

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



**Agenda of:** February 23, 2012

**Item No.:** 8

**Staff:** Tom Purciel

## VARIANCE

**FILE NUMBER:** V07-0010/Bird

**APPLICANT:** Dennis Bird

**AGENT:** Mike Dill, Aspen Environmental Services

**ARCHITECT:** Sorin I. Comanescu

**REQUEST:** Variance to reduce the front-yard setback from 20 feet to 10 feet for a second-story addition and to allow an existing retaining wall to encroach approximately 13 feet into a County right-of-way.

**LOCATION:** On the east side of Pinewood Drive, approximately 250 feet south of the intersection with Mulberry Drive, in the Meyers area, Supervisorial District 5. (Exhibit A)

**APN:** 035-142-05

**LOT SIZE:** 10,000 square feet

**GENERAL PLAN:** Adopted Plan (AP), Tahoe Regional Planning Agency (TRPA) Regional Plan, Tahoe Paradise-Mandan Plan Area Statement 122, residential land use classification (Exhibit C)

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

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

**RECOMMENDATION**

Staff recommends that the Planning Commission take the following actions:

1. Find that the project is Categorically Exempt pursuant to CEQA Guidelines Section 15305(a); and
2. Approve Variance V07-0010 subject to the Conditions of Approval in Attachment 1, based on the Findings in Attachment 2.

**STAFF ANALYSIS**

**Project Description:** The applicant is requesting a variance to reduce the front-yard setback from 20 feet to 10 feet for a proposed second-story addition, and to allow an existing four-foot high retaining wall to encroach approximately 13 feet into a County right-of-way, as shown on the project site plan, Exhibit D.

**Site Description:** The 10,000 square-foot subject lot is located in the Meyers area on the east side of Pinewood Drive at an approximate elevation of 6,300 feet above mean sea level. Existing improvements at the subject site include a primary residence and single story detached garage.

**Adjacent Land Uses:**

	Zoning	General Plan	Land Use/Improvements
<b>Site</b>	TR1	TRPA Regional Plan (PAS 122*)	Residential/single family residence, single story detached garage
<b>North</b>	TR1	PAS 122	Residential/ single family residence
<b>South</b>	TR1	PAS 122	Residential/undeveloped
<b>East</b>	TR1	PAS 122	Residential/undeveloped
<b>West</b>	TR1	PAS 122	Residential/single family residence

\*Plan Area Statement 122, Tahoe Paradise-Mandan, which is primarily residential use.

Discussion: The permitting of the proposed variance to allow a 10-foot front-yard setback for the proposed second story addition and 13-foot right-of-way encroachment for an existing retaining wall is not anticipated to negatively impact other residential uses in the project area. The proposed second story addition would be located adjacent to the existing single-family residence and above the rear portion of the existing garage. At the proposed setback, the addition would be located approximately 20 feet from the edge of pavement for Pinewood Drive and would not significantly affect the viewsheds of adjacent residences. While the existing 4-foot high retaining wall is located approximately 13 feet within the right-of-way for Pinewood rive, it is approximately 7 feet from the actual edge of pavement, and, as

conditioned, is not expected to cause a significant impact to travel, public utility maintenance, or snow clearing operations along Pinewood Drive. Further, although the proposed addition would encroach five feet into an existing 15-foot front yard Public Utility and Light and Air Easement (Exhibits D and J), this easement has not been historically used for utility infrastructure and, due to the existing garage encroachment, the proposed addition would have a negligible additional impact on light and air.

In addition, in order to minimize potential risk to public health, safety and legal liability for both public utility agencies and the County, the applicant would be required to abandon the rear five feet of the front yard Public Utility/Light and Air Easement. Note: The Board of Supervisors approved TM60-0001-C on January 10, 2012, amending Recorded Map C-83 for Lot 62, reducing the above said front yard Public Utilities/Light and Air Easement to 10 feet. Accordingly, to complete the easement abandonment process, the applicant will also be required to record a Certificate of Correction for Lot 62 prior to issuance of building permit(s). Therefore, as proposed and conditioned, this project is not anticipated to have a significant affect on the neighborhood, existing utility infrastructure or operations, constitute a significant risk to public health, safety and welfare, or be injurious to the neighborhood. A detailed discussion of these issues follows under the “variance findings” section of this report.

**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) 122, Tahoe Paradise-Mandan, with a land use designation of Residential (Exhibit G). This Residential land use designation allows residential accessory structures, both attached and detached. The granting of this variance, therefore, conforms to the Plan Area Statement.

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 second story residential accessory structure.

**Zoning:** With the exception of the proposed zoning setback variance, the construction of a residential accessory use/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.

**Public and Agency Comments:** This project was distributed to all affected public utility companies and also posted for public notice. To date, comments have been received from three public utility companies. Their comment letters are included as Exhibit K.

**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 for approval are also listed in Attachment 2 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.*

The existing garage and retaining wall were permitted in their current locations in 1976. At that time, the prior owner and County Building Department staff relied on an inaccurate parcel survey indicating the garage footprint and retaining wall were to be located entirely within the subject parcel. Based on a review of current County records and a recent parcel survey, the present owner discovered the garage was actually constructed 6.8 feet inside the County right-of-way and the retaining wall approximately 13 feet inside the County right-of-way. Based on photographic evidence (Exhibit I), the above mentioned garage and retaining wall are the only structures in the vicinity located within the County right-of-way for Pinewood Drive.

Additional living space can not be located elsewhere on the parcel due to TRPA lot coverage restrictions; additional surface coverage would be prohibited. In addition, the parcel is further constrained by the location of large rock outcroppings (See Site Plan, Exhibit D). Due to a unique combination of historic parcel survey errors, TRPA coverage restrictions and natural features, it can be found that 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 that the circumstances have not resulted from any act of the owner or applicant. Therefore, 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.*

Residential uses, including single-story garages and other noncommercial accessory uses, are among uses allowed by-right in the Tahoe One Family (TR1) Zone District. However, due to parcel topography, the orientation of the existing residence and naturally occurring rock formations (See Site Plan, Exhibit D), relocating additional living space outside of the Zoning Ordinance setback would not be possible due to the constraints imposed by the Development Standards of the Tahoe One Family (TR1) Zone District. In addition, the existing retaining wall was constructed concurrently with the existing garage for purposes of stabilizing a steep earth bank and to create both a safe garage access and seasonal snow storage area. Therefore, the strict application of the Development Standards of the TR1 Zone District would deprive the applicant of the reasonable use of the land or building allowed for other land in the vicinity and the same zone.

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

Additional living space can not be located elsewhere on the parcel due to TRPA lot coverage restrictions; additional surface coverage would be prohibited. In addition, no other locations are feasible due to large rock outcroppings (Exhibit D). Therefore, the proposed living space has been located partially over the footprint of the existing garage in order to best comply with County and TRPA requirements. Further, due to parcel topography, the existing retaining wall was constructed to allow reasonable access to the garage and adjacent driveway. Therefore, it can be found that the variance is the minimum necessary for the reasonable use of the land or building.

Required Finding 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 project was distributed to all applicable responsible agencies and no objections were raised. In addition, comment letters received from the South Tahoe Department of Transportation and affected public utility companies (Exhibit K) indicated that, as proposed, the requested variance would not interfere with their operations. Therefore, as conditioned, the variance will be in conformity with the intent of this article, as the proposed use is not considered detrimental to the public health, safety, and welfare, or injurious to the neighborhood, because the proposed project does not conflict with any standards contained in Section 17.28.010 thru 17.28.040, 17.56.010 thru 17.56.040 of the County Code.

**Conclusion:** As discussed above, staff finds the variance, as proposed and conditioned, is consistent with all applicable provisions of County Zoning Ordinance Title 17.

## **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 .....	Conditions of Approval
Attachment 2 .....	Findings for Approval
Exhibit A .....	Location Map
Exhibit B .....	General Plan Land Use Map
Exhibit C .....	Zone District Map
Exhibit D .....	Site Plan
Exhibit E .....	Floor Plans
Exhibit F .....	Building Elevations
Exhibit G .....	TRPA Plan Area Statement 122, Tahoe Paradise-Mandan
Exhibit H .....	Applicant's Variance Support Information
Exhibit I .....	Site Photographs
Exhibit J .....	Subdivision Map C-83; Sierra Park, Unit 2
Exhibit K .....	Utility Comment Letters

# **ATTACHMENT 1**

## **CONDITIONS OF APPROVAL**

### **Variance Application V07-0010/Bird Planning Commission/February 23, 2012**

#### **Planning Services**

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 10 feet for a proposed second-story addition and to allow an existing right-of-way encroachment of approximately 13 feet for an existing four-foot high retaining wall, 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.

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, a Subdivision Map Amendment shall be approved, and a Certificate of Correction recorded, to remove affected portion(s) of a 15-foot front-yard Public Utility / Light and Air Easement for Lot 62, shown as "Set Back Line" on Recorded Map C-83, Sierra Park Subdivision, Unit 2 (Exhibit J).
5. Any exterior lighting installed as a result of construction of the second story addition 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.
6. 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.
7. 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).

**Department of Transportation**

8. Hold Harmless Agreement: Prior to issuance of building permit, the applicant shall execute a hold harmless and indemnification agreement protecting the County from liability arising as a result of driveway and retaining wall encroachment into the road right-of-way for benefit of the existing home, as shown on the approved site plan. The form of said document shall be reviewed and approved by the County Counsel, and once approved, shall be recorded with the El Dorado County Recorder's Office. An official copy shall be sent to the Department of Transportation.
9. Notice of Restriction for Driveway: The applicant shall have a notice of restriction recorded to restrict parking in driveway in the winter months (as defined by Tahoe Regional Planning Agency) as stated in the DOT-TED conditions of approval prior to issuance of building permit.
10. Notice of Restriction for Retaining Wall: The applicant shall have a notice of restriction recorded stating that the applicant shall remove the existing 4-foot retaining wall, as shown on the approved site plan, within 30-days of notice from the Department of Transportation at the owner's expense. The recordation shall be completed prior to issuance of future building permit(s).

## **ATTACHMENT 2**

### **FINDINGS**

#### **Variance V07-0010/Bird Planning Commission/February 23, 2012**

#### **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 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.*

Additional living space can not be located elsewhere on the parcel due to TRPA lot coverage restrictions; additional surface coverage would be prohibited. In addition, the parcel is further constrained by the location of the existing residence and large rock outcroppings. Further, the existing retaining wall was constructed by a previous owner and allowed within the County right-of-way based on an erroneous parcel survey.

Accordingly, it can be found that 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 that the circumstances have not resulted from any act of the owner or applicant. Therefore, 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.*

Residential uses, including single-story garages and other noncommercial accessory uses, are among uses allowed by right in the Tahoe One Family (TR1) Zone District. However, due to the location of the existing residence and naturally occurring rock formations, relocating additional living space outside of the Zoning Ordinance setback would not be possible due to the constraints imposed by the Development Standards of the Tahoe One Family (TR1) Zone District, and thus deprive the applicant of the same reasonable use of the land as the other parcels in the vicinity.

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

The proposed living space has been located partially over the footprint of the existing garage in order to best comply with both the development standards of the TR1 Zone District and TRPA lot coverage restrictions. In addition, the existing retaining wall was constructed to stabilize front slopes and, therefore, allow unobstructed access to the garage and adjacent driveway. Therefore, it can be found that the variance is the minimum necessary for the reasonable use of the land or building.

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 project was distributed to all applicable responsible agencies and affected public utility companies and no objections were raised. Therefore, as conditioned, the variance will be in conformity with the intent of this article, as the proposed use is not considered detrimental to the public health, safety, and welfare, or injurious to the neighborhood, because the proposed project does not conflict with any standards contained in Section 17.28.010 thru 17.28.040, 17.56.010 thru 17.56.040 of the County Code.