## Fw: El Dorado County, California Planning Commission Agenda Update

P.C. 01/11/2024
item 3
3 Pages

Aurora M. Osbual <Aurora.Osbual@edcgov.us>
Tue 1/9/2024 12:09 PM
To:Planning Department <planning@edcgov.us>

Sincerely,

**Aurora Osbual**
Clerk of the Planning Commission
Planning Division

**County of El Dorado**
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**From:** Kathy Witherow <kathy.witherow@edcgov.us>
**Sent:** Tuesday, January 9, 2024 11:42 AM
**To:** Aurora M. Osbual <Aurora.Osbual@edcgov.us>
**Subject:** FW: El Dorado County, California Planning Commission Agenda Update

Public comment for PC meeting

**Kathy Witherow**
Executive Assistant
Planning and Building Department

**County of El Dorado**
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**From:** Karen L. Garner <Karen.L.Garner@edcgov.us>
**Sent:** Tuesday, January 9, 2024 11:28 AM
**To:** Kathy Witherow <kathy.witherow@edcgov.us>
**Subject:** Fwd: El Dorado County, California Planning Commission Agenda Update

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## Objections to Variance Application V23-0001

P.C. 01/11/2024
item #3

Michael Durkee <mdurkee21@gmail.com>

Tue 1/9/2024 2:55 PM

4 Pages

To:Planning Department <planning@edcgov.us>;Brandon Reinhardt <Brandon.Reinhardt@edcgov.us>;Kris X. Payne <KPayne@edcgov.us>;Lexi Boeger <Lexi.Boeger@edcgov.us>;Andy Nevis <Andy.Nevis@edcgov.us>;Daniel Harkin <Daniel.Harkin@edcgov.us>;Melanie V. Shasha <Melanie.Shasha@edcgov.us>;Brendan Ferry <brendan.ferry@edcgov.us>
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1 attachments (51 KB)

Lee - Response to Staff Comments (1.9.2024).docx;

Dear Chair and Planning Commissioners:

As you know, I represent Mr. Peter Lee and Mrs. Cheryl Lee regarding their property located at 1625 Player Court, South Lake Tahoe, California 96150. On January 4, 2024, I submitted comments on behalf of my clients regarding Variance Application V23-0001 (Atkins Variance). On January 8, 2024, Planning Staff submitted a proposed amendment to the finding required for the County's compliance with the California Environmental Quality Act (CEQA). Staff's updated information regarding CEQA does not respond to the comments raised in my letter of January 4, 2024. Accordingly, for the reasons set forth in the attached January 9, 2024 letter, I respectfully request that the Planning Commission find that the Variance Application has not undergone legally adequate environmental review and refer the matter to County Staff for the preparation of an "Initial Study" pursuant to CEQA.

Thank you,

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January 9, 2024

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*Re: Objections to Variance Application V23-0001*

Dear Chair and Planning Commissioners:

I represent Mr. Peter Lee and Mrs. Cheryl Lee regarding their property located at 1625 Player Court, South Lake Tahoe, California 96150. On January 4, 2024, I submitted comments on behalf of my clients regarding Variance Application V23-0001 (Atkins Variance). On January 8, 2024, Planning Staff submitted a proposed amendment to the finding required for the County's compliance with the California Environmental Quality Act (CEQA).[1] Staff's updated information regarding CEQA does not respond to the comments raised in my letter of January 4, 2024. Accordingly, I respectfully request that the Planning Commission find that the Variance Application has not undergone legally adequate environmental review and refer the matter to County Staff for the preparation of an "Initial Study" pursuant to CEQA.

As set forth in my January 4, 2024, letter, Staff has proposed that CEQA compliance for the Atkins Variance be through use a categorical exemption. This determination was originally challenged because:

1. The County has not provided a single, stable project description for the entitlements necessary for the construction of the two-story garage at 1627 Player Court in South Lake Tahoe (Atkins Property). The lack of an adequate project description is fatal to discharging the County's obligations under CEQA.

   Staff's proposed changes to the CEQA findings do not address this concern.

[1] The CEQA statutes (Pub. Resources Code, § 21000 *et seq.*), and the Guidelines for the Implementation of CEQA (Cal. Code Regs., tit. 14, § 15000 et seq.) (Guidelines), detail the protocol by which state and local agencies comply with CEQA requirements.[1] This document refers to the statutes and the Guidelines collectively as "CEQA" and cites to the Guidelines as "Guidelines, § ___."

2. The County has segmented the project. In addition to a variance from the zoning code, the construction of the two-story garage would require a change to the 50-year-old Final Subdivision Map for the neighborhood in which my clients own property. Changes to the setback reflected on the Final Map require action by the Board of Supervisors, and require input and agreement from all holders of recorded interest that may be impaired by the proposed encroachment (the proposed garage) such as the utility companies that hold utility easements. Moreover, the Tahoe Regional Planning Agency (TRPA) may need to approve changes to this setback. Neither of those changes to the setback reflected on the recorded Final Map - and necessary for the Variance from the zoning restrictions - are currently pending before the Board of Supervisors. Again, this type of "segmentation" is fatal to a legally adequate CEQA process. Staff's proposed changes to the CEQA findings do not address this concern.

3. As set forth in my January 4, 2024, letter, Staff has proposed that the Atkins Variance be found to be exempt from CEQA under Guidelines Section 15330.2, the small structures exemption. However, as discussed in our January 4, 2024, letter, *there is substantial evidence* in the record to show that unusual circumstances exist that create the potential for environmental impacts if the Atkins Variance were approved. Specifically, the proposed garage is unusual in both its size and location when viewed in the context of the 50-year-old neighborhood where the Atkins Property is located. In addition, the so-called garage is not merely for automobile storage, but also contains a second story living space that intrudes into the privacy of my clients. Based on the unusual circumstances in which the proposed garage will be built, my January 4, 2024, letter then outlined the various environmental impacts of the project related to its unusual circumstances, including aesthetics, traffic, and increased run-off due to the new impervious structure of the garage.

   Staff's proposed changes to the CEQA findings address these concerns by proposing to add the following language:

   The activity is not a project subject to CEQA. No exceptions listed under CEQA Section 15300.2 apply, including the "unusual circumstances" exception because the evidence in the record supports the conclusion that there is no reasonable possibility the Project will have a significant effect on the environment due to unusual circumstances.

   First, Staff's statement that the project is not subject to CEQA is refuted by the use of an exemption. CEQA defines a project as (1) a discretionary action by the government and (2) will either have a direct or indirect impact on the environment. (Cal. Pub. Resources Code § 21065.) Here, the Atkins Variance is a discretionary action, requiring the application of facts to the law to determine whether to grant the change. The addition of a structure under the variance has the potential for direct impacts on the environment. Therefore, the garage and its related variance (and other related activities by the Board of Supervisors and TRPA) is a "project" under CEQA.

   Second, Staff's finding that "evidence in the record" supports the use of the small structures exemption fails to cite to any specific piece of evidence or fact to support that broad conclusion. Staff overlooks that the courts use the "fair argument" standard to determine whether there are unusual circumstances giving rise to a

reasonable possibility that a project will have a significant environmental impact. (*Berkeley Hillside Preservation. v. City of Berkeley* (2015) 60 Cal.4th 1086, 1114-1116, 184 Cal. Rptr. 3d 643, 343 P.3d 834, as modified by *Berkeley Hillside Preservation v. City of Berkeley* (2015) 61 Cal.4th 163, 348 P.3d 845.) Our January 4, 2024, letter contains a fair argument that, due to the size and location of the proposed garage, and the possibility of environmental impact from the granting of the variance, reliance on the exemption is misplaced.

Thank you for this opportunity to provide this information and for your attention to this matter. I will be present at your hearing to provide additional evidence and to answer any questions you may have.

Respectfully submitted,

Michael Patrick Durkee, Esq.

cc: Brooke Laine, District V Supervisor; bosfive@edcgov.us;
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