



Community Development

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Adrian P. Freund, AICP, Community Development Director
Blaine Cartlidge, Legal Counsel



Washoe County Board of Adjustment
Richard "R.J." Cieri, Chair
Gary Feero, Vice Chair

Mary S. Harcinske
Philip J. Horan
Eric Scheetz

WASHOE COUNTY BOARD OF ADJUSTMENT

MINUTES

May 1, 2008

The regular meeting of the Washoe County Board of Adjustment was scheduled for Thursday, May 1, 2008 at 1:30 p.m., in the Washoe County District Commission Chambers, 1001 East Ninth Street, Reno, Nevada.

DETERMINATION OF QUORUM

Chair Cieri called the meeting to order at 1:30 p.m. The following members and staff were present:

Members present: Richard "R.J." Cieri, Chair
Gary Feero
Mary S. Harcinske
Philip Horan
Eric Scheetz

Members absent: None

Staff present: Kimberly H. Robinson, Planning Manager, Community Development
Bob Webb, AICP, Planning Manager, Community Development
Trevor Lloyd, Senior Planner, Community Development
Eva Krause, AICP, Planner, Community Development
Grace Jensen, Planner, Community Development
Blaine Cartlidge, Deputy District Attorney, District Attorney's Office
Cathi Moldenhauer, Recording Secretary, Community Development

PLEDGE OF ALLEGIANCE

Chair Cieri led the pledge to the flag.

APPROVAL OF AGENDA

In accordance with the Open Meeting Law, Member Feero moved to approve the amended agenda of May 1, 2008. The motion, seconded by Member Scheetz, passed unanimously.

APPROVAL OF MINUTES

Member Harcinske moved to approve the minutes of February 7, 2008 and April 3, 2008. The motion was seconded by Member Cieri and passed unanimously.

PUBLIC COMMENT

Gary Schmidt presented paperwork to the Board of Adjustment regarding an appeal of the decision of Community Development not to issue a citation for the illegal grading work done on APN017-360-12. He included a copy of a Glade L. Hall dated January 11, 2008 addressed to David Childs, Assistant County Manager, and a letter from David T. Price, P.I. County Engineer, dated February 11, 2008, as well as a copy of NRS 278.300 Powers.

CHAIR AND BOARD ITEMS

- a. Report on Previous Board of Adjustment Actions

None

- b. Report on discussions with the Nevada State Contractors Board regarding illegal grading

Ms. Robinson stated she spoke with a representative of the State Contractors Board. She presented two options: schedule a meeting in the last two weeks of May with the State Contractors Board or invite them to attend the June 5, 2008 Board of Adjustment meeting.

Member Scheetz recommended a meeting in late May attended by one or two Members and also inviting the to the June meeting.

Upon discussion, it was decided that the State Contractors Board would make a presentation at the June Board of Adjustment meeting.

DIRECTOR'S ITEMS

Ms. Robinson suggested moving the Chair and Board Items and the Director's Items to the end of the agenda. The Members of the Board determined that they preferred to leave the agenda items in their present order.

CONSENT ITEMS

AGENDA ITEM A

EXTENSION OF TIME REQUEST FOR VARIANCE CASE NO. VA06-006 (WILLIAM LINN) – To extend for three months, until August 4, 2008, the approval of the reduction of the front yard setback from 15 feet to 11 feet 6 inches to build a new house with a garage as authorized in Article 406 of the Washoe County Development Code. The project is located at 607 Doeskin Court, Incline Village Subdivision Unit 4, Block F, Lot 6, approximately 350 feet east of the intersection of Tyner Way and Doeskin Court. The ±0.25-acre parcel is designated High Density Suburban (HDS) in the Tahoe Area Plan, and is situated in a portion of Section 17, T16N, R18E, MDM, Washoe County, Nevada. The property is located in the Incline

Village/Crystal Bay Citizen Advisory Board boundary and Washoe County Commission District No. 1. (APN 125-481-06)

Member Feero moved to approve Consent Agenda Item A. The motion was seconded by Member Horan and passed unanimously.

PROJECT REVIEW ITEMS

AGENDA ITEM 1

PUBLIC HEARING: VARIANCE CASE NO. VA08-003 (FOSTER MULLEN) (Continued from the April 3, 2008 meeting) – To reduce the front yard setback from 20 feet to 6 feet to facilitate the construction of a 16-foot covered parking area and new walkway/entry to the existing single-family home. The project is located at 380 Wassou Road, between Reservoir Road and Amagosa Road in Crystal Bay. The ±0.155-acre parcel is designated High Density Suburban (HDS) in the Tahoe Area Plan, and is situated in a portion of Section 19, T16N, R18E, MDM, Washoe County, Nevada. The property is located in the Incline Village/Crystal Bay Citizen Advisory Board boundary and Washoe County Commission District No. 1. (APN 123-143-02)

[At the request of the applicant, this item was withdrawn.]

AGENDA ITEM 2

PUBLIC HEARING: VARIANCE CASE NO. VA08-004 (EDWARD D. HARWIN) - To modify Variance Case No. V5-23-82 by converting the carport in the front yard setback to an attached garage, as authorized in Article 804 of the Washoe County Development Code. The project is located at 859 Jennifer Street, Incline Village. The parcel is located approximately 150 feet south of the intersection of Fay and Jennifer Streets. The 0.14-acre property is designated as High Density Suburban (HDS) in the Tahoe Area Plan, being part of the Washoe County Comprehensive Plan, and is situated in a portion of Section 10, T16N, R18E, MDM, Washoe County, Nevada. The property is located in the Incline Village/Crystal Bay Citizen Advisory Board boundary and Washoe County Commission District No. 1. (APN 125-241-05)

[At the request of the applicant, this item was withdrawn.]

AGENDA ITEM 3

PUBLIC HEARING: VARIANCE CASE NO. VA08-005 (BEAR BEACH PROPERTIES, LLC) - To vary the front yard setback from 15 feet to 0 feet and the side yard setback from 8 feet to 5 feet on the south side, in order to build a single-family residence with an attached garage, as authorized in Article 804 of the Washoe County Development Code. The project is located at 1709 State Route 28, Incline Village, Lot 3, Block G, of the Rocky Point Subdivision. The property is approximately 400 feet north of the Lake Tahoe State Park boundary. The 0.84-acre property is designated as Medium Density Suburban (MDS) in Tahoe Area Plan, being part of the Washoe County Comprehensive Plan, and is situated in a portion of Section 26, T16N, R18E, MDM, Washoe County, Nevada. The property is located in the Incline Village/Crystal Bay Citizen Advisory Board boundary and Washoe County Commission District No. 1. (APN 130-331-03)

Chair Cieri opened the public hearing.

Eva Krause reviewed the staff report dated April 11, 2008. Staff recommended conditional approval of the variance of the front yard setback from fifteen feet to zero feet. However, staff recommended denial of the variance of the side yard setback based on the self-induced hardship created by the design of the house. She noted that the U.S. Forest Service objected to all side yard setback variances next to its properties, as people have treated those properties as vacant lots. Considerable damage has been done to such Forest Service lots during construction.

Ms. Krause requested that proposed Condition No. 6 in the staff report be replaced with the following: "Prior to obtaining a certificate of completion the applicant shall install a garage door opener and call Planning Department for inspection." She further requested that Condition No. 7 be revised to read, "The applicant shall either remove the storage area below the parking deck or obtain a new or revised lease, permit or letter approving use from Nevada Department of Transportation (NDOT) for all structures above and below grade located in the right-of-way. A signed copy of the license or lease agreement shall be submitted with the building permit application. Plans shall not be approved if the storage area is not removed or until proof of NDOT approval is submitted."

In reply to Member Feero, Ms. Krause stated that the Incline Village/Crystal Bay Citizen Advisory Board (CAB) approved the entire variance request as presented by the applicant and did not recommend denial of the side yard setback.

Member Scheetz requested verification that architectural features were allowed to encroach into setbacks by two feet. Ms. Krause advised that was specified in the Development Code.

Member Harcinske noted the applicant indicated to the CAB that the Nevada Department of Transportation (NDOT) provided a letter approving use of the storage area below the parking deck. Ms. Krause agreed, but noted she received notice from NDOT that the use would not be allowed.

Member Horan asked if the CABs have information regarding staff's presentations or recommendations. Ms. Krause advised that the CABs are not provided with that information, as staff usually has not commenced its review at the time the CAB is presented with the application.

As no one in the audience wished to speak, Chair Cieri closed the public hearing.

Member Harcinske stated concern that the applicant would use the U.S. Forest Service property for defensible space if the side yard variance were granted.

Member Scheetz noted that this was the first time the Tahoe Regional Planning Agency (TRPA) had approved a variance in a very long time. Ms. Krause stated that, in the past, variances were approved for a front yard setback along the highway to build a garage where none could be built otherwise. The TRPA does not have a variance policy, and it will have to review this project for scenic and other issues. The agency which would be more concerned is NDOT, because the project is right on the highway.

Member Harcinske moved to approve conditionally the reduction of the front yard setback from fifteen feet to zero feet as requested in Variance Case No. VA08-005, replacing

Condition No. 6 and revising Condition No. 7 as noted above. The motion was seconded by Chair Cieri and passed unanimously.

The approval of the front yard setback variance was based on the following findings:

1. Special Circumstances. Because of the special circumstances applicable to the property, due to the exceptional topographic conditions, the strict application of the front yard setback regulation would result in a steep and unsafe driveway which is an exceptional and undue hardship upon the owner of the property;
2. No Detriment. The relief will not create a substantial detriment to the public good, substantially impair affected natural resources or impair the intent and purpose of the Development Code or applicable policies under which the variance is granted;
3. No Special Privileges. The granting of the variance will not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and the identical regulatory zone in which the property is situated;
4. Use Authorized. The variance will not authorize a use or activity which is not otherwise expressly authorized by the regulation governing the parcel of property; and
5. Reasoned Consideration. That the Board of Adjustment gave reasoned consideration to the information contained within the staff report and information received during the meeting.

Member Scheetz moved to deny the side yard setback requested in Variance Case No. VA08-005. The motion was seconded by Member Harcinske and passed unanimously.

The denial of the side yard setback variance was based on the following findings:

1. Special Circumstances. Because there are no special circumstances that prevent building the house to the maximum width of the property, and being that the property is not unique in its size or unusually narrow or odd shaped, there is no exceptional or undue hardship upon the owner of the property to justify the granting of the side yard variance;
2. No Detriment. The relief will create a substantial detriment to the public good, reducing the defensible space between the house and its neighboring property and substantially impairs a natural resources and impair the intent and purpose of the Development Code or applicable policies under which the variance is granted;
3. No Special Privileges. The granting of the variance will not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and the identical regulatory zone in which the property is situated;
4. Use Authorized. The variance will not authorize a use or activity which is not otherwise expressly authorized by the regulation governing the parcel of property; and

5. Reasoned Consideration. That the Board of Adjustment gave reasoned consideration to the information contained within the staff report and information received during the meeting.

[Ms. Robinson recited the process to appeal this decision.]

AGENDA ITEM 4

PUBLIC HEARING: SPECIAL USE PERMIT CASE NO. SB08-003 (MONTREUX DEVELOPMENT GROUP, LLC) – To construct a landscaped berm (permanent earthen structure) along the western and northern edges of the project site not to exceed ten (10) feet in height, as authorized in Section 110.438.35 of the Washoe County Development Code. The project site is located at 16475 Bordeaux Drive, approximately 207 feet south of the Bordeaux Drive/Jefte Court intersection and approximately 600 feet southeast of the Mount Rose Highway (SR 431). The ±14-acre parcel is designated Low Density Suburban (LDS) in the Forest Area Plan, and is situated in a portion of Section 3, T17N, R19E, MDM, Washoe County, Nevada. The property is located in the Galena-Steamboat Citizen Advisory Board boundary and Washoe County Commission District No. 2. (APN 148-351-05)

Chair Cieri opened the public hearing.

Grace Jensen reviewed the staff report dated April 25, 2008. As presented in the staff report, Conditions 5, 12 and 13 were recommended to be deleted as they did not pertain to this case. A new Condition 15 was proposed that will read, "Prior to final inspection, a landscape easement shall be created to allow the maintenance of the berm landscaping by the Montreux Homeowners Association." Staff recommended conditional approval of the special use permit.

Member Harcinske expressed concern about the use of temporary irrigation. Ms. Jensen clarified that it would not be necessary if a tackifier or emulsifier was used.

Member Feero asked if the property would be sold. Ms. Jensen replied the applicant planned to subdivide the property and sell single-family lots.

David Pulley, C&M Engineering, 9498 Double R Boulevard, Suite B, representing the applicant, replied to Member Scheetz that water flows would pass through natural drainage ravines, and a full hydrology report will be submitted at the time of application for the grading permit for the berm.

Member Horan asked what type of development was anticipated. Mr. Pulley advised it would be a continuation of the development existing, i.e., single-family homes in the range of 3,000 to 10,000 square feet.

In response to Member Scheetz, Mr. Pulley stated the berm would provide privacy to the new lots. No fences would be added to the top of the berm.

Member Harcinske asked if there was wildlife migration through the property. Mr. Pulley replied that migration routes have been provided throughout the development. The berm will not present a challenge to the wildlife.

Chair Cieri closed the public hearing.

Member Scheetz stated his major concern was drainage, which he felt would be mitigated by the culverts proposed. He therefore moved to approve conditionally Special Use Permit Case No. SB08-003, deleting Conditions No. 5, 12 and 13 presented in the staff report and adding the new Condition 15 as noted above. The motion was seconded by Member Harcinske and passed unanimously.

1. Consistency. That the proposed use of a maximum 6-foot high berm is consistent with the action programs, policies, standards and maps of the Comprehensive Plan and the Forest Area Plan;
2. Improvements. That adequate utilities, roadway improvements, sanitation, water supply, drainage, and other necessary facilities have been provided, the proposed improvements are properly related to existing and proposed roadways, and an adequate public facilities determination has been made in accordance with Division Seven;
3. Site Suitability. That the site is physically suitable for a maximum 6-foot high berm, adding no intensity to the existing Montreux development;
4. Issuance Not Detrimental. That issuance of the permit allowing a maximum 6-foot high berm will not be significantly detrimental to the public health, safety or welfare; injurious to the property or improvements of adjacent properties; or detrimental to the character of the surrounding area; and
5. Reasoned Consideration. That the Board of Adjustment gave reasoned consideration to the information contained within the staff report and information received during the meeting.

AGENDA ITEM 5

PUBLIC HEARING: SPECIAL USE PERMIT CASE NO. SB08-004 (JAVIER AND MARTHA BARAJAS) – To grade approximately 15,100 cubic yards and approximately 117,655 square feet of surface disturbance in order to prepare the site for future development and improve on-site drainage, as authorized in Article 810 of the Washoe County Development Code. The subject property is located on Tanberg Circle, approximately ¼ mile north of West 7th Avenue, approximately ½ mile west of Sun Valley Boulevard. The subject parcel, totaling ±2.49 acres, is designated Industrial (I) in the Sun Valley Area Plan, and is situated in a portion of Section 13, T20N, R19E, MDM, Washoe County, Nevada. The property is located in the Sun Valley Citizen Advisory Board boundary and Washoe County Commission District No. 5. (APN 085-330-33)

Chair Cieri opened the public hearing.

On behalf of Sandra Monsalve, Trevor Lloyd reviewed the staff report dated April 24, 2008. Staff recommended conditional approval of the special use permit.

Hugh Ezzell, Soils Engineering, LLC, 10000 Road Runner Road, representing the applicant, was available to answer questions.

In reply to Member Horan, Mr. Ezzell stated he did not know why the applicant commenced grading with no permit. The applicant himself did the grading until the County red-tagged his work.

Chair Cieri closed the public hearing.

Member Harcinske asked if the applicant would have been allowed to perform as much grading as was already done if he had applied for a grading permit. Mr. Lloyd advised that a special use permit would have been required in order to grade that amount of surface.

Chair Cieri asked if the applicant did a good job. Mr. Lloyd stated it did not appear the job was done properly. The appearance of the property would be improved with some landscaping and recontouring.

In response to Member Scheetz, Mr. Lloyd stated the applicant received no citations for his illegal grading activity. Chair Cieri advised that the applicant's fee for a grading permit would now be doubled as an imposition of sanctions.

Member Harcinske suggested changing Condition No. 7 to allow for the use of tackifiers or emulsifiers rather than temporary irrigation.

Member Harcinske moved to approve conditionally Special Use Permit Case No. SB08-004, including the change to Condition No. 7 that would provide for temporary irrigation for a period of one year if an emulsifier or tackifier is not proposed. The motion was seconded by Member Horan and passed by a vote of four to one (Member Scheetz opposed).

1. Consistency. That the proposed use is consistent with the action programs, policies, standards and maps of the Comprehensive Plan and the Sun Valley area plan;
2. Improvements. That pursuant to the conditions of approval contained herein, findings can be made that adequate utilities, roadway improvements, sanitation, water supply, drainage, and other necessary facilities have been provided, the proposed improvements are properly related to existing and proposed roadways, and an adequate public facilities determination has been made in accordance with Division Seven;
3. Site Suitability. That the site is physically suitable for the type of development and for the intensity of development to be created once site preparation is completed;
4. Issuance Not Detrimental. That, as conditioned, issuance of the permit will not be significantly detrimental to the public health, safety or welfare; injurious to the property or improvements of adjacent properties; or detrimental to the character of the surrounding area; and
5. Reasoned Consideration. That the Board of Adjustment gave reasoned consideration to the information contained within the staff report and information received during the meeting.

OTHER ITEMS

Presentation and discussion regarding NRS 278.300, Powers, and NRS 278.310, Appeals, both pertaining to the Board of Adjustment

Deputy District Attorney Cartlidge made a presentation regarding the power given to the Board of Adjustment by the Nevada Revised Statutes and the authority of the Board concerning

appeals, in addition to the responsibilities of the Department of Community Development. Neither the Statutes nor the Development Code provide for the filing of appeals directly before a public body; an appellant must file through the Department of Community Development.

Bob Webb, Planning Manager, Community Services Program, described the process followed when a complaint regarding grading is received. Once Code Enforcement has determined illegal grading has taken place, the case is referred to the Engineering Division to calculate the amount of material taken off or delivered to the site. This calculation will determine whether the amount will trip threshold requiring either a grading permit or a special use permit. Coordination among Community Development, Engineering Division and Building and Safety Department ensues to determine if a matter of public safety exists, and, if so, the Building Official has the authority to issue a letter demanding corrective action within a certain period of time. Enforcement action is stayed until all administrative action is exhausted. Mr. Webb described the steps taken from administrative action up through criminal action.

Ms. Robinson explained the appeals process that can be taken if an applicant believes he is aggrieved. Decisions of the Board of Adjustment and the Planning Commission may be appealed to the Board of County Commissioners.

Member Cieri asked the statute of limitation on an appeal. Deputy District Attorney Cartlidge explained that the time within which an appeal must be filed varies by the type of item, whether a variance, special use permit, or tentative map, etc.

Gary Schmidt commented that the information presented today completely supported his position that appeals need not be filed with Community Development.

Chair Cieri stated he would assure Mr. Schmidt's appeal was acknowledged.

Deputy District Attorney clarified that this discussion should not be construed as acceptance of Mr. Schmidt's appeal application as this Board does not have that power.

ADJOURNMENT

There being no further business to come before the Board of Adjustment, the meeting adjourned at 3:12 p.m.

Respectfully submitted,

Cathi Moldenhauer, Recording Secretary

Approved by Board in session on June 5, 2008

Adrian P. Freund, FAICP, Director
Secretary to the Board of Adjustment