

Project History

Variance application V23-0001 was calendared for a hearing at the Zoning Administrator on November 15, 2023. Due to multiple public comments, the Zoning Administrator transferred original hearing jurisdiction to the Planning Commission. The project was heard by the Planning Commission on January 11, 2024 and February 22, 2024. Public comment was received on the project for all three calendared hearings. Concerns included: restricting mountain views from adjacent private property, the height of the proposed structure compared to the existing houses, altering the character of the neighborhood, land coverage amounts and location, the incorrect use of a CEQA exemption and that findings cannot be made for the dwelling space above the garage. At the January 11, 2024 hearing, a motion was passed to revise the project to remove the portion of the proposed garage from the side yard setback. That change was made to the proposed site plan and staff report. The item was reheard by the Planning Commission on February 22, 2024 and approved with a 4-0 vote with Commissioner Reinhardt absent.

Planning Commission report, documentation, and written comments are available here: [County of El Dorado - File #: 24-0049 \(legistar.com\)](#) and the recording of the public hearing is available here: [Planning Commission Meeting 2-22-2024 \(granicus.com\)](#). These are part of the record on appeal.

Appeal Filed

On February 27, 2024, Appeal V-A24-0001 (Legistar Attachment A) was submitted in a timely manner by Lyn Barnett representing Peter and Cheryl Lee. As stated in the appeal, the appellant is specifically appealing the project alleging that: a Variance is not needed for the project, that a garage is not a right, that there are other options to build a garage, and that the Planning Commission used economics in their decision to approve the Variance. Materials submitted with the appeal also address the CEQA exemption findings, dwelling space on the second floor, that the development is out of character with the neighborhood, and that the Tahoe-specific building standards either should not be used to make findings or that they are not a development limitation. The appellant suggested, as a compromise in the February 19, 2024 letter written by Mr. Durkee that the Lee's "would accept the approval of a variance that limited the structure to be constructed within the setbacks to be a single-story garage, with a pitched roof no higher than 14 feet, and the elimination of any windows providing lines of sight into their property." Staff addresses these topics below.

1. *CEQA Findings: The appellant's attorney states that there is substantial evidence in the record to show that unusual circumstances exist that create the potential for environmental impacts. Specifically, that the size and location of the garage and second floor dwelling space create impacts to aesthetics, traffic and increased run-off. The possibility of environmental impact from the granting of the variance and reliance on the exemption is misplaced and section 15300.2 (Exceptions to Categorical Exemptions) applies.*

Staff Response: CEQA exemption 15303 (a) and (e), (Class 3, New Construction or Conversion of Small Structures) specifically exempts (a) second dwelling units in a residential zone and (e) accessory structures including garages, carports, patios, swimming pools, and fences. No exceptions listed under CEQA section 15300.2 apply including the "unusual circumstances". The unusual circumstances cited in Mr.

Durkees letter are the size of the project and proximity to the road. Staff and the Planning Commission did not find any unusual circumstances apply to this project. It is up to the County to first determine whether unusual circumstances exist to proceed to the second step of analysis, whether unusual circumstances prohibit use of the categorical exemption based on a fair argument that the project may result in a significant environmental impact.

The significant impacts alleged are aesthetics, traffic, and increased run-off. The exception applied to the exemption for aesthetics are specifically if the project affects scenic resources within official state scenic highways. The views affected are from and over private land. The exception does not apply.

Traffic impacts are alleged by the appellant. The El Dorado County, Department of Transportation (Transportation) has reviewed the project and had no comments other than a standard condition of approval (# 8). The snow storage easement will not be affected because the size and location of the encroachment is not substantially changed. Furthermore, Transportation routinely approves new encroachments of up to 20 feet wide. The proposed encroachment is 20 feet wide and consistent with the Transportation design standards for a single unit residential. A Traffic Impact Study was not required by Transportation. The amount of traffic will not increase. The exception does not apply.

Finally, increased run-off was listed as an exception to the exemption. Best Management Practices (BMPs) are required as a part of all new building permits by the Tahoe Regional Planning Agency (TRPA). TRPA's BMP Handbook specifies on-site infiltration designs and standards. A routine, monetary deposit is required prior to issuance of a building permit and is not refunded until all BMPs are installed and the site is revegetated. This is a standard operating procedure in the Tahoe Basin and is not mitigation for the project. The existing Atkins residence has received a BMP certificate showing compliance with this requirement. The exception does not apply.

Staff position remains that substantial evidence supports the conclusion that no unusual circumstances apply to this project to remove it from the exemption.

2. *Dwelling Space Findings: The appellants attorney has stated the findings cannot be made for the second-story dwelling space. The appellant has suggested they would be fine with a garage that was just one-story tall without the dwelling space above.*

Staff Response: Variance findings are designed to be applicable to any type of project. The findings for this project are specifically made for the garage but once approved, the same reduced setback is applicable in the future. In the past five years, variances for garages and carports have included additional dwelling space 11 out of 14 times. Furthermore, findings can be made for dwellings in the setback if the site is constrained. However, projects often include the garage as the structure or portion of the structure closest to the property line. Therefore, findings are made for that portion of the structure.

The neighbors view to the U.S. Forest Service land is the main reason for their rejection of the project and submittal of the appeal. The Lee's view is over the Atkins property. They have suggested they would be amendable to the project if the structure was only one-story tall. They have not suggested a project revision to change the use of the second floor from dwelling space to another, non-residential use. Neither El Dorado County nor TRPA have policies for the protection of views from private property. Creation of a view shed policy is not part of this action.

3. *Height of Structure: The appellants attorney has stated the height of the proposed structure and its' windows provide a direct line of site into the neighbors' residence. The appellants have suggested that the height of the proposed structure will change the look and feel of the neighborhood.*

Staff Response: The maximum height for a residence in this neighborhood based on a site slope of 0% and a roof pitch of 9:12 (such as the appellant's residence) is 34 feet, 9 inches. Their actual structure is 31 feet, 10 inches. The Atkins maximum height based on a site slope of 2% and a roof pitch of 4:12 is 29 feet, 3 inches. The proposed garage is 26 feet, 10 inches. The appellant's structure will be 5 feet higher than the proposed garage. The proposed garage will not be the tallest building in the vicinity nor out of character with other structures in the neighborhood.

4. *TRPA development limitations: The appellant has alleged that TRPA development requirements do not limit the project and that TRPA development limitations should not be used to make the variance findings.*

TRPA was formed by a bi-state compact between Nevada and California and was ratified by Congress in 1969. TRPA's Compact limits development in the Tahoe Basin in several ways. It affects this parcel specifically in two (2) ways: the amount of land that can be developed (land coverage) and its location (land capability). Land coverage includes the residence, driveway, shed, and decks. The land capability was determined by TRPA in 2022 to be high capability Class 5 on the west side and low capability Class 1b (Stream Environment Zone (SEZ)) on the east side. SEZs are similar to the U.S. Army Corp of Engineers defined Wetlands and are delineated in a similar way. TRPA has jurisdiction over the delineation, setback from, and protection of SEZs. (This is found in County Zoning Ordinance 130.30.050.G.i.) SEZs and their setback are restricted from new development. Therefore, this site is limited to a total 1,800 square feet of land coverage on the west side of the parcel.

It would be a failure of staff's due diligence to ignore a major regulatory agency and their effect on the property and project. The four required variance findings analyze the specific project and site conditions. Variance Finding 4 requires the project to be compatible with "maps, objectives, policies, programs, and general land uses [...] and applicable specific plan." TRPA's Regional Plan has been adopted by El Dorado County as the Adopted Plan for the Tahoe Basin. General Plan Finding 2.2.5.2 has been made for this project as the garage and dwelling space is an allowed use in the TRPA Plan Area Statement Tahoe Paradise - Mandan. Furthermore, TRPA's SEZ delineation map must also be satisfied. Staff is unable to make finding 4 without reviewing the TRPA Plan Area Statements and SEZ delineation.

Conclusion

Site-specific conditions unfairly burden the parcel with the inability to build a structure enjoyed by others in the same neighborhood and zone. The limited amount of land coverage, the SEZ and setback on the east side of the parcel, and the unconventional shape of the parcel prevent the proposed structure from being built at the 20-foot front setback line. A two-story garage is not a special privilege inconsistent with other properties in the vicinity and zone. As designed, the project is compatible with maps, policies, general land uses and specific plans. No allegations of detriment to public health, safety or welfare or injurious to the neighborhood have been made.