

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



**Agenda of:** June 6, 2007  
**Item No.:** 4. a.  
**Staff:** Tim Chamberlain

**SPECIAL USE PERMIT / VARIANCE**

**FILE NUMBER:** S07-0001 / V 06-0009

**APPLICANT:** Michael and Kerry Damore

**REQUEST:** Special use permit request to allow two retaining walls greater than 40 inches in height to be located inside the front yard setback. The walls are 6-10 feet tall and are proposed at 11.5 feet from the property line adjacent to Leslie Lane. The walls are approximately 180 and 200 feet long respectively and have 80 and 90 foot segments that encroach into the 30 foot front yard setback. These walls are necessary for the development of the proposed on site single family residence.

Variance request to allow a reduction in the front yard setback from 30 feet to 21.5 feet for the construction of a swimming pool.

**LOCATION:** On the north side of Shoreline Drive, approximately 20 feet west of the intersection with Leslie Lane in the El Dorado Hills area, Supervisorial District I. (Exhibit A)

**APN:** 110-632-04

**ACREAGE:** 1.30 acres

**GENERAL PLAN:** Medium Density Residential (MDR) (Exhibit B)

**ZONING:** One-acre Residential (R1A) (Exhibit C)

**ENVIRONMENTAL DOCUMENT:** Categorically exempt pursuant to Section 15305 of the CEQA Guidelines

**SUMMARY RECOMMENDATION:** Conditional Approval

**BACKGROUND:** The applicants applied for a grading permit (174421) through Development Services to construct two retaining walls within the front yard setback that would allow for the future construction of a pool. Planning Services reviewed the grading permit and the proposed retaining walls for consistency with Zoning Code and General Plan policy and found that the proposed development was inconsistent with Zoning requirements. Based on this determination, the property owners applied for a variance and special use permit to allow for the walls in the front yard setback.

## STAFF ANALYSIS

**Project Description:** The applicant is requesting a variance to reduce the required 30-foot front yard setback, as required by the R1A Zone District, to 21.5 feet from the edge of the property line along Leslie Lane. This request would allow the applicants to construct a pool adjacent to their proposed residence. Additionally, the applicant is requesting a special use permit to allow two retaining walls to be located within the front yard 30 foot setback. The walls are 6-10 feet tall and are proposed at 11.5 feet from the property line adjacent to Leslie Lane.

**Site Description:** The subject parcel is approximately 1.30 acres in size and is located in the Vista Del Lago, Unit 1 subdivision in the El Dorado Hills area. The property is undeveloped and has a planned access via Shoreview Drive. Development of this property is constrained by several factors: the parcel is bordered by streets on three sides which require a 30-foot front yard setback, there is a 15-foot drainage easement running north/south that bisects the parcel, and large areas of the property are at 30 percent or greater slope.

### Adjacent Land Uses:

	Zoning	General Plan	Land Use/Improvements
Site	R1A	MDR	Unimproved Residential
North	R1A	MDR	Unimproved Residential
South	R1A	MDR	Unimproved Residential
East	RE-10	MDR	Unimproved Residential
West	R1A	MDR	Unimproved Residential

**General Plan:** The General Plan designates the subject site as Medium Density Residential, which permits a maximum of one dwelling unit per acre. The existing 1.30-acre parcel therefore conforms to the General Plan land use designation.

**Conclusion:** As discussed above, the construction of a residence and auxiliary residential uses such as a swimming pool on the property are consistent with the General Plan; however, a variance is required for encroachments into zoning setbacks.

**Zoning:** The subject site is zoned One-acre Residential (R1A) which permits a minimum parcel size of one acre. Therefore, the existing 1.30-acre parcel conforms to existing zoning. The development standards for the R1A Zone District are as follows:

17.28.040 Development Standards The following provisions shall apply in R1A Zone Districts unless and until a variance is obtained from the Planning Commission:

- A. Minimum lot area, one acre;
- B. Minimum parcel area per dwelling unit, same as subsection A of this section;
- C. Maximum building coverage, thirty- five percent (35%);
- D. Minimum parcel width, one hundred feet;
- E. Minimum yards: front, thirty feet; sides, fifteen feet, except the side yard shall be increased one foot for each additional foot of building height in excess of twenty-five feet (25'); rear, thirty feet (30'); stable (front), thirty feet (30'); sides, thirty feet (30'); rear, thirty feet (30'); (Ord. 4236, 1992)
- F. Maximum building height, forty-five feet (45'). (Prior code §9411/5(c); Ord 4236, 1992)

The purpose of this special use permit is to allow two retaining walls (greater than 40 inches in height) be located inside the 30-foot front yard setback. Chapter 17.14.155 states that “in all residential zone districts (including R1A) the following fence and wall requirements shall apply within required front yard setback areas:

- 1. Fences or walls at least 50 percent open shall be permitted up to a height of 7 feet;
- 2. Fences or walls which are less than 50 percent open shall not exceed 40 inches in height;
- 3. On corner lots, no fence or wall shall exceed 40 inches in height within a triangular area at the intersection, measured 25 feet along the lot line extending from the lot corner as noted in the exhibit below.
- 4. Fences or walls which exceed the requirements of this subsection shall be subject to the issuance of a special use permit.”

Based on the requirements of subsection 1, 2, and 4, staff has determined the need for a special use permit to allow the construction of retaining walls in the proposed location. The proposed walls are located in the front yard setback adjacent to Leslie Lane, are between 6-10 feet in height, and are solid.

The purpose of this variance is to reduce the front yard setback to allow for the construction of a pool. Chapter 17.06 (V) defines a front yard as, “a yard extending across the full width of a building site between any road easement or road right-of-way and to the nearest line of the building; provided, that if any official plan line has been established for the street upon which the building site faces, then the measurement shall be taken from the official plan line to the nearest line of the building. Further, front yards shall exclude all road easements. Roads established through prescriptive right of undefined road easements, shall be assumed to have a right of-way of twenty-five feet (25') from the existing centerline of the roadway for the purpose of establishing minimum front yard. (Ord. 4236, 1992)”

**Other Issues:** This parcel is further impacted by slopes of 30 percent (30%) or greater. The design of the development for the primary residence was made to best avoid the 30 percent slopes on the property and the two proposed retaining walls in the rear of the parcel would further reduce the total grading. Based on a prior review of the development plan, Planning Staff found that the development constituted reasonable use of the property. The development plan, and specifically the “total square feet of disturbance on 30 percent (or greater) slopes, was found to be consistent with General Plan policy 7.1.2.1 and the Interim Interpretive Guidelines (Exhibit G) adopted by the Planning Commission for this policy.”

## **ANALYSIS**

### **Special Use Permit Findings**

In order to approve the use, the Planning Commission must find that:

1. The issuance of the permit is consistent with the 2004 General Plan;

Staff has reviewed the development plan for consistency with General Plan Policy 7.1.2.1 and finds that the development constitutes reasonable use of the property. The requested special use permit would allow a variation from zoning code for walls in the front yard setback and is consistent with General Plan policy requirements.

2. The proposed use would not be detrimental to the public health, safety and welfare or injurious to the neighborhood.

The location of the retaining walls, though only 11.5 feet from the property line, is in excess of 25 feet from the roadway and roughly 17 feet above grade of the roadway. Based on information provided by the applicant and staff site visit, the retaining walls should not impact line of sight along Leslie Lane. Additionally, the proposed development meets with the requirements of the Southpointe development’s CC&R’s and is intended to blend into the natural surroundings by minimizing the footprint on the land.

It should be noted that a subcommittee from the El Dorado Hills Area Planning Advisory Committee met on December 24<sup>th</sup>, 2006 and unanimously voted to deny the application. The subcommittee felt that the home had already been given a variance on one side and that the house should be designed to stay inside the prescribed setbacks.

### **Variance Findings**

The granting of a variance requires four findings pursuant to Section 17.24.040 of the County Code. These findings are listed below with a discussion in regards to this variance request.

**Required Finding No. 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.

**Discussion:** The parcel is surrounded by road right-of-ways on three of four sides including the two long sides, and it is considered a triple fronted lot. This type of parcel (based on it's Zone District) is required to have a 30-foot front setback from all property lines adjacent to a right-of-way. Based on the shape of the parcel and the orientation of the house, the third front yard, adjacent to Leslie Lane, could be considered a rear or side yard. Additionally, the 15-foot drainage easement the runs through the middle of this property severely limits the available area for development on the parcel.

**Required Finding No. 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.

**Discussion:** The strict application of minimum setbacks pursuant to *Section 17.28.080 (E)* of *County Code* to the subject site, severely limits building options for the construction of the proposed residential development. As proposed, the development includes the construction of a two-story 6,658 square foot house and two garages totaling an additional 1,673 square feet. Though the house and attached garages do not encroach on any setback area, strict enforcement of the front yard setback for the retaining wall might cause the need for a significant redesign for the development of this parcel. It should be noted that a reasonable use determination has already been made for development on 30 percent slopes based on the interpretive guidelines for *General Plan Policy 7.1.2.1*.

The applicant has proposed to develop a swimming pool on this parcel. Reasonable use of the land applies only to the development of the residence. A variance of the front yard setback for a swimming pool does not qualify for a finding of reasonable use and is not applicable towards making the Required Finding No. 2.

**Required Finding No. 3:** The variance is the minimum necessary for the reasonable use of the land or building.

**Discussion:** Section 17.28.080 (E) of County Code states the subject site must have a 30-foot minimum front yard setback from Leslie Lane. The lot is constrained by steep slopes and does qualify for a front yard setback reduction along Shoreview Drive under Sections 17.14.020 of County Code. This section grants a 50 percent (50%) setback reduction for the residence based on the steep slopes on the lot. This reduction could also be applied to the front yard setback along Leslie Lane, however the reduction only applies to the main residence (and attached auxiliary uses such as a garage). As the house is greater than 30 feet from the property line along Leslie Lane this setback reduction is not necessary, however a reduction of setback is necessary for the proposed retaining walls and pool.

Based on discussion of Required Finding No. 2, staff does not recommend a variance of the setback requirement for a swimming pool. The development can be completed and would constitute reasonable use of the property without the addition of the swimming pool. As an

accessory structure not critical to the development of this property, a swimming pool needs to meet the standard development requirements pursuant to *Sections 17.28.080 (E)* and *17.14.050 (C) of County Code*. The minimum necessary setback for reasonable use of the land is a 30 foot front yard setback for a swimming pool.

**Required Finding No. 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.

**Discussion:** The intent of the 30-foot front yard setback for the R1A Zone District required under *Section 17.28.040(E)* is to provide a buffer for residential structures from roadways, such as Leslie Lane, and their related impacts such as noise and visual obstruction along the right-of-way. The setbacks also provide for neighborhood design consistency and appearance. The property line along Leslie Lane, in this case, is several feet from the actual edge of the road. The proposed swimming pool would be 21.5 feet from the property line, but over 30 feet from the edge of the road. Additionally, the proposed retaining walls are far enough away from the edge of road that line of sight is not an issue. Additionally, the land across Leslie Lane is not intended for residential use and is a buffer between the subdivision and Folsom Lake. Staff finds that the variance would not be detrimental to public health a safety.

If the project were to be approved, Planning Services would implement a condition requiring the recording of a legally binding document on the property for the purpose of indemnifying and holding the County harmless for any and all claims or lawsuits or damages, which arise in any way from this reduction in the building setback. Based on the physical features of this property, and the design of the development, Finding No. 4 can be made for the requested variance.

**Summary:** Staff has reviewed the proposed development and variance request for conformance with the four (4) required findings and has found that all required findings cannot be met. For this reason, Planning Services cannot support the variance request.

**Agency and Public Comments:** The following agencies provided comments on this application:

El Dorado County Department of Transportation  
El Dorado County Air Quality Management District  
El Dorado Hills Area Planning Advisory Committee

## **ENVIRONMENTAL REVIEW**

This project has been found to be Categorical Exempt from the requirements of CEQA pursuant to Section 15305 of the CEQA Guidelines stating that minor alterations in land use limitations in areas with an average slope of less than 20 percent, which do not result in any changes in land use or density. Pursuant to Resolution No. 240-93, a \$50.<sup>00</sup> processing fee is required by the County Recorder to file the Notice of Exemption.

## **RECOMMENDATION**

Staff recommends the Zoning Administrator take the following actions:

1. Find the project (V06-0009/S07-0001) is exempt from CEQA pursuant to Section 15305(a) of the CEQA Guidelines;
2. Approve Special Use Permit S07-0001 to allow two retaining walls be located in the front yard setback, at 11.5 feet from the property line along Leslie Lane and at no greater than 10 feet in height, based on the analysis in the staff report, the conditions itemized in Attachment 1, and the project Findings in Attachment 2.
3. Deny Variance V06-0009, a request to allow a reduction in front yard setback for a swimming pool.

## **SUPPORT INFORMATION**

### **Attachments:**

Attachment 1.....	Conditions of Approval
Attachment 2.....	Findings for S07-0001
Exhibit A.....	Vicinity Map
Exhibit B.....	General Plan Land Use Map
Exhibit C.....	Zoning Map
Exhibit D.....	Assessor's Map
Exhibit E.....	Site/Grading Plan
Exhibit F.....	Aerial Photograph
Exhibit G.....	Interim Interpretive Guidelines for El Dorado County General Plan Policy 7.1.2.1

# ATTACHMENT 1

## CONDITIONS OF APPROVAL

**File Number S 07-0001 - Damore  
Zoning Administrator June 6, 2007**

### Planning Services

1. This special use permit map is based upon and limited to compliance with the project description, the Zoning Administrator hearing exhibits marked Exhibit E (Site Plan Map) dated February 2006 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.

**Project description:** A special use permit to allow two retaining walls greater than 40 inches inside the front yard setback. The walls are 6-10 feet tall and are proposed at 11.5 feet from the property line adjacent to Leslie Lane.

The grading, development, use, and maintenance of the property, the size, shape, arrangement, and location of structure, 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. Pursuant to Resolution No. 240-93, a \$50.<sup>00</sup> processing fee is required by the County Recorder to file the Notice of Exemption.
3. 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 landowner 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 landowner of any claim, action, or proceeding and County will cooperate fully in the defense.

4. Development of this property is subject to issuance of a building permit from El Dorado County Building Services.
5. Prior to issuance of a building permit, the construction of the two retaining walls shall be subject to approval of any requirements from the Department of Transportation and Building Services in regards to disturbance of earth inside a slope easement.

## ATTACHMENT 2

### FINDINGS FOR APPROVAL

**File Number S 07-0001 - Damore  
Zoning Administrator June 6, 2007**

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 Finding**

- 1.1 This project has been found to be Categorical Exempt from the requirements of CEQA pursuant to Section 15305 of the CEQA Guidelines stating that minor alterations in land use limitations in areas with an average slope of less than 20 percent, which do not result in any changes in land use or density. Pursuant to Resolution No. 240-93, a \$50.<sup>00</sup> processing fee is required by the County Recorder to file the Notice of Exemption.

#### **2.0 Administrative Findings**

Special Use Permit S07-0001 would allow two retaining walls greater than 40 inches in height to be located inside the front yard setback. The walls are 6-10 feet tall and are proposed at 11.5 feet from the property line adjacent to Leslie Lane.

#### **2.1 The proposed special use permit request is consistent with the policies in the El Dorado County 2004 General Plan, adopted July 19, 2004.**

Staff has reviewed the grading plan for consistency with General Plan Policy 7.1.2.1 and finds that the development constitutes reasonable use of the property. The requested special use permit would allow a variation from zoning code for walls in the front yard setback and is consistent with General Plan Policy requirements.

#### **2.2 Granting of this special use permit is found to comply with the requirements of County Code Section 17.22.540, and this special use permit would not be considered detrimental to the public health, safety, and welfare, or injurious to the neighborhood.**

The location of the retaining walls, though only 11.5 feet from the property line, is in excess of 25 feet from the roadway and roughly 17 feet above grade of the roadway. Based on information provided by the applicant and staff site visit, the retaining walls should not impact line of sight along Leslie Lane. Additionally, the proposed development meets with the requirements of the Southpointe development's CC&R's and is intended to blend into the natural surroundings by minimizing the footprint on the land.

**2.3 The proposed use is specifically permitted by special use permit pursuant to Title 17 of El Dorado County Code.**

The Zoning Designation of this parcel is R1A which is identified in Section 17.14.155 of the El Dorado County Zoning Code as being an applicable Zone District for a Special Use Permit to allow walls greater than 40 inches inside the front yard setback.