

**EL DORADO COUNTY DEVELOPMENT SERVICES
STAFF REPORT**



Agenda of: August 16, 2006
Item No.: 6.a.
Staff: Tom Dougherty

VARIANCE

FILE NUMBER: V 05-0007

APPLICANT: Wesley Fischer

REQUEST: Variance to allow an apartment to be eight-feet (8') from the northern property line within a 200-foot agricultural setback and within the thirty-foot (30') setback required by the Select Agricultural Ten-Acre (SA-10) Zone District.

LOCATION: On the north side of Larson Drive, at the intersection with Apple Tree Lane in the Camino area. (Exhibit A)

APN: 100-100-54

ACREAGE: 10.2 acres

GENERAL PLAN: Agricultural Lands (AL)/Agricultural District (A) Overlay (Exhibit B)

ZONING: Select Agricultural Ten-acre (SA-10) (Exhibit C)

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

SUMMARY RECOMMENDATION: Denial

BACKGROUND: The applicant submitted a variance application with Planning Services on December 30, 2005. At the April 12, 2006 public meeting with the County Agricultural Commission, the applicant's application was reviewed to consider allowing the continued use of an apartment that was built on the second floor of a barn without a County approved building permit. The apartment is located within the 200-foot agricultural setbacks from the rear and side property lines of the parcel.

The Agricultural Commission decided to take no action because all the required findings could not be made for administrative relief or under *General Plan Policy 8.1.4.1*. The applicant is now requesting a variance with the Planning Services to reduce the 200-foot agricultural setbacks pursuant to *Section 17.06.150 (A)* of *County Code*, “Special setbacks from agricultural production,” for the existing apartment.

The apartment was built without a building permit. There is an active Code Compliance case #154378 that was issued in March of 2004 for the apartment. The barn is believed to have been built in 1968 as a single-story building, according to information supplied by the applicant. The second-story was built in the late 1970s, also without a building permit. The packing shed and bake shop on the first floor were operating that whole time period. (Wally Thomas letter dated July 7, 2004). The apartment on the second floor was constructed in the early 1980s.

STAFF ANALYSIS

Project Description: Variance to allow an apartment to be eight-feet (8’) from the northern property line within a 200-foot agricultural setback required by *Section 17.06.150 (A)* and within the thirty-foot (30’) setback required by the Select Agricultural Ten-Acre (SA-10) Zone District by *Section 17.36.260*.

Site Description: The barn building is set back from Carson Road approximately 150 feet in the front (south) and contains graveled driveway areas, various non-native landscape shrubs and annual grasses. There are apple trees, annual grasses and shrubs to the west within the parcel boundary and non-native conifers overhanging the rear (north) fence from the neighboring parcel. The neighboring parcel has a garage and residence set back from the property line. The barn is set back approximately 18-feet from the edge of the road easement on Apple Tree Lane on the east side, with a graveled area within the setback and apple orchard directly across the road.

Adjacent Land Uses:

	Zoning	General Plan	Land Use/Improvements
Site	SA-10	AL/A	Single-family Residence/Horticulture
North	SA-10	AL/A	Single-family Residence/Horticulture
South	SA-10	AL/A	Single-family Residence/Horticulture
East	RE-5	RR	Single-family Residence/Horticulture
West	SA-10	AL/A	Single-family Residence/Horticulture

Discussion: The predominant uses of the surrounding parcels revolve around the growing and support activities of apple production.

General Plan: The General Plan designates the subject site as Agricultural Lands (AL), which permits a maximum of two (2) dwelling units to support agricultural purposes. *Policy 2.2.2.2* and

the Agricultural District (A) overlay encourage the expansion and support of agricultural enterprises as well as the protection of important agricultural croplands and their associated activities. The following General Plan policies apply to this project:

Policy: 2.2.5.2: *“All applications for discretionary projects or permits including, but not limited to, General Plan amendments, zoning boundary amendments, tentative maps for major and minor land divisions, and special use permits shall be reviewed to determine consistency with the policies of the General Plan. No approvals shall be granted unless a finding is made that the project or permit is consistent with the General Plan.”*

Policy: 8.1.3.2: *“Agriculturally incompatible uses adjacent to agricultural zoned lands within designated agricultural districts shall provide a minimum setback of 200-feet from the boundary of the agriculturally zoned lands. Administrative relief to these setbacks may be granted by the County Planning Director, where appropriate.”*

Discussion: The 10.399-acre project parcel was created by Parcel Map 48-65, recorded on May 30, 2003, which was the end result of a certificate of compliance and then a boundary line adjustment (BLA 01-0127 finalized May 30, 2003). *Section 17.06.150 of County Code* establishes that parcels created subsequent to August 11, 1983, which abut agricultural land located in the Agricultural District land use overlay, are subject to a 200-foot agricultural setback for uses non-compatible with agricultural operations. Additionally, the recently adopted interim guidelines for this policy applies to the setback regardless of the creation date of this parcel.

The subject parcel (APN 100-100-54) is located in the Camino area, and is within the Agricultural District General Plan land use overlay. The parcel is subject to the 200-foot agricultural setback from all property lines, due to the surrounding parcels being located within SA-10 Zone District and located within the Agricultural District land use overlay. The setbacks from the apartment to the property line to the north is eight-feet (8') which is within the 200-foot area meant to be set back for protection and thus conflicts with the stated General Plan policies.

The intent of agricultural setbacks is to protect agricultural and timber uses from adjacent non-compatible land uses. *County Code* defines non-compatible uses as “those uses of land, which are apt to conflict with agricultural uses due to sprays, dust, noise, equipment, or products escaping the agricultural property in a manner, which threatens the health, safety, or welfare of adjacent occupants or land uses. It also means those uses, which are apt to cause conflict and threaten the loss of viability of agricultural use due to trespass, vandalism, theft, complaint, and dog-related problems. It includes, but is not limited to residential structures, nursing homes, public schools, playgrounds, swimming pools, ponds, and churches.” (*Section 17.06.050.GG*).

The parcel to the north is zoned Select Agricultural Ten-Acre (SA-10). Since the apartment is located within the 200-foot setback of the property line, it is inconsistent with Policy 8.1.3.2

Policy: 8.1.4.1: *“The County Agricultural Commission shall review all discretionary development applications and the location of proposed public facilities involving Agricultural District and Williamson Act Contract land, or lands adjacent to such lands, and*

shall make recommendations to the reviewing authority. Before granting approval, a determination shall be made by the approving authority that the proposed use:"

- A. "Will not intensify existing conflicts or add new conflicts between adjacent residential areas and agricultural activities; and
- B. Will not create an island effect wherein agricultural lands located between the project site and other non-agricultural lands will be negatively affected; and
- C. Will not significantly reduce or destroy the buffering effect of existing large parcel sizes adjacent to agricultural lands."

Discussion: The Agricultural Commission reviewed both the request for the variance and decided they could not make the required findings, therefore the apartment is inconsistent with *Policy 8.1.4.1*.

Conclusion: As discussed above, staff finds that the project, as proposed/conditioned, does not conform to the General Plan.

Zoning: The subject parcel is in the Select Agricultural (SA-10) Zone District, which allows a single-family dwelling by right as specified under *Section 17.36.230(A)*. All development on a parcel within the SA-10 Zone District is subject to the development criteria listed under *Section 17.36.260* of the *County Code*. *Section 17.36.260 (B)* establishes the following minimum yard setbacks:

Front: 30 feet
Sides: 30 feet
Rear: 30 feet.

The distance to the parcel boundaries for the apartment, not the barn itself, as it exists are as follows:

Front (south): 160 feet
West side: 105 feet
East side: 380 feet to parcel boundary, 18 feet to the edge of the road easement on Apple Tree Lane.
Rear (north): 8 feet

Section 17.06.150 of *County Code* requires agricultural setbacks for non-compatible uses on parcels adjacent to agriculturally zoned properties.

Discussion: A residential structure is defined as a non-compatible use under *Section 17.06.050.GG* of the *County Code*. No matter what the allowed setbacks were at the time of construction, the structure would not be able to get legal non-conforming status because the apartment was built

without an approved building permit. The recent boundary line adjustment technically, currently establishes the creation date of the subject parcel as May 30, 2003.

The County Board of Supervisors adopted Resolution 176-97, which provides the required findings for administrative relief. Requests for administrative relief are subject to all required findings of Resolution 176-97, and are approved by the Agricultural Commission. The Development Services Director or designee does not have authority under Resolution 176-97 and the Agricultural Commission could not make the proper findings for Administrative Relief or under General Plan Policy 8.1.4.1.

Conclusion: It cannot be found that the existing residential component of the barn structure meets the setbacks required by *Zoning Code Sections 17.36.260* for Select Agricultural (SA-10) required yard setbacks or *17.06.150* for required agricultural setbacks.

Variance: A variance is required to allow development of the proposed single-family dwelling within the 200-foot agricultural setbacks from the east (side), west (side), and north (front) property lines.

Any residential development will likely be over 200-feetaway from the north (rear) property line. *Section 17.22.600 (Variance)* of the *County Code* establishes that the purpose of a variance is to provide a procedure in which the provisions of this Title (*Zoning Ordinance*) may be varied or modified in cases where practical difficulties and unnecessary hardships make strict application infeasible.

The granting of a variance requires the making of four (4) findings pursuant to *Section 17.22.630* of the *County Code*. These findings are listed below with a discussion in regards to this variance request.

Required Finding 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.*

Discussion: Setbacks for agricultural protection in agricultural districts are applied equally for parcels in the County as directed by *General Plan Policy 8.1.3.2* and implemented by *Section 17.06.150* of the *El Dorado County Zoning Ordinance*. The existing apartment was built without a building permit by a previous owner and was not constructed with regard to required setbacks. There are no topographical constraints as the direct project vicinity is generally flat. A single-family dwelling could potentially be constructed elsewhere on the 10.2-acre parcel and meet the required zoning and agricultural setbacks. Finding 1 cannot be made for the requested variance.

Required Finding 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.*

Discussion: The strict application of the agricultural setbacks pursuant to *Section 17.06.150 of County Code* does not prohibit the development of non-compatible uses for the entirety of the 10.399-acre project parcel. A single-family dwelling could potentially be constructed elsewhere on the 10.2-acre parcel and meet the required zoning and agricultural setbacks. Finding 2 cannot be made for the requested variance.

Required Finding 3: *The variance is the minimum necessary for the reasonable use of the land or building.*

Discussion: As stated above in Finding 2, because there are other locations on the subject parcel that this same use can potentially be allowed, Finding 3 cannot be made for the requested variance.

Required Finding 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.*

Discussion: The intent of agricultural setbacks is to protect agricultural and timber uses from adjacent non-compatible land uses. A single-family dwelling is a non-compatible agricultural use pursuant to *Section 17.06.050.GG of County Code*.

All parcels adjacent to the boundary lines of the subject parcel are actively engaged in commercial agricultural operations.

Conclusion: Staff concludes that the allowance of the continued use of an existing non-permitted apartment on the top floor of an existing barn located within a 200-foot agricultural setback as required by *Section 17.06.150*, and the standard 30-foot rear setback required by *Section 17.36.260* of the *El Dorado County Zoning Ordinance*, would compromise the purpose and intent of the applicable Ordinances and General Plan policies. The findings for approval cannot be made.

Response to Applicant’s “Statement of Facts in Support of Variance Application”, (Exhibit G):

A request for a variance must be looked at against rules and regulations that apply equally to all County residents. Therefore, many of the personal circumstances and accusations cannot become part of the decision in order to remain objective across the board for all citizens.

The previous parcel where the apartment is located was previously one-acre in size. The current subject parcel is 10.2 acres as a result of a Boundary Line Adjustment (BLA 01-0127, recorded May 30, 2003). The present parcel size would potentially allow the construction of a single-family residence that could meet SA-10 Zone District and agricultural setbacks. Any construction on the previous one-acre parcel would have been subject to the setbacks required at the time they were constructed. Because no permit was issued for the construction of the apartment, no “vesting” status for it has been granted.

ENVIRONMENTAL REVIEW

This project has been found to be Categorical Exempt from the requirements of CEQA pursuant to *Section 15305 (a)* of the *CEQA Guidelines* which states that minor lot line adjustments, side yard, and set back variances not resulting in the creation of any new parcel are exempt. Pursuant to *Resolution No. 240-93*, a \$35.⁰⁰ processing fee is required by the County Recorder to file the Notice of Exemption.

RECOMMENDATION

Planning Services staff recommends that the Zoning Administrator take the following action:

Deny the project as the required findings cannot be made based on the analysis in the staff report and as noted herein.

FINDINGS FOR DENIAL

1. There are no 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. These circumstances are that the apartment was built within the required 200-foot setback as required by *17.06.150* of the *El Dorado County Zoning Ordinance* without a County approved permit, and there are other potential sites on the parcel suitable for construction of a residence.
2. The strict application of the provisions of the ordinance requested to be varied would not deprive the applicant of the reasonable use of the land or building allowed for other land in the vicinity and the same zone because there are other parts of the 10.2-acre parcel where a second residential unit could potentially be constructed.
3. The variance is not the minimum necessary for the reasonable use of the land or building since, as stated above in Finding 2, because there are other locations on the subject parcel that this same use can potentially be allowed. Further, the granting of this variance would legalize a use that was not recommended or allowed in its current location within required setbacks at the time the residential component was constructed any more than it would be allowed today.
4. 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 the intent of agricultural setbacks is to protect agricultural and timber uses from adjacent non-compatible land uses. A single-family dwelling is a non-compatible use pursuant to *Section 17.06.050.GG* of *County Code* and all the adjacent properties surrounding the apartment

structure are actively engaged in commercial agricultural operations, thereby compromising the purpose and intent of the applicable Ordinances and General Plan policies.

5. The project has been found to be Categorical Exempt from CEQA pursuant to *Section 15305 (a)* of the *CEQA Guidelines* which states that minor lot line adjustments, side yard, and set back variances not resulting in the creation of any new parcel are exempt.
6. *General Plan Policy 2.2.5.2* requires discretionary projects to be consistent with the general Plan and it can be found that the variance request is not consistent with *Policies 8.1.3.2 and 8.1.4.1*

SUPPORT INFORMATION

Attachments to Staff Report:

Exhibit A	Vicinity Map
Exhibit B	General Plan Land Use Map
Exhibit C	Zoning Map
Exhibit D	Parcel Map 48-65
Exhibit E	Site Plan, Sheet C-11 received January 3, 2006
Exhibits F1 thru F5	Site Visit Photos
Exhibit G	“Statement of Facts in Support of Variance Application,” pages 1-2