit issuance, the barn was constructed but did not receive final inspection eventually expiring. A building permit to convert the barn to a residence in 1995 was applied for, but was never issued eventually expiring. Though the conversion was not finalized, the structure was used as a residence.

Unaware of the permit history of the structure, the current property owner took ownership of the property in September 2003. A Code Enforcement Case was issued in August 2005 by the County involving the unpermitted dwelling structure and a mobilehome. The mobilehome was removed from the property and a new building permit for the conversion of the barn to a residence was applied for in October 2007. During review of the permit, it was determined that the residence encroaches 13.26 feet into the required 30-foot setback. The permit was not issued and eventually expired.

The Variance application was filed in May 2009. In comparing the approved site plan for the barn with the submitted site plan (Exhibit F) for this variance application, the location and orientation of the building do not match. Based on these documents, the original barn, which has been used as a residence, was built closer to the side property line, inconsistent with the approved plans for the barn.

Table 1. Historical Permit Applications and Activities on APN 084-040-45

County Application No.	Description	Application Date	Issuance Date	Final Date	Status
Building Permit No. 91075588-1	New residence	8/27/1991	Not issued	NA	Void
Building Permit No. 94088706-1	Construct a barn	6/10/1994	8/15/1994	Not finalized	Expired
Building Permit No. 96955-1	Building (barn) conversion to residence	11/13/1995	Not issued	NA	Expired
Code Enforcement No. 167824-7	Code Enforcement for Mobilhome and unpermitted residence	8/2005	NA	NA	Open
Building Permit No. 185150-1	Building (barn)conversion to residence	10/17/2007	Not issued	NA	Expired

Variance Permit V09-0003	Variance for encroachment into 30-foot sideyard setback	05/11/2009	In Process	In process	NA
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STAFF ANALYSIS

Staff has reviewed the project for compliance with the County’s regulations and requirements. An analysis of the proposal and issues for Planning Commission consideration are provided in the following sections.

Project Description

In accordance with Section 17.22.X of the El Dorado County Zoning Ordinance, the applicant is requesting a variance for the reduction of the 30-foot side yard setback required under Section 17.70.110 of the Zoning Ordinance regulating the development standards under the Estate Residential Ten-acre (RE-10) Zone District. The reduction of the side yard setback to 16.74 feet would accommodate the 984 square foot converted residence which is encroaching 13.26 feet into the setback.

A formal building permit would be required to change the occupancy from an agricultural barn to the existing residence. As part of permit review, the structure would be verified for conformance to the zoning development standards including yard setbacks to the property line. Consideration of the variance would facilitate in legalizing the residence.

Site Description and Adjacent Land Uses

The 5-acre project site is situated at an approximate elevation of 2,160 feet above mean sea level. Access to the site is via a long graveled driveway which connects to Nelson Canyon Road. This road intersects with Shoo Fly Road to the east which connects Highway 193. The property has limited areas of relatively level pad to steep slopes, varying above 30% grade. The disturbed areas are predominantly confined in the southwest area of the property where the existing residence is located. The existing vegetation consists of Pine Trees which are primarily located on the northern and western portions of the property. Other existing improvement on the site includes a septic leachfield and tank, domestic water well and wooden shed

The property is located within the Kelsey area part of the County. As shown in Table 2, the site is surrounded parcels with similar land use designations and existing residential uses. This property and other several properties in the immediate vicinity are substandard in size with regards to the 10-acre minimum required by the zone district.

Table 2. Project Site and Adjacent Properties Description

	Zoning	General Plan	Land Use/Improvements
Site	RE-10	RR	Rural Residential/Single-family residence
North	RE-10	RR	Rural Residential/Vacant
South	RE-10	OS	Open Space/Undeveloped

East	RE-10	RR	Rural Residential/Accessory Structures
West	RE-10	OS	Open Space/Vacant

Consistency

The following discussion details the project’s conformance with applicable governing policies, regulations, and standards.

El Dorado County General Plan

Table 3 below provides a summary of the El Dorado County General Plan policies applicable to the project.

Table 3. General Plan Consistency

General Plan Element	Policy Reference	Consistency Discussion
Land Use	Policy 2.2.5.2 (Project Consistency)	Consistent. This policy requires verification of discretionary project applications for consistency with the applicable General Plan policies. The project is residential in nature and would be consistent with the allowed uses under Rural Residential (RR) Land Use Designation.
	Policy 2.2.5.21 (Compatibility with adjacent properties)	Consistent. The project is residential in nature consistent with the allowed uses under Rural Residential (RR) Land Use Designation and the existing uses in the surrounding properties. The request involves a deviation from development standard per the zoning ordinance.

Zoning

The property is zoned Estate Residential 10-acre minimum (RE-10) zone district. The 5-acre parcel is a substandard, legal non-conforming property with regards to the minimum 10-acre size. The district allows for various uses including single-family detached dwellings and accessory uses. The existing residence is in conformance with the standard rear and front yard setbacks of 30 feet, the minimum residential living area of 600 square feet, and is below the maximum building height of 30 feet at 13 feet. However, the residential structure, does not meet the required side yard setback of 30 feet subject to the Variance further discussed below.

Variance

The Variance request is subject to the regulations established under Section 17.22.X for the encroachment of the existing single-family dwelling into the required 30-foot yard setback. As detailed in the applicant’s justification letter (Attachment 3), the basis for this request is due to the unique circumstance involving the property and the existing residence. Despite previous inconsistencies involving the construction of the original barn structure, requiring a relocation of the residence elsewhere on the property in order to meet to sideyard setback would be limited given the existing topographical constraint on the site which the predominantly varies above 30% grade. Relocating the structure would also result in further disturbance of the areas encumbered by slopes, could pose additional impacts the existing vegetation, and result in adjustments of the supporting water and septic utilities. Additionally, as required by the Garden Valley Fire Protection District, a standard vehicular turnaround would be required to serve the residence which would further limit the availability of developable land if relocation is mandated. Granting the variance would maintain the existing disturbed site, minimize unnecessary site impacts, support in legitimizing the existing residence, and would not pose a detriment to adjacent properties and general public health, safety and welfare.

Staff finds that the Variance, as proposed and conditioned, would be consistent with all applicable provisions of County Zoning Ordinance under Title 17 of the El Dorado County Zoning and can be supported based on the findings in detailed in Attachment 2.

ENVIRONMENTAL REVIEW

This project qualifies for Categorical Exemption from the requirements of California Environmental Quality Act (CEQA) pursuant to Section 15305(a) that allows minor lot line adjustments, side yards, and set back variances not resulting in the creation of any new parcels. The project proposes a reduction in the front yard setback from 30 feet to 16 feet to legitimize the existing residence. No further environmental analysis is necessary. A \$50.00 processing fee is required by the County Recorder to file the Notice of Exemption.

SUPPORT INFORMATION

Attachments to Staff Report:

- Attachment 1.....Conditions of Approval
- Attachment 2.....Findings
- Attachment 3.....Variance Support Information from Applicant

- Exhibit A.....Location Map
- Exhibit B.....Assessor’s Parcel Map
- Exhibit C.....General Plan Land Use Map
- Exhibit D.....Zoning Map
- Exhibit E.....Approved Site Plan for Barn
- Exhibit F.....Site Plan
- Exhibit G.....Site Photos

ATTACHMENT 1

CONDITIONS OF APPROVAL

Variance

**File Number V09-0003/Nelson Canyon Road
Planning Commission/October 8, 2009**

PROJECT DESCRIPTION

1. This variance is based upon and limited to compliance with the project description, the Planning Commission hearing Exhibits A through F and conditions of approval set forth below. Any deviations from the project description, exhibits, or conditions must be reviewed and approved by the County for conformity with this approval. Deviations may require approved changes to the permit and/or further environmental review. Deviations without the above described approval will constitute a violation of permit approval.

The project description is as follows:

A Variance to allow a reduction in the side yard setback from 30 feet to 16.74 feet for the existing residence as shown on the approved Site Plan (Exhibit F).

The grading, development, use, and maintenance of the property, the size, shape, arrangement, and location of structures, parking areas and landscape areas, and the protection and preservation of resources shall conform to the project description above and the hearing exhibits and conditions of approval below. All plans must be submitted for review and approval and shall be implemented as approved by the County.

PROJECT CONDITIONS OF APPROVAL

Planning Services

2. In the event of any legal action instituted by a third party challenging the validity of any provision of this approval, the developer and landowner agree to be responsible for the costs of defending such suit and shall hold County harmless from any legal fees or costs County may incur as a result of such action, as provided in Section 66474.9(b) of the California Government Code.

The applicant shall defend, indemnify, and hold harmless El Dorado County and its agents, officers, and employees from any claim, action, or processing against El Dorado County or its agents, officers, or employees to attack, set aside, void, or annul an approval of El Dorado County concerning a variance, which action is brought within the time period provided for in Section 66499.37 of the California Government Code.

County shall notify the applicant of any claim, action, or proceeding and County will cooperate fully in the defense.

3. The reduction in the side yard setback shall apply only to the existing residence. All other structures shall conform to all setback requirements pursuant to Section 17.70.110.D.
4. Prior to issuance of any building permit involving the subject residential structure, the applicant shall pay all Development Services Department fees in accordance with the Agreement for Payment of Processing Fees form authorized for this application.
5. Prior to issuance of any building permits the applicant shall provide a written description, together with appropriate documentation, showing conformance of the project with each condition imposed as part of the project approval.
6. A building permit shall be obtained for the conversion of the structure from an agricultural barn into a residence, in accordance with the applicable building codes. The applicant shall demonstrate good faith effort in processing the permit and, within 6 months from the filing of the permit application, shall coordinate in writing with the Development Services-Building Division the on-going status of the permit. In the event that the permit application is not pursued in good faith, the violation under current Code Enforcement No.167824-7 shall remain open for on-going investigation.

Garden Valley Fire Department

7. Prior to issuance of final occupancy permit, the following requirements by the Garden Valley Fire Department shall be verified:
 - A. A 100-foot defensible space for fuel management in accordance with Public Resource Code Section 4291.
 - B. Construction of a residential driveway in accordance with Fire Safe Standards and El Dorado County Design and Improvement Manual (DISM).
 - C. Installation and operation of 2,500 gallon water storage with 2 ½-inch thread connection.
 - D. Posting of address sign at Nelson Canyon Road intersection with Shoo Fly Road.

ATTACHMENT 2

FINDINGS

Variance File Number V09-0003/Nelson Canyon Road Planning Commission/October 8, 2009

1.0 CEQA

- 1.1 This project has been found to be Categorically Exempt from the requirements of CEQA pursuant to Section 15305(a) that allows minor lot line adjustments, side yards, and set back variances not resulting in the creation of any new parcel.
- 1.2 The documents and other materials which constitute the record of proceedings upon which this decision is based are in the custody of the Development Services Department -Planning Services at 2850 Fairlane Court, Placerville, CA, 95667.

2.0 GENERAL PLAN

- 2.1 The project involves an existing residential use on the property. This use is allowed under Rural Residential Land Use Designation of the property.

3.0 ZONING

- 3.1 The property is zoned Estate Residential 10-acre minimum (RE-10) zone district. The existing residential use conforms to the applicable district development standards including front and rear yard setbacks, and minimum residential floor area; however, the side yard setback standard is not met. As discussed below, the requested variance for this standard is justified by the existing conditions on the site, granting of which would provide reasonable use of land that would not be detrimental to the welfare of the general public.
- 3.2 Variance
 - 3.2.1 There are exceptional or extraordinary circumstances or conditions applying to the land, building, or use referred to in the application, which circumstances or conditions do not apply generally to land, buildings or uses in the vicinity and the same zone, and have not resulted from any act of the owner or applicant.

The existing residential structure encroaches within the required 30-foot side yard setback. Consideration of the variance from this standard would permit continuous use of the residence at its current developable location. Alternative site

within the property is limited given the topographical constraints on the property and other required improvements (i.e. driveway turnaround) associated with the permitting of the residence.

- 3.2.2 The strict application of the provisions of the ordinance requested to be varied would deprive the applicant of the reasonable use of the land or building allowed for other land in the vicinity and the same zone;

Application of the minimum 30-foot sideyard setback standard could result in requiring the relocation of the existing residence. Given the site constraints and ancillary impacts related to relocation related to relocation related to relocation related to relocation, application of this requirement would further deprive the reasonable use of the property. Consideration the variance request would continue the reasonable use of the land by the existing 900-square foot residence at its current location.

- 3.2.3 The variance is the minimum necessary for the reasonable use of the land or building.

Granting of the variance would continue the reasonable use of the property for the existing residence. The variance request would support in legitimizing the existing residence located at 13.26 feet into the side yard setback, which is the minimum necessary to allow the applicant to legitimize the residential structure without the need for further grading or removal of existing improvements and vegetation. Otherwise, absent this variance, the residence would require to be relocated on the property constrained by steep terrain that would result additional development impacts associated with significant grading and would affect the existing improvements including foundation, sub-floor, septic and water lines, and propane lines.

- 3.2.4 The variance is in conformity with the intent of this article and not detrimental to the public health, safety, and welfare, or injurious to the neighborhood.

The variance is in substantial conformance with the intent of the zoning ordinance. Granting of the variance would facilitate in legalizing the existing residence through acquisition of a building permit, subject to compliance with the project conditions of approval and applicable development and building regulations. These actions would not pose a detriment to adjacent properties nor negatively impact the general public health, safety, and welfare.