

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



**Agenda of:** June 4, 2008  
**Item No.:** 4.a.  
**Staff:** Aaron Mount

## **VARIANCE**

**FILE NUMBER:** V07-0004

**APPLICANT:** Mark and Nancy Johnson

**AGENT:** Brian Shinault

**REQUEST:** Variance to reduce the front setback from 20 feet to zero feet for an existing 404 square foot garage and reduction in the side setback from five feet to zero feet for a walkway and stairs.

**LOCATION:** On the east side of Semat Court, approximately .25 miles west of the intersection with Pioneer Trail in the Tahoe Paradise area, Supervisorial District V. (Exhibit A)

**APN:** 033-678-06

**ACREAGE:** 15,333 square feet

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

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

**ENVIRONMENTAL DOCUMENT:** Categorically Exempt pursuant to Section 15303(e) and 15305(a) of the CEQA Guidelines

## RECOMMENDATION

Staff recommends the Zoning Administrator take the following actions:

1. Find that the project is Categorically Exempt pursuant to *CEQA Guidelines Sections 15303(e) and 15305(a)*; and
2. Approve Variance V07-0004 subject to the conditions in Attachment 1 based on the findings in Attachment 2.

**BACKGROUND:** The subject parcel contains an existing single-family dwelling and garage on the property. The County Building Permit (No. 14904) for the dwelling was approved October 6, 1975. The existing garage 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 Semat Court (see Exhibit D). There is also an existing stairway and walkway with open railings on the north side of the garage.

The County Department of Transportation, in South Lake Tahoe, has confirmed that the garage has existed for many years, without any record of complaints. The resultant Building Code and Zoning Ordinance violations were discovered in March of 2003, 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, an encroachment permit, and a building permit in addition to other agency conditions of approval.

## STAFF ANALYSIS

**Project Description:** The applicant is requesting a variance to allow a reduction in the front-yard setback from 20 feet to zero (0) feet to allow permitting of an existing 404 square-foot garage and reduction in the side setback from five feet to zero feet for a walkway and stairs (see Exhibit D). Off-street parking for the subject parcel is currently located within the existing garage.

**Site Description:** The 15,333 square-foot subject parcel is located in the Tahoe Paradise Addition Unit 2 Subdivision near the intersection of Washoan Boulevard and Pioneer Trail, at an approximate elevation of 6,400 feet above mean sea level. The site has slopes ranging from approximately 13 to

18 percent, sloping downward from the rear of the parcel to the street. Existing improvements include a 908 square-foot residence, a 404 square-foot garage, and 611 square feet of decks and 52 square feet of stairs. Vegetation on the site is dominated by sub-alpine forest.

**Adjacent Land Uses:**

	Zoning	General Plan	Land Use/Improvements
<b>Site</b>	TR1, PAS 117*	AP (TRPA Regional Plan)	Developed with single-family dwelling
<b>North</b>	TR1/CT, PAS 117	AP	Undeveloped
<b>South</b>	TR1, PAS 117	AP	Undeveloped
<b>East</b>	TR1, PAS 117	AP	Developed with single-family dwelling
<b>West</b>	TR1, PAS 117	AP	Semat Court

\*Plan Area Statement 117, Tahoe Paradise (T.P.) Washoan, which is primarily residential use.

**Discussion:** The permitting of the proposed variance to allow the garage and stairs within the front yard setback is not anticipated to negatively impact other residential uses in the project area. Semat Court is lightly developed as a few of the parcels are owned by the Tahoe Conservancy. Of the developed parcels along Semat Court all have an enclosed garage structures.

**Variance Findings:** The granting of a variance requires four findings pursuant to *Section 17.24.040* of the *County Zoning Ordinance*. These findings for approval and their respective discussions are listed in Attachment 2 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) 117, Tahoe Paradise Washoan, which is primarily residential use (Exhibit C). The proposed garage is an allowed residential accessory structure. The granting of this variance, therefore, 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):** The 15,333 square-foot subject parcel has approximately 1,994 square feet of verified land coverage as verified by a site assessment. 64 square feet of coverage is off-site as the garage and stairs are built over the property line. TRPA approval will be required to legalize the existing non-permitted structures.

**Zoning:** With the exception of the proposed zoning setback variance, the construction of a garage would be permitted by right in the TR1 Zone District. *Section 17.18.060* requires two parking spaces not in tandem for a single family residence. The existing garage is the only available parking for the subject parcel.

**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 California Environmental Quality Act (CEQA) pursuant to *Section 15303(e)* that allows accessory (appurtenant) structures including garages, garages, patios, swimming pools, and fences in areas where no sensitive environmental resources exist, as well as *Section 15305(a)* that allows minor alterations in land use limitations for a variance. The project proposes development in the least sensitive parts of the property and impacts to the environment will not occur with the approval of a variance. 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.

**SUPPORT INFORMATION**

**Attachments to Staff Report:**

- Attachment 1.....Conditions of Approval
- Attachment 2.....Findings
  
- Exhibit A .....Vicinity Map
- Exhibit B.....General Plan Land Use Map
- Exhibit C.....Zoning District Map
- Exhibit D.....Variance Site Plan
- Exhibit E.....Photo of Site
- Exhibit F.....Assessor’s Map
- Exhibit G.....TRPA Plan Area Statement 117

## **ATTACHMENT 1**

### CONDITIONS OF APPROVAL

#### **File Number V07-0004/ Johnson Variance Zoning Administrator/June 4, 2008**

#### **CONDITIONS OF APPROVAL**

1. This variance is based upon and limited to compliance with the project description, the Zoning Administrator hearing exhibit marked as Exhibit D dated June 4, 2008, 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 setback from 20 feet to zero feet for an existing 404 square foot garage and reduction in the side setback from five feet to zero feet for a walkway and stairs, to allow these structures to remain in their current locations, 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. 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, 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*.

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

#### **El Dorado County Building Department**

5. The applicant shall apply for a building permit for the existing unpermitted structures.

#### **El Dorado County Department of Transportation**

6. The variance to the setback will be allowed within the area necessary to construct only the project as listed in the project description. All remaining portions of the property setback which are not needed for the proposed project will remain at the current setback limit.
7. 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 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. Please contact Planning Services for a copy of the hold harmless and indemnification agreement.
8. The permittee shall apply for an encroachment permit for all structures within the right-of-way of Semat Court.

## **ATTACHMENT 2**

### **FINDINGS**

#### **File Number V07-0007/Johnson Variance Zoning Administrator/June 4, 2008**

#### **1.0 CEQA FINDINGS**

1.1 This project has been found to be Categorically Exempt from the requirements of CEQA pursuant to *Section 15303(e)* that allows accessory (appurtenant) structures including garages, garages, patios, swimming pools, and fences in areas where no sensitive environmental resources exist, as well as *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 site is constrained by the lack of additional area to locate a new garage outside of the 20-foot front setback requirement pursuant to *Section 17.56.040* and TRPA coverage requirements. Possible relocation of the existing garage would require removal of several large pine trees and grading into a slope. Also, a garage that meets front yard setback requirements would require installation of a 20-foot driveway and new driveway apron. The Tahoe Basin is an area which experiences an abundance of snow fall every year. Locating the garage in this manner reduces the overall need for snow maintenance of driveways throughout the winter season.

The existing garage was built by a previous property owner without a building permit. The current property owner did not learn of the un-permitted and non-conforming circumstances of the garage, until after buying the parcel. Therefore, the violations associated with the garage did not result from any act of the current property owner. Although the garage resulted from the actions of a previous property owner, given the site constraints 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.*

It has been determined that covered garages in the Tahoe basin are a reasonable use of the property due to the amount of snow fall the area experiences. The location of the existing garage is the most reasonable and appropriate location. Garage structures located within the 20-foot front setback requirement can be found within the adjoining neighborhood. If this variance were not approved, the applicant would be deprived the use of the garage, and arguably the reasonable use of the property allowed for other lands in the vicinity and the same Zone District. The proposed garage would be utilized to meet the off-street parking requirement pursuant to Section 17.18.060 of the County Zoning Ordinance. Currently the existing garage is the only available off-street parking.

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

This variance request would validate the existing garage 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 project was distributed to all applicable responsible agencies, and no comments were received to prevent approval of the variance. The garage has existed for some time and staff is unaware of any known history of access, safety, or utility related complaints or concerns. The approval of the existing garage will ensure that the parcel continues to meet the on-site parking requirements pursuant to *Section 17.18.060*. 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 (see Attachment 1). The variance, as conditioned, is not anticipated to be detrimental to the public health, safety, and welfare of the neighborhood.