

**EL DORADO COUNTY DEVELOPMENT SERVICES
ZONING ADMINISTRATOR
STAFF REPORT**

Agenda of:	March 7, 2007
Item No.:	6.a.
Staff:	Roman Anissi

VARIANCE

FILE NUMBER: V06-0008

OWNER: Robert and Deborah Hanson

AGENT: Natural Pools, Jeff Sipiora

REQUEST: A variance to allow a reduced front yard setback from; 30 feet to 20 feet for a swimming pool, 30 feet to 19 feet for pool equipment, and 30 feet to 15 feet for a six-foot (6') tall solid redwood fence as measured from the edge of the Old Ditch Road easement. (Exhibit F)

LOCATION: West side of Old Ditch Road, approximately 650 feet south of the intersection with Newtown Road within the Newtown Acres subdivision, in the Placerville Periphery area, Supervisorial District III. (Exhibit A)

APN(s): 096-180-11

ACREAGE: 7.16-acres

GENERAL PLAN: Rural Residential (RR) (Exhibit D)

ZONING: Estate Residential 10-acres (RE-10) (Exhibit C)

ENVIRONMENTAL DOCUMENT: Categorically Exempt pursuant to CEQA Sections 15303(e) and 15305(a)

SUMMARY RECOMMENDATION: Conditional Approval

PROJECT SUMMARY:

This site is located in the Newton Acres subdivision just southeast of the Placerville Airport. The Tentative Map (G-8) for Newton Acres was approved July 7, 1981 and a Final Map was recorded May 2, 1984. A main home and a garage exist on this property. Final inspection for occupancy for the home was completed July 14, 1995. The final inspection of the garage occurred January 19, 2004. Both the home and the garage are located closer to the front of the property near Old Ditch Road.

The County issued Permit #175641 for the swimming pool with equipment on September 21, 2006. Prior to the final inspection, the site inspector discovered that the swimming pool plan provided an incorrect measurement for the front yard setback. Instead of measuring from the edge of the 50 foot wide Old Ditch Road easement, the applicant had measured from the edge of the asphalt which resulted in a 25 foot discrepancy allowing the pool to encroach 11 feet into the front yard setback.

STAFF ANALYSIS

Project Description: A variance to allow completion of swimming pool, equipment, and a solid fence within the front yard setback of a 7.16 acre lot. Hardscape will be installed at-grade between the edge of the pool and fence sections located within the setback.

Site Description: With exception to the area near and within the front yard setback, heavy oak woodland tree canopy covers the entire property. Wilson Creek flows along the rear property line. Topography of the general area on the property where development has been allowed slopes from a higher point of 2,103 feet near the main home to a lower elevation of about 2,088 feet adjacent Old Ditch Road. There is about a 15 foot vertical elevation differential between the main home and the road.

Adjacent Land Uses: The property is located within the Newton Acres subdivision which extends to the north, south, and east of the site. Most of the properties within the subdivision are zoned Estate Residential Ten-acre (RE-10) with a Rural Residential (RR) General Plan land use designation. This subdivision is typical of single-family residential development on parcels ranging in size between 2.53 and 12.07 acres. Twelve (12) of the fourteen (14) lots within this subdivision have been developed with single-family homes. Three properties have been issued swimming pool permits, which includes the one issued for this property.

Newton Acres II Unit 1, the neighborhood on the west, also is typical of single-family residential development on parcels averaging five (5.0) acres in size. As with Newton Acres, this entire subdivision is also located within the IBC overlay. Zoning for Newton Acres II Unit 1 is Estate Residential Five-acre (RE-5) Zone District, with a Low Density Residential (LDR) General Plan land use designation. Many of these homesites have built swimming pools on the least sensitive parts of the properties. The following table identifies adjacent zoning and land uses:

Zoning	General Plan	Land Use/Improvements
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Site	RE-10	RR	Single-Family Residence
North	RE-10	RR	Single-Family Residence
South	RE-10	RR	Single-Family Residence
East	RE-10	RR	Single-Family Residence/Newton Road
West	RE-5	LDR	Newton Acre II Unit 1, Single-Family Residences

Project Issues: Discussion items for this project are limited to sensitivity to natural resources, neighborhood sensitivity, the applicant’s response to the Statement of Fact in Support of a Variance Application, and Fire District conditions. Findings supporting the variance are included in Attachment 2 of this report.

Sensitivity to Natural Resources

Site constraints created by a heavy oak woodland canopy makes this site unique within the area. While surrounding properties have oak canopy ranging between the 40-59 or 60-79 percent canopy within an Important Biological Corridor (IBC) overlay, this site is nearly 100 percent covered by such canopy. The only area on this property that is devoid of such sensitive resources is the area in the front yard setback where the swimming pool is partially constructed.

An aerial assessment of the neighborhood shows that many of the surrounding home sites have installed pools and have adequate areas devoid of sensitive resources such as oak trees and oak canopy near or adjacent home sites. These property owners could build such accessory structures outside of the required yards and the natural disposition of many other lots allowed construction of swimming pools without the need to affect natural resources.

Allowing the pool and equipment to be located no closer than 19 feet from the edge of the Old Ditch Road easement considers these unique site constraints. Allowing a six-foot (6’) tall solid redwood fence to be located 15 feet from the edge of the Old Ditch Road easement provides a safety feature required by the California Building Code with installation of swimming pools. These encroachments are the minimum necessary to allow the property owner the ability to enjoy the same rights as those experienced by many in the neighboring area and without the need to impact sensitive resources.

Sensitivity to the Neighborhood

The six-foot (6’) tall redwood fence and the ten foot (10’) elevation differential that exists, between the grade of the pool and Old Ditch Road, will limit any direct visual line-of-sight from adjacent properties into the pool enclosure. In addition, the physical separation between the pool and enclosure with the two (2) closest homes located to the north is in excess of 120 feet. This will further buffer and protect adjacent property owners from experiencing any potential negative effects of a pool located within the front yard setback in this part of the Newton Acres neighborhood.

Discussion of Statement of Facts in Support of a Variance Application

The response to the questions below was generated by the applicant in order to justify the request for a variance for this project.

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 the land, buildings or uses in the vicinity and the same zone, and have not resulted from any act of the owner or applicant.

Response: Due to the oak trees/canopy and septic field location, the proposed encroachment (into the front yard setback) is the most reasonable location (for the pool and equipment). The proposed pool/spa and concrete decking would not remove any (oak) trees and is not visible from the roadway.

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.

Response: There are several non-essential (accessory) structures in the area that encroach into the front yard setback. Decorative retaining walls, planters, lighted address columns, and elaborate mailboxes can be found on other properties in the same zone.

3) The variance is the minimum necessary for the reasonable use of the land or building.

Response: The variance request is necessary to avoid removal of oak trees in the IBC. Reasons for (requesting reduced) setbacks include (allowing) emergency equipment access. (to this water source). Old Ditch Road is a private, not a County maintained cul-de-sac. Proposed pool is built in-ground, thus no visible structure (will occur) from pavement (because) the lot slopes up at a 2:1 slope (from Old Ditch Road). Emergency equipment would/could not have access in direct line to pool (if constructed further back on the property where heavy oak canopy exists).

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.

Response: The variance is not detrimental to the public, health, safety, or welfare, or injurious to the neighborhood. Pool can help (fire) safety by providing source of water for firefighters.

El Dorado County Fire Protection District Conditions

The El Dorado County Fire Protection District provided six project conditions to address fire safety. Following a recent site visit, District staff believes that all six (6) conditions apply and that all have been met except for one. The one that the District will require is a fire plan submittal and review fee of \$120.⁰⁰. The remaining five (5) conditions address certain repairs and improvements. Such improvements include re-graveling and/or repair of the fire access road from the end of Old Ditch

Road to Newton Road. Other improvements include repair or replacement of the gate at Newton Road, installation of a *Knox* padlock on the gate, installation of signage on the gate to read Emergency Fire Access using six inch (6”) red lettering on a white background, and trimming of brush and vegetation for horizontal and vertical clearance.

General Plan: Issues relating to General Plan consistency are limited to a discussion about the Important Biological Corridor (IBC) pursuant Policy 7.4.2.9 which identifies the IBC as having a high wildlife habitat value because of the extent, function, and connectivity of important habitat. Projects adjacent to and within the IBC overlay require a higher level of review to ensure protection of sensitive natural resources, particularly when oak canopy and/or riparian corridors exist within the overlay. This project meets the intent of the IBC overlay by directing development to the least sensitive areas between existing buildings and Old Ditch Road while protecting the more sensitive internal parts of the property.

Zoning: This project requests a variance based on the regulations established by the Zoning Ordinance Sections 17.22.600 and 17.22.050 for encroachment into required yards for a swimming pool, equipment, and a six-foot tall safety fence. *Section 17.70.110* identifies a required front yard setback of 30 feet for pools in Estate Residential Ten-acre (RE-10) Zone District. *Sections 17.14.155(B)* and *(C)* allows only open agricultural fencing in the front yard setback for property zoned RE-10. Solid fencing can only be installed in the side and rear yard setbacks of any zone.

The findings necessary to justify the variance for the pool, equipment and the fence are included in Attachment 2 and discuss the extraordinary circumstances and site constraints of this property. The minimum improvements necessary to allow reasonable use, and public health, safety, and welfare issues are also discussed in the project findings.

Agency and Public Comments: The El Dorado County Fire Protection District provided project comments and conditions for this project. The other agencies that were distributed but did not provide comments include:

El Dorado County Department of Transportation
El Dorado County Environmental Management Department
Placerville Airport
Office of the County Surveyor
El Dorado County Resource Conservation District

ENVIRONMENTAL REVIEW

This project has been found to be Categorically Exempt from the requirements of CEQA pursuant to *Section 15303(e)* that allows accessory (appurtenant) structures including garages, carports, patios, swimming pools, and fences in areas where no sensitive environmental resources exist, as well as *Section 15305(a)* that allows minor alterations in land use limitations for a variance. The project proposes development in the least sensitive parts of the property and impacts to the environment will not occur with the approval of a variance. No further environmental analysis is necessary.

Pursuant to Resolution No. 240-93, a \$50.⁰⁰ processing fee is required by the County Recorder to file the Notice of Exemption.

RECOMMENDATION

Staff recommends that the Zoning Administrator take the following action:

1. Find that the project is Categorical Exempt pursuant *CEQA Guidelines Sections 15303(e)* and *15305(a)*; and
2. Approve V06-0008 subject to the conditions in Attachment 1 based on the findings in Attachment 2.

SUPPORT INFORMATION

Attachments To Staff Report:

Attachment 1	Conditions of Approval
Attachment 2	Findings
Exhibit A	Vicinity Map
Exhibit B	General Aerial Map
Exhibit C	Zoning Map
Exhibit D	General Plan Land Use Map
Exhibit E	Airport/IBC Overlay
Exhibit F	Site Plan
Exhibit G	Site Photographs
Exhibit H	GIS Aerial Comparison/Site Constraint #1
Exhibit I	GIS Aerial Comparison/Site Constraint #2
Exhibit J	August 20, 1998 Aerial Photo/TerraServer™
Exhibit K	Newton Acres Subdivision Map (G-8)
Exhibit L	Assessor's Map

ATTACHMENT 1

CONDITIONS OF APPROVAL

File Number V06-0008/Hanson Pool Variance

CONDITIONS OF APPROVAL

Planning Services

1. This variance is based upon and limited to compliance with the project description, the Zoning Administrator hearing exhibits marked Exhibits A-L dated March 7, 2007, 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:

Approval of this variance allows only the following: portions of the swimming pool to be located within the front yard setback and no closer than 20 feet as measured from the edge of the Old Ditch Road easement to the edge of the swimming pool; pool equipment shall be located within the front yard setback and no closer than 19 feet as measured from the edge of the Old Ditch Road easement to the equipment; and installation of a six-foot (6') tall solid redwood fence to be located no closer than 15 feet as measured from the edge of the Old Ditch Road easement to the fence line. At-grade hardscape for swimming pool decking is to be located between the edge of the pool and the redwood fence within the front yard setback.

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. The property and any portions thereof shall be sold, leased or financed in compliance with this project description and the approved hearing exhibits and conditions of approval hereto. All plans must be submitted for review and approval and shall be implemented as approved by the County.

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, as provided in *Section 66474.9(b)* of the *California Government Code*.

The subdivider 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 subdivision, which action is brought within the time period provided for in *Section 66499.37*.

County shall notify the subdivider of any claim, action, or proceeding and County will cooperate fully in the defense.

3. Pursuant to *Resolution No. 240-93*, a \$50.00 processing fee is required by the County Recorder to file the Notice of Exemption. This fee must be made payable to El Dorado County and must be submitted to Planning Services within five (5) days following the approval of the Zoning Administrator and after the end of the appeal period of a final project decision.
4. All on-site oak trees and oak woodland canopy shall be protected in place. Oak trees and oak woodland canopy shall not be removed from the property with the approval of this variance.
5. All patio and deck lighting associated with the pool shall be shielded to prevent light and glare from leaving the property and must conform to the provisions of *Section 17.14.170* for *Outdoor Lighting*.
6. Pool slides, pool equipment, and any accessory or temporary structure located within the pool enclosure area and within the six-foot (6') tall redwood fence, regardless of location of such equipment within or outside of the setback areas, shall remain below 3 feet (3') in height as measured from grade.
7. The six-foot (6') tall solid redwood oak fence shall be maintained in good visual repair at all times. The redwood fence shall be stained using a natural stain that will enhance the natural qualities of the redwood. At no time shall color paints be used to paint any part of the six-foot (6') tall redwood fence.

El Dorado County Fire Prevention District

8. Prior to the approval of a final inspection, the applicant must submit a review inspection fee of \$120.00 for the El Dorado County Fire Prevention District.
9. Prior to the approval of a final inspection, the applicant shall illustrate how the emergency fire access road, from the end of Old Ditch Road to Newtown Road, is in adequate repair or must re-graveled and/or repair the road, as needed.
10. Prior to the approval of a final inspection, the applicant shall illustrate how the gate at Newton Road is in adequate repair, or shall repair and/or replace the gate at Newton Road, as needed.

11. Prior to the approval of a final inspection, the applicant shall illustrate the location of a *Knox* padlock on the gate, or shall install a *Knox* padlock on the gate, as needed.
12. Prior to the approval of a final inspection, the applicant shall illustrate how the signage on the gate meets the Fire District requirements, or shall install signage on the gate to read *Emergency Fire Access* with six inch (6") red lettering on a white background, as needed.
13. Prior to the approval of a final inspection, the applicant shall illustrate how the vegetation along Old Ditch Road meets the Fire District standards, or shall trim back vegetation on the access road as follows: 10 feet on each side of the road and shall provide 15 feet of vertical clearance.

ATTACHMENT 2

FINDINGS

File Number V06-0008 / Hanson Variance

Based on the review and analysis of this project by staff and affected agencies, and supported by discussion in the staff report and evidence in the record, the following findings can be made:

1.0 CEQA FINDINGS

1.1 The installation of a swimming pool, equipment and fencing is exempt from further CEQA review pursuant to *CEQA Guidelines Section 15303(e)* for *Accessory (Appurtenance) Structures* and *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.*

Most, if not all, neighboring properties have oak canopy coverage ranging between 40 to 59 or 60 to 79 percent and all properties in this neighborhood are within an Important Biological Corridor (IBC). The project site is unusual in that nearly 100 percent of the property is covered by oak canopy. This is an exceptional and extraordinary condition of the land that was not created as a result of any action taken by the property owner or applicant. This project considers the extraordinary circumstances of the property by directing the development of a swimming pool, equipment, and a safety fence to the least sensitive parts of the property and within the front yard setback where no sensitive resources such as oak trees and more sensitive IBC resources exist.

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.*

Site constraints on this property creates unreasonable hardships on the property owner and combined with General Plan policies that require the protection of sensitive and natural resources including oak woodland within the IBC overlay, the applicant is deprived of the reasonable use of the land allowed for other land in the vicinity and the same zone. Other property owners in the vicinity and within the same zone have areas that are clear and devoid of oak canopy. The only area where no such resources exist on this property is within the front yard setback. The heavy oak canopy and the site constraints created by such canopy deprives this property owner of the same enjoyment experienced by surrounding homeowners.

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

Allowing the swimming pool and equipment to be located no closer than 19 feet from the edge of Old Ditch Road easement and by allowing the installation of a six-foot (6') tall redwood fence 15 feet from the edge of Old Ditch Road easement is the minimum necessary for the reasonable use of this land. The location of the existing home, the garage and the site constraints based on the IBC overlay and oak canopy, limits where the swimming pool, equipment and fence can be located.

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. (Ord. 4589 §§2, 5, 2001)*

By providing a six-foot (6') tall redwood fence, the location of the swimming pool and equipment ten feet (10') above the grade of Old Ditch Road meets the intent of the ordinance by providing safety while completely screening the visual impacts to those that visit or live in this neighborhood. As a result, this project will not be detrimental to the public health, safety, and welfare, and will not be injurious to the neighborhood.