

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



Agenda of: November 19, 2008
Item No.: 4.a.
Staff: Tom Dougherty

VARIANCE / PARCEL MAP CORRECTION

FILE NUMBER: V08-0010/P77-0170C

APPLICANT: Marc and Linda Springer

REQUEST:

- (1) Variance to allow construction of a 9 foot x 25 foot solid patio cover to encroach 12 feet into the 30-foot front yard setback.
- (2) Request to amend Parcel Map 19-136 to remove a 40-foot non-exclusive road and public utility easement.

LOCATION: On the east side of Old Sawmill Road approximately 0.3 mile northeast of the intersection with Black Oak Mine Road in the Garden Valley area, Supervisorial District IV. (Exhibit A).

APN: 060-361-20 (Exhibit B)

ACREAGE: 2.020 acres

GENERAL PLAN: Medium Density Residential (MDR) (Exhibit C)

ZONING: Estate Residential Five – Acre (RE-5) (Exhibit D)

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

RECOMMENDATION

Staff recommends the Zoning Administrator take the following actions:

1. Certify that variance V08-0010 and map amendment P77-0170C are Categorical Exempt from the requirements of CEQA pursuant to Section 15305 (a).
2. Approve variance V08-0010 and map amendment P77-0170C amending Parcel Map 19-136 based on the Conditions of Approval contained in Attachment 1 and the Findings contained in Attachment 2.

BACKGROUND: The approval of Tentative Parcel Map P77-0170 resulted in Parcel Map 19-136, recorded May 5, 1978 creating three parcels and the subject parcel is Parcel 1. The Parcel Map included 25 feet of a 50-foot wide road and public utility easement along the west boundary. A 40-foot road and utility easement was also recorded with the Parcel Map on the north boundary to be shared by Parcels 1 and 2 that is requested to be removed. That easement was originally created by a Grant Deed in 1963. There is an additional 50-foot road and public utility easement providing access to Parcel 3 that travels eastward through the center of Parcels 1 and 2 that was created by PM-136.

The Garden Valley Area Plan was adopted in March of 1980 and the subject parcel was zoned Estate Residential Five – Acre. Prior to that the parcel was zoned Unclassified (U). The existing single family dwelling with the attached garage was approved in 1977 with Building Permit 19970. That permit lists the setbacks as 20 feet for the front yard setback, five feet side yard setback and 15-foot rear yard setback. There is no indication why the garage was approved within the 40-foot road and public utility easement. The parcel is now zoned RE-5 which has 30-foot setbacks in all yards.

During the review of Building Permit 186874 for the 225 square-foot solid metal patio cover which is the subject of this Variance request, it was determined the applicants would need to file a map amendment for a parcel map to eliminate the problem of the garage existing within the unused easement and variance application to attempt to rectify the location of the proposed patio cover within the 30-foot front yard setback because it is a new structure.

The map amendment and variance applications are included together for background informational purposes as the variance cannot be approved unless the map amendment is approved.

The parcel is subject to the Old Sawmill Road Association; however the subject deed restriction (easement) is located on the private driveway accessed by Old Sawmill Road which is a private road.

STAFF ANALYSIS

Project Description: Request to amend the recorded Parcel Map PM 19 - 136 to remove the 40-foot road and public utility easement along the north boundary. An approved map amendment is required in addition to a variance to allow construction of a 9 foot x 25 foot carport to encroach 12 feet into the 30 foot front yard setback required by Section 17.28.210 of the RE – 5 Zone District.

Amending of Final Maps: Chapter 16.72 of the El Dorado County Code and Section 66472.1 of the Subdivision Map Act allows the amending of final maps by either filing a certificate of correction or amending the map. Should the Zoning Administrator approve the amendment, a certificate of correction is recommended to effect the relocation of the road and public utility easement.

Section 16.72.040 of the County Code requires the approving authority make specific findings as set forth in Attachment 3.

Site Description: The 2.020 - acre parcel is located at approximately 2,000 feet above sea level. The parcel is covered with mature conifers and oak trees spaced apart with very little under story.

Adjacent Land Uses:

	Zoning	General Plan	Land Use/Improvements
Site	RE - 5	MDR	Residential. Single-family residence.
North	RE - 10	RR	Residential. Single-family residence.
South	R2A	MDR	Residential. Single-family residence.
East	RE - 5	MDR	Residential. Single-family residence.
West	R2A	MDR	Residential. Single-family residence.

Discussion: Parcels 2 and 3 of PM 19 – 136 were also part of the original Parcel Map that included the 40-foot road and public utility easement to be removed. Only Parcels 1 and 2 had the deeded rights to use it though. Parcels 2 and 3 have access and public utilities Bucksaw Road off of Sawmill Road such that this proposed map correction will not affect them or any of the surrounding parcels. The subject parcel has a Quit Claim Deed (OR 053966), recorded September 21, 1989, from the owner of Parcel 2 of PM 19 – 136 which relinquished their interests in the said easement. The subject easement has not been improved or used by any of the parcel owners or utility companies associated with that original map easement designation. The map amendment would remove said easement. No surrounding parcels use the easement for their public utilities.

General Plan: The project area is designated on the General Plan land use map as Medium-Density Residential (MDR). This designation is suitable for single-family residences with accessory structures.

Conclusion: Staff finds that the proposed project, as conditioned, is consistent with the requirements of the 2004 General Plan.

Zoning: The project site is zoned estate Residential Five-Acre (RE - 5). No new conflicts with setbacks or easements relative to structures under construction, or any other development standards or requirements of the Zoning Code will be created by the elimination the newly proposed easement. The approval of the variance for the patio cover will not cause an encroachment into the front setback any greater than the existing garage because it does not exceed the existing dwelling footprint. The proposed project does not impose any adverse visual, safety, environmental or access impacts to the site or surrounding environment. The proposed variance would result in the best use alternative to allow construction of the structure on the existing pad as it would not require excessive grading or vegetation removal. Because of the facts listed above, the proposed setback of twelve feet is the minimum variance necessary for the reasonable use of the land.

2004 Subdivision Map Act: Pursuant to Section 66472.1 of the California Government Code (Subdivision Map Act), because neither the abandonment of the forty-foot wide road and public utility easement, nor the variance for the construction of the patio cover, would not adversely impact any public agency or any party with interest in this easement, the amendment as proposed conforms to Section 66474.

Discussion: In order to approve the map amendment, the County must find that the amended map complies with the Government Code. An alternative easement exists for all affected parcel owners and utility companies. Georgetown Divide Public Utility District (GDPUD), American Telephone and Telegraph (AT&T) and Pacific Gas and Electric (PG&E) have had the project proposal distributed to their staff and have responded that they do not have any concerns with the reduction of the front yard setback line from 30 feet to 12 feet, nor the abandonment of the unused 40-foot road and public utility easement. The applicant has stated that no other parcel has deeded rights to that easement.

The following agencies responded that they had no concerns with either the map amendment or the variance:

El Dorado County Department of Transportation
El Dorado County Environmental Health Division
El Dorado County Office of the County Surveyor
Garden Valley Fire Protection District

Accordingly, based on comments received from public agencies, and the analysis contained within this report, staff finds that the project would not be detrimental to the public health, safety and

welfare and nor be injurious to the neighborhood.

ENVIRONMENTAL REVIEW

The variance and map amendment project have been found to be Categorically Exempt from the requirements of CEQA pursuant to Section 15305 (a) of the CEQA Guidelines which states that minor lot line adjustments, side yard, and set back variances not resulting in the creation of any new parcel are exempt. Pursuant to Resolution No. 240-93, a \$50.00 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	Vicinity Map
Exhibits B	Assessor's Parcel Map
Exhibit C	General Plan Land Use Map
Exhibit D	Zoning Map
Exhibit E	Parcel Map PM 19 - 136
Exhibit F	Site plan dated August 8, 2008
Exhibit G	Patio Cover Elevation
Exhibits H1, H2	Site photos
Exhibit I	Aerial Photo

ATTACHMENT 1
CONDITIONS OF APPROVAL

File Numbers V08-0010/P77-0170C – Springer Variance/Parcel Map Amendment
Zoning Administrator Hearing November 19, 2008

Planning Services

1. The subject variance is based upon and limited to compliance with the project description, the Zoning Administrator Hearing exhibits marked Exhibits A-I2 dated November 19, 2008, 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. Variance to allow construction of a 9 foot x 25 foot carport to encroach 12 feet into the 30 foot front yard setback, as shown on Exhibit F.
- b. Amend Parcel Map 19-136 to remove the 40-foot non-exclusive road and public utility easement.

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 herein. 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 no way shall any construction activities necessary for the the subject patio cover, encroach, impede, block or otherwise negatively impact the existing utilities infrastructure, both located in the protected Public Utility Easements, and on the project parcel as deemed necessary by the applicable utility companies, now or in the future. The subject patio cover, single family dwelling and attached garage shall not be expanded within the setback as shown in Exhibit F.
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 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.

4. All Planning Services fees shall be paid in full prior to recording of the Certificate of Correction.
5. Variance is subject to the approval of map amendment File P77-0170C by the Zoning Administrator. The Certificate of Correction for P77-0170C shall be recorded prior to final occupancy of Building Permit 186874 for the carport.

County of El Dorado Office of the County Surveyor

6. The property owners shall submit a “Certificate of Correction” amending PM 19-136. The certificate shall be prepared by an appropriately licensed professional, to the County Surveyor pursuant to the Subdivision Map Act and County Code for review. Then upon approval by the County Surveyor the “Certificate of Correction” shall be recorded in the County Recorders Office, a copy of which shall be provided to Planning Services. The property owners are responsible for all associated processing and recording fees.

ATTACHMENT 2 FINDINGS

File Numbers V08-0010/P77-0170C – Springer Variance/Parcel Map Correction Zoning Administrator Hearing November 19, 2008

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 pursuant to *Section 66472.1* of the *California Government Code*:

FINDINGS FOR APPROVAL

1.0 CEQA Findings

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

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.*

A previously graded pad and approved single family dwelling with attached garage with offset rooflines allows for placement of the proposed patio covering structure without the need for significant grading or vegetation removal. The proposed variance would result in the best use alternative to allow construction of the structure on the existing pad.

- 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.*

Without the proposed variance there would be a whole portion of the applicants' footprint within the existing roof line that could not be used and that is the area with the least amount of impact on the parcel.

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

This variance request will authorize the construction of a solid patio structure, which has been conditioned to prevent any further structural encroachment within the front yard setback (see Attachment 1). To utilize the existing graded area, thus avoiding significant grading and removal of vegetation, constructing it at the same setback the garage has, the proposed setback of twelve feet is the minimum variance necessary for the reasonable use of the land.

- 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 comments were received to prevent approval of the variance. The adaptive reuse of the existing graded pad will ensure that the patio cover will not infringe any more into the setback than the attached garage already does. The patio will not increase any impacts not currently existing today because it essentially just covers an area already considered the portion of the property to with the least amount of impact. The proposed variance is not anticipated to negatively impact the public health, safety, and welfare, or injurious to the other residential uses in the project area.

3.0 Map Amendment Findings

- 3.1 *That there are changes in circumstances which make any and all of the conditions of such a map no longer appropriate or necessary.* All three parcels created by PM19 - 136 will have alternative access easements. The subject easement was never used or developed by any affected parcel owners or utility companies. Alternate access has been developed for each of the parcels. Therefore, the subject easement is not needed.
- 3.2 *That the modifications proposed do not impose any additional burden on the present fee owner of the property.* The removal of the road and public utility easement being requested would benefit, and not burden, the current owner.
- 3.3 *That the modifications proposed do not alter any right, title or interest in the real property reflected in the recorded map.* The 40-foot easement for road and public utilities was for the benefit of the Parcels 1 and 2 and included in the recording of Parcel Map 3-105 and Georgetown Divide Public Utility District (GDPUD), American Telephone and Telegraph (AT&T) and Pacific Gas and Electric (PG&E) all of whom have interest in the easement, and all of whom approve of the request. The easement was created by a Grant Deed and the owners of Parcel 2 released their rights to the easement by Quitclaim Deed to the applicants. The rights have thus been relinquished and the map may be amended to reflect this change.
- 3.4 *That the map as modified conforms to the provisions of Section 66474 of the Government Code.* The applicable portion of Section 66474(g) requires that the County find the removal

of the road and public utility easement will not conflict with easements for access through or use of, property within the parcel map. No utility company, public agency, or parcel owner with interest in the easement, objected to the abandonment of the forty-foot non-exclusive road and public utility easement subject of this permit request.