

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



**Agenda of:** October 3, 2007  
**Item No.:** 5.a.  
**Staff:** Thomas A. Lloyd

## **SPECIAL USE PERMIT**

**FILE NUMBER:** S07-0014

**APPLICANT:** Ben Fagen and Tim Lefever

**REQUEST:** A request for a Special Use Permit to allow the expansion of a legal non-conforming structure. The expansion would be to add a 484 square feet second story living space to an existing garage located within a setback area. The footprint of the garage would not change, though the height would be expanded by 6 feet 6 inches to allow for a small living area, a full bath, and washer/dryer hookups. Exterior stairs would be added to give access to the second story. Also proposed are an addition to, and the enclosure of, the existing entry and first floor deck of the primary residence. Adequate parking and a driveway already exist for the garage. No further parking or driveway modifications are proposed.

**LOCATION:** On the south side of Rubicon Drive at the intersection of Rubicon Drive and Highway 89, in the South Lake Tahoe area, Supervisorial District V. (Exhibit A).

**APN:** 016-201-02

**ACREAGE:** 0.36 acre (15,826 square feet)

**GENERAL PLAN:** Adopted Plan (AP) (Exhibit B)

**ZONING:** One-family Residential (TR1) (Exhibit C)

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

**SUMMARY RECOMMENDATION:** Conditional Approval

**BACKGROUND:** The subject parcel was created by the Rubicon Properties subdivision map E-2 which was recorded in August of 1946 and assigned the designation of a portion of Lot 1, Block J. There is an existing two-story, 2,064 square-foot single-family residence with a detached 484 square-foot garage. In 1965, the existing structures were permitted and built within the 20-foot front setback required of the TR1 Zone District. The southwestern portion of the garage was built approximately 4.5 feet from the property line, along the edge shared with the southern terminus of Rubicon Drive. It was once common practice in the Lake Tahoe area to permit the construction of garages in close proximity to the property line. Today this garage would be required to be set back 20 feet from the edge of any road easements, or 20 feet from the property line, whichever is more restrictive. Since the structure was built with permits, it is now considered a legal non-conforming use.

**STAFF ANALYSIS**

**Project Description:** The applicants are requesting a Special Use Permit to allow the expansion of a legal non-conforming structure. The expansion would be to add a 484 square feet second story living space to an existing garage located within a setback area. The footprint of the garage would not change, though the height would be expanded by 6 feet 6 inches to allow for a small living area, a full bath, and washer/dryer hookups. Exterior stairs would be added to give access to the second story. Also proposed are an addition to, and the enclosure of, the existing entry and first floor deck of the primary residence. As the primary residence is located outside all applicable easements and setbacks, approval of this Special Use Permit is not necessary to allow the aforementioned modifications to the primary residence.

**Site Description:** Both a single-family residence and a two-car garage with a steeply pitched roof are existing on the parcel. During a site visit conducted July 11, 2007, staff noted that the structure is only visible for about five seconds when traveling either direction on State Highway 89. The house is set back from the highway, and the rest of the parcel is covered with driveway area and vegetation. The elevation of the garage is approximately 6,410 feet; while the elevation of State Highway 89 (elevation taken at the corner of State Highway 89 and Rubicon Drive) is approximately 6,421 feet, or eleven feet below grade. At this elevation, the structure is much less visible than would be a structure at the same elevation or higher.

**Adjacent Land Uses:**

	Zoning	General Plan	Land Use/Improvements
<b>Site</b>	TR1, PAS 149*	AP (TRPA Regional Plan)	Single-family dwelling
<b>North</b>	TR1, PAS 149	AP	Single-family dwelling
<b>South</b>	TR1, PAS 149	AP	Single-family dwelling
<b>East</b>	TR1, PAS 149	AP	Single-family dwelling
<b>West</b>	TR1, PAS 149	AP	State Hwy. 89

\*Plan Area Statement 149, Rubicon, which is a TRPA residential PAS.

**General Plan:** The proposed project is located on a parcel with an Adopted Plan (AP) General Plan land use designation. This land use category recognizes areas for which specific land use plans have been prepared and adopted. The subject parcel is within the Rubicon Plan Area of the Tahoe Regional Planning Agency (TRPA). The following General Plan policies also apply:

**Policy 2.2.1.2:** “To provide for an appropriate range of land use types and densities within the County, the following General Plan land use designations are established and defined.”

**Adopted Plan (AP):** “The adopted plan for the Tahoe Basin is the Regional Plan for the Tahoe Basin and the Plan Area Statements, both adopted by the Tahoe Regional Planning Agency (TRPA).

**Discussion:** The subject parcel is located in the Rubicon Plan Area which allows one residential single-family dwelling. Further, the Tahoe Regional Plan allows accessory structures and uses. The proposed expansion of the existing garage is not disallowed by the Rubicon Plan Area Statement or any CC&Rs associated with the parcel.

**Subparagraph 18.2.F** of the *TRPA Code of Ordinances* states that, “living area associated with a permissible residential accessory structure under **Subparagraph 18.2.A(1)** may be permitted for parcels ineligible for a second residence provided that such living area does not constitute a secondary residence. Residential accessory structures, other than an authorized secondary residence, shall not contain any of the following: (1) Any item listed under cooking facilities as defined in **Chapter 2** or areas for the insertion of these items. (2) Both bathing facilities and a wet bar; either bathing facilities or a wet bar may be permitted. (3) More than one toilet or bathing facility. (4) Living area greater than 50 percent of the living area of the primary residence, or greater than 640 square feet, whichever square footage is less.”

**Discussion:** The project, as proposed, would comply with the provisions of TRPA Code of Ordinances **Subparagraph 18.2.F**. The proposed living space would not contain cooking facilities as defined by TRPA, would have bathing facilities but no wet bar, would have only one toilet or bathing facility, and, at 484 square feet, would be less than 50 percent of the living area of the primary residence (1,623 square feet).

Additionally, **Policy 2.2.5.21** provides that development projects shall avoid incompatibility with adjoining land uses.

**Discussion:** Single family homes can be found on all but one of the adjacent parcels. With the frequency of heavy snows in the Tahoe Basin, garages are commonplace in the area. The addition of living space above the garage is an efficient use of the limited ground coverage area permitted through the Tahoe Regional Planning Agency’s (TRPA) regulations, and is common in the Lake Tahoe area. Additionally, staff has determined that since the project is located below the grade of State Highway 89, significant visual impact on the Highway would be minimized with the use of proper building materials, color selections, and vegetation. As a condition of this permit, the applicant must demonstrate to Planning Services that compliance with all applicable Tahoe Regional

Planning Agency (TRPA) regulations and policies has been met. As such, the project would not be incompatible with adjoining land uses.

**Zoning:** The subject site is zoned as a One-family Residential (TR1) District, which permits a minimum parcel size of 7,000 square feet when the lot is served with public water supply and sewage system. The parcel is served by a public water and sewage system by the Tahoe City Public Utility District.

The project requests a Special Use Permit to allow the expansion of a structure otherwise prohibited by the Zoning Ordinance, specifically **Section 17.56.040**, which identifies a front yard setback of 20 feet in the TR1 Zone District.

With the exception of the proposed zoning setback violation, a garage addition would be permitted by right in the TR1 Zone District, pursuant to **Section 17.56.020(H)**. Additionally, **Section 17.56.040(E)** limits maximum building height to 40 feet. At approximately 24 feet, the proposed project would comply. As such, staff finds the proposed Special Use Permit, as conditioned, is consistent with all applicable provisions of County **Zoning Ordinance Title 17**.

**Special Use Permit Request:**

The proposed use is normally permitted in the One-Family Residential TR1 Zone District pursuant to current El Dorado County Zoning Code Sections **17.56.010** and **17.56.020**. The special use permit would permit development where the current development standards in **Section 17.56.040(D)** would otherwise apply. **Section 17.56.040(D)** requires minimum yards of: front 20 feet, sides 5 feet and rear 15 feet.

**Chapter 17.20** describes nonconforming uses and ways to, “provide for a means by which the use of land or buildings or any building itself which violates current zoning ordinances but which lawfully existed on the effective date of the ordinances can be effectively regulated in the public interest.”

**Section 17.20.020** further defines a nonconforming use as meaning “the actual use or occupation of any land or structure or any structure itself which was lawful at the time of the adoption of the ordinance codified in this article but which has been made unlawful by the provisions of the ordinances or any amendments thereto.”

**Section 17.20.030** states that “any nonconforming use may be continued subject to the limitations set forth in **Sections 17.20.040** through **17.20.100**.”

**17.20.040:** “Expansion. A nonconforming use shall not be expanded, enlarged or otherwise extended either on the same or adjoining parcel of land without a special use permit. The permit shall be issued in accordance with **Chapter 17.22** which describes Special Use Permit procedures.”

**Conclusion:** After review of the submitted site plan and pursuant to a site inspection, it has been determined that the proposed project does not conflict with any standards contained in **Sections 17.28.010** through **17.28.040** and **Sections 17.56.010** through **17.56.040** of the County Code. It can

be found that the expansion of the top of the garage subject to this permit would not cause any loss of any sight distance, solar benefit, nor conflict with any use currently enjoyed by any of the surrounding parcel owners. The expansion onto the top of the garage would not increase the existing non-conformity building setback since the expanded portion would be within the footprint of the current legal non-conforming portion of the lower garage.

In order to approve the use, the approving authority must find that the use is consistent with the General Plan and would not be detrimental to the public health, safety and welfare nor injurious to the neighborhood. Staff finds as such based on comments received from public agencies, as discussed below.

**Agency and Public Comments:** Only the Meeks Bay Fire Protection District and El Dorado County Building Services provided comments during the distribution period. Copies of their written comments are available at the Planning Services office.

The following agencies had no specific concerns regarding the proposed special use permit:

El Dorado County Department of Transportation  
South Lake Tahoe Fire Department  
Pacific Gas and Electric  
Sierra Pacific Power  
Tahoe City Public Utility District  
Tahoe Regional Planning Agency  
Tahoe/Truckee unified School District  
El Dorado County Environmental Management/Environmental Health  
Caltrans

## **ENVIRONMENTAL REVIEW**

This project has been found to be Categorical Exempt from the requirements of CEQA pursuant to Section 15305 (a) 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, including but not limited to minor lot line adjustments, side yard, and set back variances not resulting in the creation of any new parcel. 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 that the Zoning Administrator take the following actions:

1. Certify that the project is Categorical Exempt from CEQA pursuant to Section 15305(a); and
2. Approve Special Use Permit S07-0014 subject to the Conditions of Approval in Attachment 1 and 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 Plan Land Use Map  
Exhibit C .....Zoning Map  
Exhibit D .....Subdivision Map page A-052D  
Exhibit E .....Site Plan dated August, 2005  
Exhibit F .....Proposed Floor Plan and Elevations  
Exhibit G .....Existing Floor Plan and Elevations  
Exhibit H .....Assessor's Map

# ATTACHMENT 1

## CONDITIONS OF APPROVAL

File Number S07-0014 – Lefever  
October 3, 2007 Zoning Administrator Hearing

### Planning Services

1. This special use permit is based upon and limited to compliance with the project description, the Zoning Administrator hearing exhibits marked Exhibits A-E dated October 3, 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:

A request for a Special Use Permit to allow the expansion of a legal non-conforming structure. The expansion will add a 484 square feet second story living space to an existing garage located within a setback area. The footprint of the garage will not change, though the height will be expanded by 6 feet 6 inches to allow for a small living area, a full bath, and washer/dryer hookups. Exterior stairs will be added to give access to the second story. Also proposed are an addition to, and the enclosure of, the existing entry and first floor deck of the primary residence. Adequate parking and a driveway already exist for the garage. No further parking or driveway modifications are proposed.

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 (such as Landscape and Tree Protection 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 applicant shall defend, indemnify, and hold harmless El Dorado County and its agents, officers, and employees from any claim, action, or processing 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 applicant of any claim, action, or proceeding and County will cooperate fully in the defense.

3. Pursuant to *County Code Section 17.22.250*, implementation of the project must occur within twenty-four (24) months of approval of this special use permit, otherwise the permit becomes null and void. It is the responsibility of the applicant to monitor the time limit and make diligent progress toward implementation of the project and compliance with conditions of approval
4. Any exterior lighting installed as a result of the proposed addition and remodeling 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*. Any proposed lighting shall be revised by Planning Services prior to issuance of the building permit.
5. The applicant shall provide to El Dorado County Development Services documentation demonstrating compliance with all applicable Tahoe Regional Planning Agency policies.
6. Prior to issuance of any permits, the applicant shall pay all Development Services fees in full.

#### **El Dorado County Building Services**

7. The applicant shall apply for a building permit for the proposed construction project. All necessary permits shall be issued prior to construction.

#### **Meeks Bay Fire Protection District**

8. All flammable building(s) shall be constructed with 5/8 inch sheetrock under the exterior siding (similar to a commercial building), as well as the normal requirements for the interior sheetrock.
9. The subject parcel shall comply with the defensible space requirements of *California Public Resource Code 4291*.

## **ATTACHMENT 2**

### **FINDINGS**

File Number S07-0014 – Lefever  
October 3, 2007 Zoning Administrator Hearing

#### **1.0 CEQA FINDING**

- 1.1 This project has been found to be Categorical Exempt from the requirements of CEQA pursuant to Section 15305 (a) 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, including but not limited to minor lot line adjustments, side yard, and set back variances not resulting in the creation of any new parcel.
- 1.2 The documents and other materials which constitute the record of proceedings upon which this decision is based are in the custody of Planning Services at 2850 Fairlane Court, Placerville, CA 95667.

#### **2.0 General Plan Findings**

- 2.1 The proposed use is consistent with the policies in the 2004 El Dorado County General Plan, as discussed in the General Plan Section of this staff report, specifically ***Policy 2.2.5.21*** which provides that development projects shall avoid incompatibility with adjoining land uses.
- 2.2 It can be found that the proposed use is consistent with applicable policies in the 2004 El Dorado County General Plan because the General Plan designates the parcel as Adopted Plan (AP). As such, the project is subject to the Tahoe Regional Planning Agency's Plan Area Statements and ordinances. The parcel is included in the Rubicon Plan Area which permits single-family residential development uses and accessory uses such as those subject to this permit.

#### **3.0 Special Use Permit Findings**

- 3.1 *The issuance of the permit is consistent with the General Plan.*

The approval of the permit, as conditioned, can be found to support these policies as it will be compatible with surrounding properties, as well as the permitted land uses found in the Rubicon Plan Area Statement.

- 3.2 *The proposed use will not be detrimental to the public health, safety, and welfare, or injurious to the neighborhood.*

The proposed use is not considered detrimental to the public health, safety, and welfare, or injurious to the neighborhood, because the proposed project does not conflict with any standards contained in Section **17.28.010** through **17.28.040** and **17.56.010** through **17.56.040** of the County Code. Furthermore, the expansion onto the top of the garage will not increase the existing non-conformity of the building setback since the expanded portion will be within the footprint of the current legal non-conforming portion of the lower garage.

3.3 *The proposed use is specifically permitted by special use permit pursuant to Title 17.*

**Section 17.20.040** of the County Zoning Ordinance states that, “a nonconforming use shall not be expanded, enlarged or otherwise extended either on the same or adjoining parcel of land without a special use permit. The permit shall be issued in accordance with **Chapter 17.22** which describes Special Use Permit procedures.”

3.4 *The proposed use is specifically permitted by the Tahoe Regional Planning Agency’s Code of Ordinances.*

**Subparagraph 18.2.F** of the *TRPA Code of Ordinances* allows “living area associated with a permissible residential accessory structure provided that such living area does not constitute a secondary residence.” The proposed living space, as defined by TRPA, is not a secondary residence.