

February 19, 2024

Law Offices of
Michael Patrick Durkee
1250- I Newell Avenue, #156
Walnut Creek CA 94596
(510) 918-5873
mdurkee21@gmail.com

Via email:

Planning@edcgov.us;
brandon.reinhardt@edcgov.us;
kpayne@edcgov.us;
lexi.boeger@edcgov.us;
andy.nevis@edcgov.us;
daniel.harkin@edcgov.us;

El Dorado County Planning Commission
2850 Fairlane Ct. #C
Placerville, CA 95667

*Re: Additional Legal Arguments Regarding Variance Application V23-0001;
Potential Compromise*

Dear Chair and Planning Commissioners:

As previously announced, I represent Mr. Peter Lee and Mrs. Cheryl Lee regarding their property located at 1625 Player Court, South Lake Tahoe, California 96150 (the “Lee Property”). I previously submitted letters on January 4, 2024, and January 9, 2024, outlining my clients’ legal and factual objections relating to El Dorado County Variance Application V23-0001 (“Variance Application”) regarding the neighboring property, 1627 Player Court (the “Atkins Property”), and why approval of the Variance Application would violate controlling law.

I write separately today to provide additional legal arguments as to why the Variance Application should be denied, but, as an accommodation and compromise, I offer what my clients are willing to agree to in order to allow the Atkins Property to have a garage.

I. BACKGROUND

The Variance Application was previously considered at the January 11, 2024, Planning Commission meeting; at that time, the matter was continued to February 22, 2024. As filed, the Variance Application proposes to build a two-story structure that would include both a garage and a living space over the garage. This proposed structure would encroach into various setbacks on the property, including one created by the subdivision map that created both the Atkins and Lee Properties. My January 4, 2024, letter and January 9, 2024, letter, outline how approval of the Variance Application will violate the California Environmental Quality Act (CEQA), state Planning and Zoning laws, and the Subdivision Map Act. I incorporate those prior arguments by this reference as if set forth in this place in full.

February 19, 2024

II. DISCUSSION

A. Any Variance Granted Should be Limited to a Garage Use; Residential Uses Should Not be Granted a Variance.

As outlined in my prior correspondence, a variance is used to address conditions on a property that would prevent a property owner from enjoying the use and benefit that other property owners in the same area enjoy. In this case, the purported basis for granting the Variance Application is that various setbacks preclude the location of a *garage* in any place other than within the setback. Thus, the staff report concludes that the Variance Application for a *garage use* should be granted.

However, the plans submitted with the Variance Application are not simply for a garage – they are also for a second floor living space. But the Atkins Property *already* enjoys a residential use of the property that does not require a variance to intrude into the setbacks. It is this second use – a second story residential use – that cannot support the required Variance findings, that makes the structure ten feet higher than it needs to be, and that results in the direct detriment to my client.

Concerns about the height of the structure were raised by the Planning Commission during the discussion on January 11, 2024 meeting. One Planning Commissioner suggested that a smaller garage could be approved instead of the two-story structure proposed in the Variance Application for the Atkins Property.

While my clients continue to oppose the approval of the Variance Application on the basis of the factual and legal arguments we have raised (including in this letter), as an accommodation and compromise, they 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. As the February 5, 2024 letter from Licensed Architect Natalia Wieczorek (BFD/KEY ARCHITECTURE) makes clear, “With a steeper pitch, such as 5:12, a two-car garage would be feasible and about 14’ tall.” (*Id.* at p. 2.)

Because the underlying subdivision map (Final Map) will need to be revised (the 20-foot set back is on the recorded Final Map), this limitation could be set forth in the needed amendment to that recorded Final Map.

In sum, this accommodation and compromise would allow the approval of a variance for a single-story garage intruding into the relevant setbacks as proposed, but disallowing a second story residential use for which the required Variance findings cannot be legally made.

B. Due Process/Equal Protection Dictates That the Lees be Provided Sufficient/Equal Time to Address the Factual and Legal Issues Involved.

During the Planning Commission’s consideration of the Variance Application, the Applicant, Mr. Atkins, was allowed unlimited time to make his presentation, to respond to Commissioner comments and questions, to address potential solutions, and to freely converse with the Commission without a seeming time limit for this dialogue. In contrast, my clients –

February 19, 2024

who are directly impacted by the potential approval of the Variance Application – were limited to three minutes to present our concerns. With respect, this is neither fair nor legal.

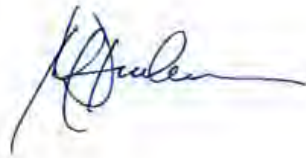
Please allow equal time for both the Applicant and my client to speak at your next meeting of February 22, 2024 – with that extra time, we may be able to negotiate a compromise and avoid an appeal and potential litigation.

III. CONCLUSION.

For the factual and legal reasons provided above, we respectfully submit that proposed Variance Application V23-0001 is legally flawed for several reasons, including without limitation, violating CEQA and violating the variance rules of California Planning and Zoning law and El Dorado County Code section 17.52.070, violating the Subdivision Map Act, and violating the Tahoe Regional Planning Agency's Regional Plan and Code of Ordinances. Nonetheless, in the spirit of neighborly cooperation, accommodation, and compromise, my clients would accept the construction of a garage only structure within the setback that meets the description above: a single-story garage, with a pitched roof no higher than 14 feet and which does not have windows providing lines of sight into their property.

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;
Kim Dawson, Clerk of the Board; edc.cob@edcgov.us;
Jefferson B. Billingsley, Deputy County Counsel; Jefferson.billingsley@edcgov.us;
Brian Frazier, County Surveyor; surveyor@edcgov.us;
Melanie Shasha, Senior Planner; Melanie.Shasha@edcgov.us;
Brendan Ferry, Deputy Director; Brendan.ferry@edcgov.us;
Wendy Jepson, Permitting and Compliance Department Manager; wjepson@trpa.gov;
John Marshall, General Counsel, TRPA; jmarshall@trpa.gov;
Lyn Barnett; lyn@wbaplanning.com;
Peter and Cheryl Lee