

**EL DORADO COUNTY DEVELOPMENT SERVICES
ZONING ADMINISTRATOR
STAFF REPORT**



Agenda of: June 6, 2007
Item No.: 4. d.
Staff: Jason Ramos

VARIANCE

FILE NUMBER: V 06-0007

APPLICANT: Teresa J. Winchester

AGENT: Laura Silvieus

REQUEST: Variance to reduce the front setback from 20 feet to zero feet for an existing 443 square foot carport up to the front property line of the subject parcel (See Exhibit D).

LOCATION: On the south side of Hidatsa Court, approximately 50 feet east of the intersection with Hidatsa Circle in the Meyers area, Supervisorial District IV (Exhibit A).

APN: 034-665-17

ACREAGE: 0.49 Acres

GENERAL PLAN: Adopted Plan, TRPA Regional Plan (Exhibit B)

ZONING: Tahoe One-family Residential (TR1) Districts (Exhibit C)

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

SUMMARY RECOMMENDATION: Conditional Approval

BACKGROUND

There is an existing single-family dwelling and carport on the property. The County Building Permit (No. 16077) for the dwelling was approved September 23, 1976. The existing carport was subsequently built after the dwelling by a previous property owner without a building permit, and

was located within the front yard setback and partially within the right-of-way of Hidatsa Court (see Exhibit D). The carport was constructed on a slope of approximately 12 percent, which required the installation of retaining walls to support the side posts of the carport. The east side retaining wall ranges in height from 43 inches at the front of the carport to 48 inches at the rear of the carport. The west side retaining wall ranges in height from 32 inches at the front, to 41 inches at the rear (see Exhibit F). There is also an existing stairway with open railings (greater than 50 percent open) on the east side of the carport. Although staff was unable to confirm the height of the stairway railings, due to the stairway being buried in snow, the height of the stairway railing is anticipated to be approximately 3 feet in height (see Exhibit F). The stairway railing is within five feet (5') of the east side retaining wall, but is not believed to have a cumulative height (height of retaining wall and railing) greater than seven feet (7').

The County Department of Transportation, in South Lake Tahoe, has confirmed that the carport has existed for at least the last 30 years, without any record of complaints. The resultant Building Code and Zoning Ordinance violations were discovered in January of 2006, by the County Building Department, during a site assessment of the parcel for TRPA land capability and coverage verification purposes. Among other reasons, TRPA site assessments require the verification of legally permitted land coverage, and consequentially, the verification of the un-permitted land coverage. Un-permitted land coverage is subject to TRPA and County development permits, or removal and restoration if the parcel is not eligible for additional land coverage.

To remedy the non-compliance requires a variance to the front yard setback, a map amendment to remove a 20-foot public utility easement recorded with the Tahoe Paradise Subdivision Map, an encroachment permit, and a building permit in addition to other agency conditions of approval. No public comments have been received for the project, and agency comments were received by the El Dorado County Department of Transportation and Building Department (see Attachment 1).

STAFF ANALYSIS

Project Description: The applicant is requesting a variance to the front yard setback to allow an existing carport up to the front property line of the parcel (see Exhibit D).

Site Description: The parcel is located in the Meyers area near the end of Hidatsa Court, within the Tahoe Paradise Unit No. 45 Subdivision (see Exhibit A). The Subdivision Map identifies a 20-foot P.U.E. from the front property line, a 2-foot easement along the side property lines, and a 7.5-foot P.U.E. along the east side property line (see Exhibit H). The northern three quarters of the parcel has an approximate slope of 12 percent, and the southern third of the parcel has a slope of approximately 22 percent. The parcel is forested with a mix of Jeffrey pine, Lodgepole pine, and White fir.

Adjacent Land Uses: The parcels along Hidatsa Court are primarily undeveloped, forested parcels under public ownership. Other than the subject parcel, there is only one other parcel on Hidatsa Court that is developed, located at the end of Hidatsa Court (APN 034-665-19). The remaining parcels along Hidatsa Court are owned by the California Tahoe Conservancy, with the exception of

APN 034-665-16, which is a vacant parcel under private ownership (see Exhibit E). Adjacent land uses are subject to County zoning and the TRPA Regional Plan. See the General Plan and Zoning analysis section for further discussion.

	Zoning	General Plan	Land Use/Improvements
Site	TR1, PAS 122*	AP (TRPA Regional Plan)	Developed with single-family dwelling
North	TR1, PAS 122	AP	Undeveloped, CA Tahoe Conservancy (CTC)
South	TR1, PAS 122	AP	Undeveloped, CTC
East	TR1, PAS 122	AP	Undeveloped, CTC
West	TR1, PAS 122	AP	Undeveloped, privately owned.

*Plan Area Statement 122, Tahoe Paradise – Mandan, which is a TRPA residential PAS.

ANALYSIS

Sensitivity to the Neighborhood: The permitting of the existing carport is not anticipated to negatively impact other residential uses in the project area. Hidatsa Court is primarily undeveloped, and will remain undeveloped due to the majority of the surrounding parcels being owned by the CTC as environmentally sensitive lots (see Exhibit E). Further, over the last 30 years of the carport’s existence, there has been no known record of complaint from surrounding property owners or government agencies, according to the Department of Transportation (SLT).

Additional Discretionary Permit Requirements: In addition to the approval of a variance to the front yard setback, the property owner will need to apply for a Map Amendment to remove a 20-foot public utility easement along the front property line as recorded with the Tahoe Paradise Unit No. 45 Subdivision Map (see Exhibit H), and the amendment must be recorded prior to issuance of a building permit.

Variance Findings: The granting of a variance requires four findings pursuant to Section 17.24.040 of the County Code. These findings are briefly discussed below. The full text of the findings is contained in Attachment 2.

The subject parcel is unique, with regard to being one of the only developed residential parcels on Hidatsa Court that is restrained from residential development by the limited land coverage allowed for the parcel. The carport cannot meet a front setback of 20 feet, as this will result in additional land coverage, which is prohibited. The carport resulted from the actions of a previous property owner.

The existing development on the rear side of the carport, and elimination of remaining allowable land coverage would prohibit the relocation of the carport to meet front yard setback requirements (see Exhibit D). If this variance were not approved, the applicant would be deprived the use of the

carport, and arguably the reasonable use of the property allowed for other land in the vicinity and the same Zone District.

The variance would allow the reasonable use of the land with no reported history of having potential to adversely affect the public health, safety, and welfare of the neighborhood. The project was distributed to all applicable responsible agencies, and no comments were received to prevent approval of the variance. The variance, as conditioned with this permit, is not anticipated to be detrimental to the public health, safety, and welfare of the neighborhood.

General Plan: The General Plan designates the subject site as an 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, which is a residential PAS. The existing carport is an allowed residential accessory structure for this PAS. The County permitting of the carport will not create additional land coverage on the parcel, as the carport is located over an existing concrete driveway (see Exhibit D). Therefore, 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 and its associated policies.

Conclusion: As discussed above, staff finds that the project, as proposed and conditioned, conforms to the General Plan and TRPA Regional Plan.

Zoning: The subject site is zoned One-Family Residential (TR1) District, which permits a minimum parcel size of 7,000 square feet when the lot is served with public water supply and sewage system. The parcel is served by a public water and sewage system by the South Tahoe Public Utility District.

The project requests a variance based on the regulations established by the Zoning Ordinance Sections 17.22.600 for encroachment into required yards for the carport. *Section 17.56.040* identifies a front yard setback of 20 feet in the TR1 Zone District.

Sections 17.14.050 and 17.14.155 prohibit walls or fences less than 50 percent open to exceed 40 inches in height within front yard setbacks. Although the retaining walls for the carport exceed 40 inches in height within the front setback, retaining walls that are necessary to provide site access are not subject to front yard setback requirements. The exemption from setbacks for retaining walls associated with necessary site access, recognizes that construction of adequate access consistent with Fire regulations is required for all development. The exemption language was approved at the March 8, 2007, Planning Commission as an interpretive guideline for the plan check review of building permits, in relation to Sections 17.14.050 and 17.14.155 of the Zoning Ordinance.

With the exception of the zoning setback violation, the carport is an accessory use permitted by right in the TR1 Zone District. Staff finds the proposed variance, as conditioned, consistent with all applicable provisions of County Zoning Ordinance Title 17.

ENVIRONMENTAL REVIEW

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 in areas with an average slope of less than 20 percent, which do not result in any changes in land use or density, including setback variances.

No further environmental analysis is necessary. Pursuant to Resolution No. 240-93, a \$50.00 processing fee is required by the County Recorder to file the Notice of Exemption.

RECOMMENDATION

Staff recommends the Zoning Administrator take the following actions:

1. Find that the project is Categorical Exempt pursuant to *CEQA Guidelines Section 15305(a)*; and
2. Approve V06-0007 subject to the conditions in Attachment 1 based on the findings in Attachment 2.

SUPPORT INFORMATION

Attachments:

Attachment 1.....	Conditions of Approval
Attachment 2.....	Findings
Exhibit A.....	Vicinity Map
Exhibit B.....	General Plan Land Use Map
Exhibit C.....	Zoning Map
Exhibit D.....	Variance Site Plan
Exhibit E.....	Surrounding Land Uses Map
Exhibit F.....	Project Site Photo
Exhibit G.....	Project Area Photo
Exhibit H.....	Tahoe Paradise Unit No. 45 Subdivision Map

ATTACHMENT 1

CONDITIONS OF APPROVAL

Zoning Administrator June 6, 2007
File Number V06-0007 - Winchester Carport

Planning Services

1. This variance is based upon and limited to compliance with the project description, the Zoning Administrator hearing exhibits marked Exhibits A-H dated May 16, 2007, 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.

Project Description: Approval of a variance to reduce the front yard setback from 20 feet to 0 feet, to allow the existing carport to remain in its current location, as shown on 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. The property and any portions thereof shall be sold, leased, or financed in compliance with this project description and the approved hearing exhibits and conditions of approval hereto. All plans (such as Landscape and Tree Protection 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, as provided in *Section 66474.9(b)* of the *California Government Code*.

The subdivider 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 subdivision, which action is brought within the time period provided for in *Section 66499.37*.

County shall notify the subdivider of any claim, action, or proceeding and County will

cooperate fully in the defense.

3. Any exterior lighting on the carport shall be shielded to prevent light and glare from leaving the property and must conform to the provisions of *Section 17.14.170* for *Outdoor Lighting*.
4. The permittee shall apply for a Map Amendment to the Tahoe Paradise Unit No. 45 Subdivision Map, to remove a 20-foot public utility easement along the front property line of the parcel. No building permit shall be issued prior to recording the map amendment.
5. All Development Services fees shall be paid prior to issuance of the building permit.

El Dorado County Building Department

6. The permittee shall apply for an encroachment permit for the portion of the carport, retaining walls, and adjacent stairway within the right-of-way of Hidatsa Court.
7. The permittee shall apply for a building permit for the carport within 30 days of variance approval.

El Dorado County Department of Transportation

8. Prior to building permit issuance, the applicant shall execute a hold harmless and indemnification agreement protecting the County from liability arising as a result of the approval of this setback variance. 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, South Lake Tahoe office.

ATTACHMENT 2

FINDINGS FOR APPROVAL

Zoning Administrator June 6, 2007
File Number V06-0007 - Winchester Carport Variance

Based on the review and analysis of this project by staff and affected agencies, and supported by discussion in the staff report and evidence in the record, the following findings can be made:

1.0 CEQA FINDINGS

- 1.1 The approval of the existing carport is exempt from further CEQA review pursuant to *CEQA Guidelines 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.*

The subject parcel is located at the end of Hidatsa Court, and is predominantly surrounded by vacant parcels owned by the CTC as environmentally sensitive lands. A TRPA Site Assessment was conducted on the parcel, which identified the parcel as being located within a Class 3 Land Capability District, with 5 percent (5%) allowable land coverage (1,078 square feet). The site assessment identified the parcel as having 1,684 square feet of legally permitted land coverage (dwelling, driveway, decks, and stairs). Therefore, the parcel is currently over covered, and not eligible for additional land coverage.

Although other surrounding parcels are also subject to the Class 3 Land Capability District, these parcels are primarily owned by the CTC, and will remain undeveloped as environmentally sensitive parcels (see Exhibit E). The subject parcel is unique, with regard to being one of the only developed residential parcels on Hidatsa Court that is restrained from residential development by the limited land coverage allowed for the parcel. The carport cannot meet a front setback of 20 feet, as this will result in additional land coverage, which is prohibited.

The existing carport was built by a previous property owner in approximately the mid-1970's, without a building permit. The current property owner did not learn of the un-permitted and non-conforming circumstances of the carport, until after buying the parcel in 1977. Therefore, the violations associated with the carport did not result from any act of the current property owner. Although the carport resulted from the actions of a previous property owner, given the land coverage limitations discussed above, staff finds that Finding 1 can reasonably 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 location of the existing carport is the most reasonable and appropriate location for the use of a carport and driveway. The existing development on the rear side of the carport, and elimination of remaining allowable land coverage would prohibit the relocation of the carport to meet front yard setback requirements (see Exhibit D). If this variance were not approved, the applicant would be deprived the use of the carport, and arguably the reasonable use of the property allowed for other land in the vicinity and the same Zone District. The overhead coverage of vehicles is arguably a necessity in the Tahoe Basin, to protect vehicles from snow and other extreme weather events.

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

This variance request would validate the existing carport in its current location, which has been conditioned to prevent any further structural encroachment within the front yard setback (see Attachment 1). Therefore, the requested variance is the minimum necessary for the reasonable use of the land.

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 would allow the reasonable use of the land with no reported history of having the potential to adversely affect the public health, safety, and welfare of the neighborhood. The carport has existed since approximately the mid-1970's, with no known history of access, safety, or utility related complaints or concerns. The project will require the abandonment of a 20-foot public utility easement along the front property line, as conditioned with the project. Among other agencies, the project was distributed to the County Department of Transportation (DOT), Lake Valley Fire District, and all applicable utility companies, and no specific comments of concern were received to prevent approval of the proposed variance. No public comments were received for the project, and comments were received from the Department of Transportation and Building Department (see Attachment 1). Although the DOT has authorized the approval of the variance, the DOT has imposed a condition that no further structural encroachments shall be authorized within the front setback. The variance, as conditioned with this permit, is not anticipated to be detrimental to the public health, safety, and welfare of the neighborhood.