

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



Agenda of:	September 9, 2010
Item No.:	11
Staff:	Tom Purciel

VARIANCE

FILE NUMBER: V10-0001/Stein

APPLICANT: Gary and Janna Stein

AGENT: Brad Altman, P.E.

REQUEST: Variance request to reduce the front yard setback from 20 feet to 1 foot and side yard setback from 5 feet to 1 foot for a single-story garage on an existing parking pad.

LOCATION: On the east side of Scenic Drive, approximately 600 feet south of the intersection with State Route 89 in the Meeks Bay area, Supervisorial District V (Exhibit A).

APN: 016-600-19

LOT SIZE: 2.55 acres

GENERAL PLAN: Adopted Plan (AP): Tahoe Regional Planning Agency (TRPA) Regional Plan, Meeks Creek Plan Area Statement 148, Conservation land use classification (Exhibit B).

ZONING: Tahoe One-Family Residential (TR1) (Exhibit C)

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

RECOMMENDATION:

Staff recommends the Planning Commission take the following actions:

1. Find that the project is Categorical Exempt pursuant to CEQA Guidelines Section 15305(a); and
2. Deny Variance V10-0001 based on the Findings in Attachment 1.

Should the Planning Commission or approving authority make appropriate Findings for Approval, staff would recommend conditional approval subject to the Conditions of Approval in Attachment 2.

STAFF ANALYSIS

Project Description: The applicant is requesting a variance to reduce the front yard setback from 20 feet to 1 foot and the side yard setback from 5 feet to 1 foot, respectively, to allow a single story garage on an existing parking pad. For details, refer to the project site plan, Exhibit D.

Site Description: The 2.55 acre parcel is located in the Meeks Bay area on the east side of Scenic Drive at an approximate elevation of 6,400 feet above mean sea level. Existing improvements at the subject site include a primary residence and paved parking pad (See Site Photographs, Exhibit H).

Adjacent Land Uses:

	Zoning	General Plan	Land Use/Improvements
Site	TR1	AP (TRPA Regional Plan)	Residential / primary residence, asphalt parking pad
North	TR1	PAS 148*	Residential / single family residence
South	TR1	PAS 148	Residential / single family residence
East	TR1	PAS 148	Residential / single family residence
West	TR1	PAS 148	Residential / undeveloped

*Plan Area Statement 148, Meeks Creek, which is primarily resource conservation use.

Discussion: The permitting of the proposed variance to allow one foot front yard and side yard setbacks for a proposed single story garage is not anticipated to negatively impact other uses in the project area. Due to screening from adjacent vegetation and the existing single family residence, the proposed garage will have minimal impact on the viewsheds of adjacent residences and vehicular traffic on adjacent State Route 89. In addition, regular use of the existing parking pad has not obstructed road access or snow clearing operations to date. However, it should be noted that several public utility companies maintain active easements

within the area of the proposed garage (Exhibit K), and continued use of these easements over time could be detrimental to public health, safety and welfare or be injurious to the neighborhood. A detailed discussion of these issues follows under the “variance findings” section below.

General Plan: The County General Plan designates the subject parcel as Adopted Plan, which refers to the Tahoe Regional Planning Agency’s Regional Plan. The parcel is located within TRPA Plan Area Statement (PAS) 148, Meeks Creek, with a land use classification of Conservation (Exhibit B). This Conservation land use designation allows the establishment of residential uses by (TRPA) Special Use Permit only. However, a single family residence had been previously permitted in 1979, establishing a single family residence as a legal nonconforming use, and is therefore allowed by the PAS. A secondary residential use, including a garage, can therefore be allowed by-right. Accordingly, the granting of this variance conforms to the Adopted Plan land use designation.

The County General Plan provides broad deference to the TRPA Regional Plan, for the implementation of related General Plan policies and for the review of County discretionary projects. With regard to the Tahoe Basin, the primary goal of the County General Plan is to integrate the County’s regulations with those of TRPA, to eliminate inconsistencies with the Regional Plan and to simplify the regulatory environment in the Tahoe Basin, as articulated in *Goal 2.10* of the *County General Plan* and its associated policies.

Tahoe Regional Planning Agency (TRPA): TRPA approval would be required to construct the proposed single story private garage.

Zoning: With the exception of the proposed zoning setback variance, the construction of a residential accessory structure would be permitted by-right in the TR1 Zone District. As proposed, the project is consistent with all other development standards contained within Section 17.56.040 of the Zoning Ordinance. Approval by the Planning Commission is required for modification to the zone district development standards pursuant to Section 17.56.040.

Variance Findings: The granting of a variance requires four findings pursuant to Section 17.22.630 of the County Zoning Ordinance. Accordingly, these findings are shown below with a discussion of the issues related to each finding. Appropriate findings are also listed in Attachment 1 of this report.

Required Finding 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.

Virtually the entire subject parcel is constrained by the lack of additional area to locate a new garage outside the setbacks required by Section 17.56.040 due to a combination of excessive slope (exceeding 40 percent) and TRPA Scenic Highway Corridor screening requirements. If this Variance is approved, the proposed garage site would require only minimal grading/soil disturbance and the proposed structure would be screened from the viewshed of a designated

Scenic Highway Corridor (State Route 89) by a combination of existing trees and the existing residence (See site photographs, Exhibit H). In addition, Section 30.13.C (3) of the TRPA Code of Ordinances (Exhibit J) requires all projects within the viewshed of Scenic Highway Corridors “be sited in such a manner that they are not visually evident from the scenic highway.” As proposed, this project will be sited to comply with this requirement. However, if the proposed garage was constructed outside the required zoning setbacks, the project would require both a significant amount of grading/soil disturbance and virtually eliminate screening from the existing vegetation and residence, both of which would likely cause a significant visual impact. Therefore, due to excessive slope and significant scenic concerns, it can be found that there are exceptional or extraordinary circumstances or conditions applying to the land, building or use referred to in this application, and that these circumstances have not resulted from any act of the owner or applicant. Accordingly, Finding 2.1 can be made.

Required Finding 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.

Noncommercial accessory buildings and structures, including garages, are among uses allowed by right in the Tahoe One Family (TR1) Zone District. Further, it has been determined that garages in the Lake Tahoe Basin constitute a reasonable use due to the excessive amount of annual snowfall the area experiences. By requiring the applicant to locate a garage in accordance with the building setbacks of the Tahoe One Family (TR1) Zone District, the strict application of the provisions of the ordinance would thus deprive the applicant of the reasonable use of the land or building allowed for other land in the vicinity and the same zone, and therefore, Finding 2.2 can be made.

Required Finding 2.3: The variance is the minimum necessary for the reasonable use of the land or building.

Staff has determined that the variance is not the minimum necessary for the reasonable use of the land or building because there are other locations on the subject parcel that would allow for a single story garage to be consistent with the building setbacks and Development Standards of Section 17.56.040 of the Zoning Ordinance. In addition, by permitting the existing parking pad in 2001 (Building Permit 113603), the applicant had already satisfied the County off-street parking requirements of Section 17.18.060 for an existing single family residence and therefore, a Variance would not be necessary for the reasonable use of the land or building. Therefore, Finding 2.3 can not be made.

Required Finding 2.4: The variance is in conformity with the intent of this article and not detrimental to public health, safety and welfare, or injurious to the neighborhood.

The variance is not in conformity with the intent of this article and would be detrimental to the public health, safety and welfare or injurious to the neighborhood because there are two active public utility easements within the area of the proposed garage, and staff has determined that continued use of these easements over time has the potential to constitute a significant risk to public health, safety and welfare or be injurious to the neighborhood. The County has not

permitted structures within utility easements due to potential risk to public health, safety and legal liability concerns for both the utility agencies and the County. Approval of this Variance could establish a precedent in the public record potentially allowing future encroachments into utility easements. For the above reasons, it is staff's opinion that structures should not be permitted within utility easements, and, therefore, Finding 2.4 can not be made.

However, it should also be noted that the project was distributed to all affected utility companies and no objections were raised. Further, written comments and documents from affected utility companies, including a Distribution Encroachment Agreement received from the Sierra Pacific Power Company, indicated that as proposed, the requested variance would not interfere with, or obstruct, their operations. These documents are included as Exhibit I.

Conclusion: As discussed above, staff recommends that the Planning Commission deny the Variance, as it is staff's opinion that Required Findings 2.3 and 2.4 **can not** be made. However, if the Commission chooses to approve this project, this project should then be subject to the Conditions of Approval shown as Attachment 2.

ENVIRONMENTAL REVIEW

This project has been found to be Categorically Exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15305(a) that allows minor alterations in land use limitations for a variance. No further environmental analysis is necessary. A \$50.00 administrative processing fee is required by the County Recorder to file the Notice of Exemption.

SUPPORT INFORMATION

Attachments to Staff Report:

Attachment 1	Findings
Attachment 2	Potential Conditions of Approval
Exhibit A	Location Map
Exhibit B	TRPA Plan Area Statements, 148-Meeks Creek
Exhibit C	Zoning Map
Exhibit D	Site Plan
Exhibit E	Floor Plans
Exhibit F	Building Elevations
Exhibit G	Applicant's Variance Support Information
Exhibit H	Site Photographs
Exhibit I	Utility Comment Letters
Exhibit J	TRPA Code of Ordinances, Section 30.13.C.3
Exhibit K	Utility Easement Documents

ATTACHMENT 1

FINDINGS

Variance V10-0001/Stein Planning Commission/September 9, 2010

1.0 CEQA FINDINGS

- 1.1 This project has been found to be Categorical Exempt from the requirements of CEQA pursuant to Section 15305(a) that allows minor alterations in land use limitations for a variance.

2.0 REQUIRED VARIANCE FINDINGS

- 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.*

Virtually the entire subject parcel is constrained by the lack of additional area to locate a new garage outside the setbacks required by Section 17.56.040 due to a combination of excessive slope and TRPA Scenic Highway Corridor screening requirements. Therefore, due to excessive slope and significant scenic concerns, it can be found that there are exceptional or extraordinary circumstances or conditions applying to the land, building or use referred to in this application, and that these circumstances have not resulted from any act of the owner or applicant.

Finding Conclusion: Finding 2.1 can be made.

- 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.*

Noncommercial accessory buildings and structures, including garages, are among uses allowed by-right in the Tahoe One Family (TR1) Zone District. Further, it has been determined that garages in the Lake Tahoe Basin constitute a reasonable use due to the excessive amount of annual snowfall the area experiences. By requiring the applicant to locate a garage in accordance with the building setbacks of the Tahoe One Family (TR1) Zone District, the strict application of the provisions of the ordinance would thus deprive the applicant of the reasonable use of the land or building allowed for other land in the vicinity and the same zone.

Finding Conclusion: Finding 2.2 can be made.

2.3 *The variance is the minimum necessary for the reasonable use of the land or building.*

The variance is not the minimum necessary for the reasonable use of the land or building because there are other locations on the subject parcel that this same use can potentially be allowed. In addition, by permitting the existing parking pad (2001), the applicant had already satisfied County off-street parking requirements for the existing single family residence and therefore, a Variance would not be necessary for the reasonable use of the land or building.

Finding Conclusion: Finding 2.3 can not be made.

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

The variance is not in conformity with the intent of this article and would be detrimental to the public health, safety and welfare or injurious to the neighborhood because there are active public utility easements within the area of the proposed garage, and continued use of these easements has the potential to constitute a risk to public health, safety and welfare or be injurious to the neighborhood.

Finding Conclusion: Finding 2.4 can not be made.

3.0 FINDING CONCLUSION

3.1 *Pursuant to Section 17.22.630, all four Findings are required.*

Since Findings 2.3 and 2.4 can not be made, the variance request is denied.

ATTACHMENT 2

CONDITIONS OF APPROVAL

**Variance V10-0001/Stein
Planning Commission/September 9, 2010**

CONDITIONS OF APPROVAL

1. This variance is based upon and limited to compliance with the project description, the approved site plan (Exhibit D), 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:

Variance to reduce the front yard setback from 20 feet to one foot and the side yard setback from five feet to one foot, respectively, to allow a single story garage on an existing parking pad, as shown on the approved site plan, Exhibit D.

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.

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.

The developer and land owner shall defend, indemnify, and hold harmless El Dorado County and its agents, officers, and employees from any claim, action, or proceeding 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. The County shall notify the applicant of any claim, action, or proceeding, and the County shall cooperate fully in the defense.

3. Prior to issuance of any permits, the applicant shall pay all Development Services fees in full.

4. Prior to issuance of a building permit, 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.
5. Prior to issuance of a building permit, the applicant shall record a Hold Harmless Agreement, or equivalent legal instrument approved by County Counsel, with El Dorado County, holding the County harmless for any public health, safety or welfare issues that may arise, or be caused by, locating the proposed structure within utility easement(s).
6. Any exterior lighting installed as a result of construction of the proposed garage shall conform to § 17.14.170, and be fully shielded pursuant to the Illumination Engineering Society of North America's (IESNA) full cut-off designation.
7. The applicant shall submit to Planning Services the \$50.00 administrative filing fee prior to filing of the Notice of Exemption by the County. No permits shall be issued until said fee is paid.
8. All site improvements, building locations, building orientations, and materials shall substantially conform to the approved site plan, floor plans and elevations (Exhibits D, E, F)
9. Approval of this Variance authorizes the setback encroachment for the garage only, as shown on the approved site plan. All other structures shall conform to the setbacks as specified in the TR1 Zone District.