

**COUNTY OF EL DORADO DEVELOPMENT SERVICES  
PLANNING COMMISSION  
REVISED STAFF REPORT**



**Agenda of:** February 25, 2010

**Item No.:** 8

**Staff:** Jason R. Hade

## VARIANCE

**FILE NUMBER:** V09-0002/Fry Variance

**APPLICANT:** Pat and Renate Fry

**AGENT:** Kristina Hill

**ARCHITECT:** Ben Fagan Designs

**REQUEST:** Variance to reduce the front-yard setback from 35 feet to 17 feet (measured from the road easement centerline), reduce the rear-yard setback from 15 feet to five feet (measured from the high water line), reduce the northern side-yard setback from five feet to zero feet, and increase the building height from 22 feet for the existing home to 39 feet 8.5 inches for the reconstruction of a single-family residence.

**LOCATION:** On each side of Fallen Leaf Road, approximately three miles south of the intersection with Emerald Bay Road in the Fallen Leaf Lake area, Supervisorial District V. (Exhibit A)

**APN:** 021-331-04 (Exhibit B)

**LOT SIZE:** 27,300 square feet

**GENERAL PLAN:** Adopted Plan (AP), Tahoe Regional Planning Agency (TRPA) Regional Plan South Fallen Leaf Lake Plan Area Statement 145 – residential land use classification (Exhibit C)

**ZONING:** Tahoe One-Family Residential (TR1) (Exhibit D)

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

**RECOMMENDATION**

Staff recommends the Planning Commission take the following actions:

1. Find that the project is Categorically Exempt pursuant to CEQA Guidelines Section 15305(a); and
2. Approve Variance V09-0002 subject to the conditions of approval in Attachment 1 based on the findings in Attachment 2.

## **BACKGROUND**

This application first came before the Planning Commission on August 27, 2009. At that time, it was determined that the project would need to be amended to also include a side-yard setback variance along the northern property line as well as an analysis of the proposed structure's height. As such, the item was continued off-calendar by the Planning Commission on August 27, 2009. A revised submittal package was submitted for staff review on October 5, 2009.

## **STAFF ANALYSIS**

Staff has reviewed the project for compliance with the County's regulations and requirements. An analysis of the proposal and issues for Planning Commission consideration are provided in the following sections.

**Project Description:** The applicant is requesting a variance to reduce the front-yard setback from 35 feet to 17 feet (measured from the road easement centerline), reduce the rear-yard setback from 15 feet to five feet (measured from the high water line), reduce the northern side-yard setback from five feet to zero feet, and increase the building height from 22 feet for the existing home to 39 feet 8.5 inches for the reconstruction of a single-family residence. A comparison of the existing structure conditions versus those of the proposed structure is included below as Table 1. Table 1 also features the applicable development standards for the TR1 zone district.

<b>Table 1: Existing Conditions Versus Proposed Conditions</b>			
	<b>Existing Conditions</b>	<b>Proposed Conditions</b>	<b>TR1 Zone District Development Standards</b>
<b>Square Footage</b>	966 square feet	2,608 square feet	Minimum dwelling unit area of 600 square feet and two rooms; 200 square feet for each additional bedroom
<b>Front-Yard Setback</b>	17 feet	17 feet	20 feet minimum
<b>Rear-Yard Setback</b>	5 feet	5 feet	15 feet minimum
<b>Side-Yard Setback (North)</b>	0 feet	0 feet	5 feet minimum
<b>Side-Yard Setback (South)</b>	27.5 feet	27.5 feet	5 feet minimum
<b>Building Height</b>	22 feet	39 feet 8.5 inches	40 feet maximum
<b>Stories</b>	2 stories	3 stories	N/A

**Site Description:** The 27,300 square-foot subject lot is located in Fallen Leaf Lake area and is bisected by Fallen Leaf Lake Road at an approximate elevation of 6,390 feet above mean sea level. Existing improvements at the subject site include a primary residence, second dwelling, guesthouse, boathouse, and two piers. The existing home is located adjacent to Fallen Leaf Lake approximately 12 feet from the high waterline.

**Adjacent Land Uses:**

	<b>Zoning</b>	<b>General Plan</b>	<b>Land Use/Improvements</b>
<b>Site</b>	TR1, PAS 145*	AP (TRPA Regional Plan)	Residential/primary residence, second dwelling, guesthouse, boathouse, and two piers
<b>North</b>	TR1, PAS 145	AP	Residential/Single-family residence
<b>South</b>	TR1, PAS 145	AP	Residential/Single-family residence
<b>East</b>	TR1, PAS 145	AP	Residential/Single-family residence
<b>West</b>	TA, PAS 145	AP	Fallen Leaf Lake

\*Plan Area Statement 145, South Fallen Leaf Lake, which is primarily residential use.

**Discussion:** The permitting of the proposed variance is not anticipated to negatively impact other residential uses in the project area as no new construction is proposed outside of the existing building envelope. The requested setback reductions are consistent with the current setbacks for the existing structure. As shown in the photographs included within Exhibit I, approximately seven other homes within the project vicinity do not meet current front-yard setback requirements. Additionally, several other homes in the project vicinity also do not meet the current rear-yard setback requirements. Also included within Exhibit I are photographs of several other three-story homes within the Fallen Leaf Lake area.

Fallen Leaf Road was determined to be an undefined road and public utility easement. As such, Section 17.06.050.V of the Zoning Ordinance states that “roads established through prescriptive right of undefined road easements, shall be assumed to have a right-of-way of twenty-five (25) feet from the existing centerline of the roadway for the purpose of establishing minimum front yard.” The Zoning Ordinance further defines “front yard” as a yard extending across the full width of a building site between any road easement or road right-of-way. Further, front yards shall exclude all road easements. The subject site is also eligible for a 50 percent front setback reduction for slope pursuant to Section 17.14.020 of the Zoning Ordinance. The minimum front yard setback for the TR1 zone district is 20 feet. This has been reduced to 10 feet pursuant to Section 17.14.020 as discussed above. Based on this information, the requested front yard setback reduction is from 35 feet to 17 feet measured from the road easement centerline.

**Variance Findings:** The granting of a variance requires four findings pursuant to Section 17.24.040 of the County Zoning Ordinance. Appropriate findings for approval and their respective discussions are listed in Attachment 2 of this report.

**Building Height:** As noted above, part of the project would include increasing the building height from 22 feet for the existing home to 39 feet 8.5 inches for the reconstruction of a single-family residence. The new structure would be three stories versus the current two-story structure. The TR1 zone district permits a maximum building height of 40 feet. As such, the proposed structure would be consistent with the maximum building height authorized under the TR1 zone district.

**Distances to Neighboring Structures:** As shown in Exhibit J, the nearest corner of the proposed structure is 188 feet away from the neighbor to the north. The nearest corner to the neighbor to the south is 98 feet to the neighboring residence and 59 feet to the neighboring garage.

**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) 145, South Fallen Leaf Lake with a land use designation of residential (Exhibit H). The proposed reconstructed single-family dwelling is an allowed residential use. The granting of this variance, therefore, conforms to the TRPA Plan Area Statement.

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):** TRPA approval would be required to reconstruct the proposed single-family dwelling.

**Zoning:** With the exception of the proposed zoning setback variance, the reconstruction of a single-family dwelling would be permitted by right in the TR1 Zone District. As proposed, the project is consistent with all other development standards contained within Section 17.56.040 of the Zoning Ordinance. The existing second residence at the subject site is permitted by right under the Zoning Ordinance.

**Conclusion:** As discussed above, staff finds the variance, as proposed and conditioned, is consistent with all applicable provisions of County Zoning Ordinance Title 17.

**Public Comments:** Public comment letters received to date are attached as Exhibit K. The main concerns noted in the comment letters were the height of the proposed structure and its proximity to the Fallen Leaf Lake and Fallen Leaf Road.

## ENVIRONMENTAL REVIEW

This project has been found to be Categorical Exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15305(a) that allows minor alterations in land use limitations for a variance. No further environmental analysis is necessary. A \$50.00 administrative 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 .....	Location Map
Exhibit B.....	Assessor's Map
Exhibit C.....	General Plan Land Use Map
Exhibit D.....	Zoning District Map
Exhibit E.....	Site Plan
Exhibit F .....	Preliminary Elevations
Exhibit G.....	Floorplan
Exhibit H.....	TRPA Plan Area Statement 145
Exhibit I .....	Applicant's Variance Support Information/Photos
Exhibit J .....	Distances from Proposed Structure to Neighboring Structures
Exhibit K.....	Public Comment Letters

# **ATTACHMENT 1**

## **CONDITIONS OF APPROVAL**

### **Variance V09-0002/Fry February 25, 2010/Planning Commission Hearing**

#### **CONDITIONS OF APPROVAL**

1. This variance is based upon and limited to compliance with the project description, the Staff Report exhibits marked as Exhibit E - G, 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-yard setback from 35 feet to 17 feet (measured from the road easement centerline), reduce the rear-yard setback from 15 feet to five feet (measured from high water line), reduce the northern side-yard setback from five feet to zero feet, and increase the building height from 22 feet for the existing home to 39 feet 8.5 inches for the reconstruction of a single-family residence, as shown on the approved site plan, Exhibit E.

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.

The developer and land owner shall defend, indemnify, and hold harmless El Dorado County and its agents, officers, and employees from any claim, action, or proceeding 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.

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

#### **Department of Transportation**

5. The variance to the setback will be allowed only within the area necessary to construct the project as listed above. All remaining portions of the property setback which are not needed for the proposed project shall remain at the current setback limited by the zone district.
6. 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 the 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.

#### **Environmental Management Department**

7. Prior to building permit issuance, a will serve letter from the Fallen Leaf Mutual Water Company shall be submitted to the Environmental Management Department.

#### **Fallen Leaf Lake Community Services District Fire Department (FLLCSDFD)**

8. Prior to occupancy, the applicant shall construct a paved turnout no less than 45 feet in length and 10 feet in width with at least 28 feet of full depth with tapering entrance and exit. The center of this turnout must also be situated directly across from the point or points in the new construction that come within 10 feet of the edge of the existing pavement on Fallen Leaf Road if the width of the property allows.
9. Public roads shall remain open to through traffic at all times during project construction. Obstruction of the road for longer than a 10 minute loading or unloading period is prohibited. All vehicles shall be parked so the tires are off the pavement and/or out of the main roadway.
10. Prior to occupancy, house address numbers shall be installed in an appropriate location on the house, clearly visible from the street and visible from either direction of travel. If the house is farther than 20 feet from the edge of the road, an additional set of address numbers shall be installed within 20 feet of the road. If the property has a boat dock, address numbers shall be installed at the boat dock. Numbers are to be a minimum of four inches high, reflective, and mounted on a contrasting background.

11. Prior to occupancy, the exterior materials and construction shall comply with Chapter 7A of the current California Building Code regarding flame and ember resistance construction.
12. Prior to occupancy, a six-inch drafting hydrant shall be installed within 300 feet of the new project to the satisfaction of the FLLCSDFD.
13. At least one smoke detector (installed according to manufacturer's specifications) shall be installed outside of each sleeping area and one in each room used for sleeping purposes as well as one on each floor of the building prior to occupancy.
14. Prior to occupancy, every sleeping room below the fourth story shall have at least one exterior opening for egress/rescue purposes. The openings shall be a minimum of 5.7 square feet and 20 inches wide by 24 inches high. The finished sill height of the opening shall be no higher than 44 inches from the floor. Ladder access shall be provided for sleeping rooms with window sills higher than 25 feet off the ground.
15. LPG propane installation shall be per NFPA 58 and the California Fire Code and include the following: (1) installation of the tank no less than 10 feet from the building or from any other combustible material on approved reinforced concrete slab or piers with proper winter marking poles at each end; (2) proper piping materials; (3) installation of the first stage regulator underneath the cover connected to the appropriate plumbing/piping throughout; and (4) installation of a second stage regulator shut off valve and snow protection cover where the gas line enters the building.
16. Prior to occupancy, CA PRC 4291 defensible space compliance is required to be completed to the satisfaction of FLLCSDFD.
17. At time of building permit submittal, the site plan shall reflect the relocation of the trash storage area at least five feet from the edge of the pavement of Fallen Leaf Road.



## **ATTACHMENT 2**

### **FINDINGS**

#### **Variance V09-0002/Fry February 25, 2010/Planning Commission Hearing**

#### **1.0 CEQA FINDINGS**

- 1.1 This project has been found to be Categorically Exempt from the requirements of CEQA pursuant to 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 existing residence to be reconstructed was built in 1927. The entire property on the lakeside of the roadway is approximately 60 feet deep, making compliance with the front and rear setback requirements nearly impossible. No further expansion into the front, rear-yard, and side-yard setbacks will occur as the residence will be reconstructed at the same location as the existing residence.

- 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.*

As shown in the photographs included within Exhibit I, approximately seven other homes within the project vicinity do not meet current front-yard setback requirements. Additionally, several other homes in the project vicinity also do not meet the current rear-yard setback requirements. Several existing three-story homes within the Fallen Leaf Lake area are also shown in the photographs. Requiring the applicant to comply with the Zoning Ordinance setback provisions would deprive them of the same reasonable use of their land as the other existing homes within the project vicinity.

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

The proposed location of the residence has the same front, rear-yard, and side-yard setbacks as the existing residence which is the minimum necessary for reasonable use of the site.

- 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 objections were raised. Comment letters received from the Fallen Leaf Lake Community Services District Fire Department and South Tahoe Public Utility District indicate that the requested variance will not interfere with their operations. Further, as part of project implementation, the applicant will be providing a new paved turnout and fire hydrant in accordance with the FLLCSDFD recommended conditions of approval in Attachment 1 enhancing public safety within the project vicinity. Public comment letters raised concerns regarding the structure's height and proximity to Fallen Leaf Road. However, no construction will occur outside of the existing building envelope and the proposed structure's height is consistent with the maximum building height of 40 feet permitted within the TR1 zone district. Therefore, the variance, as conditioned, will not be detrimental to the public health, safety, and welfare of the neighborhood.