

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



Agenda of:	January 10, 2013
Item No.:	8
Staff:	Tom Dougherty

VARIANCE

FILE NUMBER: V12-0005/Walker Riparian Setback Reduction

APPLICANT: Harrie Alley Walker

REQUEST: Finding of Consistency with General Plan Policy 7.3.3.4 and request for a reduction of the perennial stream setback from 100 feet to no less than 46 feet from the top of bank of the Middle Fork Cosumnes River for a residential deck and covered porch.

LOCATION: Northwest side of Stream Way in the Somerset/Fairplay area, Supervisorial District 2 (Exhibit A).

APN: 046-141-02 (Exhibit B)

LOT SIZE: 0.17 acre

GENERAL PLAN: High Density Residential-Platted Lands-Important Biological Corridor (HDR-PL-IBC) (Exhibit C)

ZONING: One-Family Residential (R1) Exhibit D)

ENVIRONMENTAL DOCUMENT: Negative Declaration

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

1. Adopt the Negative Declaration based on the Initial Study prepared by staff;
2. Find that the proposed reduction of the riparian setback is consistent with the intent of General Plan Policies 7.3.3.4 and 7.4.2.9 and the Interim Interpretive Guidelines for Policy 7.3.3.4.; and
3. Approve V12-0005 subject to the Conditions of Approval in Attachment 1, based on the Findings in Attachment 2.

PROJECT INFORMATION

Project Description: Request for a Finding of Consistency with General Plan Policy 7.3.3.4 and a request for a reduction of the perennial stream setback from 100 feet to no less than 46 feet from the top of bank of the Middle Fork Cosumnes River for a residential deck and covered porch. The variance is requested pursuant to Zoning Ordinance Section 17.22.330 which requires development projects, including residential building and grading permits, to be consistent with the General Plan when located within the Important Biological Corridor overlay designation (IBC).

Background: Building Permit 205489 was submitted on February 10, 2012 to remodel the existing 635 square-foot dwelling. The applicant was informed by Planning Services Permit Center that the submittal of a variance application would be required. That application was received November 2, 2012.

Currently a wood deck with an enclosed storage area below is located on the north side of the home. Part of the deck is covered by a wood frame roof. The existing distance from the edge of the deck to the River is approximately 50 feet. A small backyard north of and adjacent to the deck is enclosed by a wire mesh fence approximately 3.5 feet high. The backyard is currently used to store old materials and is outdoor space for a dog.

The parcel extends beyond the existing backyard north towards the River. The proposed project would enclose approximately half of the existing deck and incorporate it into the existing home. The deck would be extended 4 feet to the north, and would be supported by 4x4 wooden posts. A 3.5 ft high guard rail would be built along the edge of the deck. Upon project completion the distance from the edge of the deck to the River would be 46 feet. (See Exhibits E and F).

Site Description: The parcel is Lot 25 of the Outingdale Subdivision, which was created in 1928 as a resort, with the adjacent Middle Fork Cosumnes River (River) being its main attraction. The parcel is located at approximately 1,650 feet above mean sea level in an area of high-density residential development. The River flows through the northern end of the parcel. There is an ephemeral channel that has been excavated and straightened between the subject parcel and the parcel to the east. The channel drains part of the neighborhood and road runoff from Stream Way. The biological community above the top of bank of the River is Ponderosa pine forest, although the understory is highly disturbed due to the high-density neighborhood and attendant roads and landscaping.

Adjacent Land Uses

	Zoning	General Plan	Land Use/Improvements
Site	R1	HDR-IBC-PL	Residential / single family residence
North	RE-5	OS-IBC	Open space/Middle Fork Cosumnes River
South	R1	HDR-IBC-PL	Residential / single- family residence
East	R1	HDR-IBC-PL	Residential / Single-family residence
West	R1	HDR-IBC-PL	Residential / single family residence

STAFF ANALYSIS

General Plan: With the exception of the request for a reduction of riparian setbacks as required by General Plan Policy 7.3.3.4, this project would be consistent with all other applicable General Plan Policies. As directed by the Interpretive Guidelines for General Plan Policy 7.3.3.4, for projects within the IBC and those requesting to reduce the interim setback for development beyond the reductions (50 feet) provided for in the Guidelines, the Planning Commission is required to review the request at a public hearing. The Commission must consider all evidence and make all required findings prescribed in County Code Section 17.22.630 (Variances). The Commission must also conclude, based on substantial evidence, that the alternative setback would be consistent with the General Plan.

Interim Interpretive Guidelines: General Plan Policy 7.3.3.4 requires a minimum setback of 100 feet from all perennial streams, rivers, and lakes, and a 50 foot setback from intermittent streams and wetlands until standards for buffers and special setbacks are established in the zoning ordinance. Policy 7.3.3.4 states that the interim standards may be modified if more detailed information relating to slope, soil stability, vegetation, habitat or other site- or project-specific conditions, supplied as part of the review for a specific project, demonstrates that a different setback is necessary or would be sufficient to protect the particular riparian area at issue.

The Guidelines require project-specific biological reports to address all applicable provisions of General Plan Policy 7.4.2.9 for IBC designated lands, ensuring protection of wildlife habitat. “General Plan Policy 7.3.3.4 Analysis of Setback to the Middle Fork Cosumnes River for Proposed Home Renovation” dated October 17, 2012 (Setback Analysis), was provided by the applicant (Attachment 5 of the Initial Study Environmental Checklist). The Setback Analysis reviewed the project for consistency with General Plan Policies 7.3.3.4 and 7.4.2.9 and concluded that the proposed project, allowing construction of a covered deck and porch within a 46 foot minimum setback from the perennial river, with County adopted Best Management Practices included during the building permit process, would not affect water quality nor have the potential to cause any direct or indirect impact or disturbance to riparian vegetation, wetlands or lakes, wildlife movement or affect any Special Status plant or animal species. Staff concurs with this analysis.

Staff has reviewed the Setback Analysis and based on the project biologist’s field observations, review of all applicable special-status species lists and review of project plans, staff is satisfied that the recommendations provided would protect the perennial river.

Flood Zone: The project parcel is located within in Flood Zone A (FIRM Panel 06017C1025E, revised 9/26/08) which are areas of potential flooding. Zoning Ordinance Section 17.25.050.A.3.a requires that improvements to residential structures in Zone A are required to have finished floors two-feet above the Base Flood Elevation (High Water Line). The applicant submitted a Historical Flood Elevation prepared by Site Consulting, Inc., Land Surveying Services, dated September 18, 2012 (Attachment 6 of the Initial Study Environmental Checklist) which established the project finished floor would be 1.9 feet above the historic high water level for the River. Pursuant to Section 17.25.060.C.4, staff determined that although 1.9 feet is less than two feet, this will provide both relief to the applicant and would preserve the integrity of the

Ordinance requirement because the addition posts preserve the existing grade of the finished floor.

ENVIRONMENTAL REVIEW: Staff has prepared an Initial Study Environmental Checklist with discussion, provided in Exhibit H, to determine if the Variance project may have a significant effect on the environment. Based on the Initial Study, staff has determined that there is no substantial evidence that the proposed project would have a significant effect on the environment, and a Negative Declaration has been prepared.

This project is located within an area that has wildlife resources (riparian lands, wetlands, watercourse, native plant life, rare plants, threatened or endangered plants or animals, etc.) and was referred to the California Department of Fish and Game. In accordance with State Legislation (California Fish and Game Code Section 711.4), the project is subject to a fee of \$2,156.25 after approval, but prior to filing the Notice of Determination on the project. This fee, plus a separate \$50.00 recording fee, is to be submitted to Planning Services and must be made payable to El Dorado County. The \$2,156.25 is forwarded to the State Department of Fish and Game and issued to defray the cost of managing and protecting the states fish and wildlife resources.

SUPPORT INFORMATION

Attachments to Staff Report:

Attachment 1	Conditions of Approval
Attachment 2	Findings
Exhibit A	Location Map
Exhibit B	Assessor's Parcel Number Map
Exhibit C	General Plan Land Use Designations Map
Exhibit D	Zoning Map
Exhibit E	Plot Plan, Sheet T; May 29, 2009
Exhibit F.....	Elevations, Sheet A5; June 7, 2010
Exhibit G.....	Applicant-submitted Variance Findings Support Information
Exhibit H.....	Proposed Negative Declaration and Initial Study

ATTACHMENT 1

CONDITIONS OF APPROVAL

Variance V12-0005/Walker Riparian Setback Reduction Planning Commission/January 10, 2013

1. The project is based upon and limited to compliance with the project description, the hearing exhibits marked Exhibit E (Site Plan) and F (Elevations), 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 Finding of Consistency with General Plan Policy 7.3.3.4 for reduction of a riparian river setback from 100 feet to no less than 46 feet from the top of bank of the Middle Fork Cosumnes River for a residential deck and covered porch.

2. Fish and Game Fee: The applicant shall submit to Planning Services a \$50.00 recording fee and a \$2,156.25 Department of Fish and Game fee prior to filing of the Notice of Determination by the County. No permits shall be issued until said fees are paid.
3. 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.

ATTACHMENT 2

FINDINGS

Variance V12-0005/Walker Riparian Setback Reduction Planning Commission/January 10, 2013

1.0 CEQA FINDINGS

- 1.1 El Dorado County has considered the Negative Declaration. The Negative Declaration reflects the independent judgment of the County and has been completed in compliance with CEQA and is adequate for this project.
- 1.2 No significant impacts to the environment as a result of this project were identified in the initial study.
- 1.3 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 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 no resulted from any act of the owner or applicant.**

The parcel is constrained by steep topography, 0.17-acre size, the location of the Middle Fork of the Cosumnes River, existing utilities and the location of the existing septic system. As part of a proposed replacement residence, the proposed deck and covered porch would be located near the footprint of the existing dwelling. However, due to the above constraints, these structures could not reasonably be replaced outside the required riparian setback, and therefore, required 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.**

The project site is surrounded by similar residential uses. The applicant has followed the process set forth by General Plan Policy 7.3.3.4 and the Interim Interpretive Guidelines for that Policy. Strict application of the provisions would deprive the applicant of the reasonable use of the land for residential development. Therefore, required Finding 2.2 can be made.

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

The applicant's biologist has recommended a minimum setback of 46 feet from the perennial river to protect the integrity of the riparian habitat. Due to the parcel

constraints described in Finding 2.1 above, the proposed deck and porch coverings would allow protected circulation within the dwelling. This is the minimum variance that is necessary for the reasonable use of the land as a residential home site, and, therefore required Finding 2.3 can be made.

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.

Based on the project biologist's field observations, review of all applicable special-status species lists and review of project plans, the setback reduction from the perennial river on the project site has been designed for sufficient protection of the integrity of the riparian habitat, consistent with the intent of General Plan Policies 7.3.3.4 and 7.4.2.9. Further, the proposed porch and deck coverings, including the proposed riparian setback encroachment, will be sited within the existing developed area, and the additions will not be detrimental to the public health, safety and welfare, or be injurious to the neighborhood. Therefore, required Finding 2.4 can be made.

3.0 FINDINGS FOR GENERAL PLAN CONSISTENCY

3.1 The alternative setback is consistent with the General Plan.

The proposed project has been designed in a manner to ensure that alternative setbacks would not have an adverse effect on the perennial feature. A Negative Declaration was adopted in accordance with CEQA that recognizes that County adopted Best Management Practices will be incorporated into the project during the building permit process that reduces identified potential significant impacts to less-than-significant. The project will occur within an area consistently disturbed by residential use since the dwelling was constructed in 1954. The proposed project, therefore, is consistent with intent of General Plan Policy 7.3.3.4 by providing for an adequate setback for protection of natural riparian areas from impacts related to development for their importance to wildlife habitat, water purification, scenic values, and unique and sensitive plant life.