

**COUNTY OF EL DORADO  
PLANNING AND BUILDING DEPARTMENT  
ZONING ADMINISTRATOR  
STAFF REPORT**



**Agenda of:** November 17, 2021  
**Item No.:** 4.a.  
**Staff:** Melanie Shasha

**VARIANCE**

**FILE NUMBER:** V21-0001/Danaher

**APPLICANT:** Mike Dill, Aspen Environmental

**REQUEST:** Variance to allow a reduction of the front setback from 20 feet to 0 feet to allow for the construction of a two-car garage.

**LOCATION:** The property is located on the south side of Fallen Leaf Rd, approximately 2 miles south of the intersection with Tahoe Mountain Road, in the South Lake Tahoe area, Supervisorial District 5. (Exhibit A)

**APN:** 021-401-004 (Exhibit B)

**ACREAGE:** 0.6 acre

**GENERAL PLAN**

**LAND USE DESIGNATION:** Adopted Plan (AP) / Tahoe Regional Plan Area Statement South Fallen Leaf Lake (Exhibit D)

**ZONING DESIGNATION:** Single-unit Residential, Tahoe Overlay (R1) (Exhibit E)

**ENVIRONMENTAL DOCUMENT:** The activity is covered by the common sense exemption 15061(b)(3) that the California Environmental Quality Act (CEQA) applies only to projects, which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

**RECOMMENDATION:** Staff recommends the Zoning Administrator take the following actions:

1. Find that the project is covered under the common sense exemption pursuant to CEQA Guidelines Section 15061(b)(3); and
2. Approve Variance V21-0001 based on the Findings, and subject to the Conditions of Approval as presented.

## **EXECUTIVE SUMMARY**

The applicant is requesting a variance to the front setback to develop a two-car garage that would provide covered parking for two vehicles. This site is in the Tahoe Basin with the Tahoe Overlay. Development is limited to 2,667 square feet of land coverage on this lot. Covered parking is a reasonable use of the land due to winter snowstorms and because the site is limited to a single parking spot partially within the roadway easement. The amount of land coverage, limited by the Tahoe Regional Planning Agency (TRPA), and excessively steep slopes, prevent the construction of the parking structure at the 20-foot front setback line. Staff is recommending approval of this request.

## **BACKGROUND / HISTORY**

TRPA was formed by a bi-state compact between Nevada and California and ratified by Congress in 1969. TRPA's Compact limits growth in the Tahoe Basin in several ways, one being the amount of land that can be impervious surfaces. This site is limited to 2,667 square feet of land coverage. Land coverage includes the residence, driveway, decks, and garage. In 1920 the road was developed and in 1925 the two single-family dwellings were constructed.

## **EXISTING CONDITIONS**

This site is littoral to Fallen Leaf Lake and has an existing dock. The Fallen Leaf Road easement travels along the shoreline between the existing homes and the lake.

Native shrubs, trees, forbs and stream environment zone associated with Fallen Leaf Lake exist on the site. (Exhibit F).

The site is Lot 4 of the Fallen Leaf Forest Track as noted on the Assessor's parcel map dated 1946. Access to this lot is by Fallen Leaf Road (Exhibit B).

The lot is 24,879 square feet with slopes ranging 30% to 50%. The 50% slope is at the northeast corner of the property, 40% slope exists on the undeveloped slope uphill of the houses on the southeast side, and 30% slopes exist from edge of roadway pavement to the back of the proposed garage.

Development in the neighborhood includes single-family dwellings on all adjacent, privately owned parcels. Vacant parcels are publicly owned and located south and southeast of the subject parcel.

Parking for the proposed residence currently straddles the parcel line with a portion within the roadway easement.

## **PROJECT DESCRIPTION**

The applicant is requesting a variance to reduce the 20-foot front setback to 0 feet to allow a two-car garage (Exhibit F). The proposed garage will be 20 feet deep and 22 feet wide. The height will comply with TRPA's height regulations. The total distance from the front of the proposed garage to edge of pavement for Fallen Leaf Road would be at a minimum of 14 to 15 feet. The total size of the proposed encroachment is 14 feet by 22 feet to accommodate the two-vehicle garage encroachment.

There will be no reduction in the side and rear setbacks.

This variance does not grant new allowable or verified land coverage.

## **STAFF ANALYSIS**

**Alternative locations for the garage do not exist.** This site is limited in locations on which to place a structure to provide covered parking. This site has a front yard setback of 20 feet, two side yard setbacks of 5 feet, and a rear yard setback of 15 feet. The proposed two-car garage is within the existing front yard setback due to the limited amount of land coverage (Exhibit F) and excessively steep slopes. The existing residences are shown behind and uphill of the proposed garage. No place on-site exists that meets all of the following criteria: the standard setback, land coverage limitations, and excessive grading.

**South Tahoe Public Utility District (STPUD):** STPUD provides water and wastewater collection services to the project area. The developer shall contact STPUD to apply for any applicable permits and to review any utility work needed.

**Tahoe Regional Planning Agency (TRPA):** TRPA approval will be required to allow construction of the garage. Residential structures and their accessory structures are an allowed use in the South Fallen Leaf Lake PAS 145.

**General Plan:** The subject parcel is in the Tahoe Regional Planning Agency Adopted Plan. This use is consistent with the TRPA Code of Ordinances and the General Plan.

**Zoning:** The subject parcel is zoned R1, which allows single-family detached dwellings, and accessory uses and structures. With the exception of the proposed setback variance, the construction of the garage is allowed by right in the R1 zone district. Findings have been made for slopes greater than 30%.

**Variance Findings:** The granting of a Variance requires four findings pursuant to Section 130.52.070 of the County Zoning Ordinance. These findings for approval and their respective discussions are provided following this report.

## **ENVIRONMENTAL REVIEW**

This project is covered by the common sense exemption 15061(b)(3) that CEQA applies only to projects, which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. Zoning Ordinance findings are made for a variance. No further environmental analysis is necessary.

A \$50.00 administration fee is required by the County Recorder to file the Notice of Exemption. This fee shall be made payable to El Dorado County and shall be submitted to Planning Services upon project approval.

## **SUPPORT INFORMATION**

### **Attachments to Staff Report:**

#### **Findings**

#### **Conditions of Approval**

Exhibit A.....	Location Map
Exhibit B.....	Assessor's Parcel Map
Exhibit C.....	General Plan Land Use Map
Exhibit D.....	Zoning Designation Map
Exhibit E.....	Proposed Site Plan
Exhibit F.....	Existing Conditions

## **FINDINGS**

### **Variance V21-0001/Danaher Zoning Administrator/November 17, 2021**

#### **1.0 CEQA FINDINGS**

- 1.1 The activity is covered by the common sense exemption 15061(b)(3) that California Environmental Quality Act (CEQA) applies only to projects, which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

Typically, a variance request would use a class 5 categorical exemption. However, the proposed project is in a location with a slope of more than 20%. The native slope for this site is 40%. The slope at the rear of the proposed garage is 60%. This slope was created when grading the parking pad to provide off-street parking. Fallen Leaf Road is incredibly narrow at just 11 feet wide. It is due to these artificially steep slopes and narrow right-of-way that the applicant has requested a variance to the front setback. The residences and garage are allowed by right on this parcel at the 20-foot setback line. An administrative permit could be approved which would reduce the setback by 50% to 10 feet without a discretionary hearing. Both of these options would result in more grading and vegetation removal. Therefore, a variance to the front setback will further reduce the impact to the environment.

A determination of the potentially affected elements in the CEQA environmental checklist was completed. Those potentially affected elements are: Aesthetics, Biological Resources, Cultural Resources, Geology/Soils, Hydrology/Water Quality, Cultural Resources and Land Use/Planning and Wildfire.

The proposed residential structures will be consistent with the height, scenic and dark-night requirements of the Tahoe Regional Planning Agency (TRPA). The project will not alter or destroy scenic resources. This project will not affect aesthetics of the area.

Impacts to biological resources would not occur with this project at a level higher than a ministerial project. Biological Resources, such as special status habitat destruction, wetland alteration, interference with species migration, conflict with local preservation policies or habitat modification, are not anticipated to be effected with this development.

There is a moderate potential for locating prehistoric or historic-period cultural resources according to the California Historical Resources Information System, North Central Information Center as determined by a search of their records. Applications to TRPA to determine the historic value of the structure is in process (HIST2021-0551 and HIST2021-0158). A condition of approval is included for any discovery of pre-historic artifacts.

The project would not affect Geologic/Soils onsite including rupturing earthquake faults, the loss of topsoil, result in a landslide, have soils unable to support wastewater facilities or directly or indirectly result in the destruction of paleontological resource or unique geologic feature.

- 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 El Dorado County Planning and Building Department, at 2850 Fairlane Court, Placerville, CA.

## **2.0 GENERAL PLAN FINDINGS**

- 2.1 **The project is consistent with General Plan Policy 2.2.5.2: All applications for discretionary projects or permits including, but not limited to, General Plan amendments, zoning boundary amendments, tentative maps for major and minor land divisions, and special use permits shall be reviewed to determine consistency with the policies of the General Plan. No approvals shall be granted unless a finding is made that the project or permit is consistent with the General Plan. In the case of General Plan amendments, such amendments can be rendered consistent with the General Plan by modifying or deleting the General Plan provisions, including both the land use map and any relevant textual policies, with which the proposed amendments would be inconsistent.**

Rationale: The subject parcel is in the Tahoe Regional Planning Agency Adopted Plan, Plan Area Statement South Fallen Leaf Lake and residential structures are a permissible use. This use also complies with the General Plan. Staff finds the project is consistent with the General Plan and Adopted Plan.

## **3.0 ZONING FINDINGS**

**The project is consistent with Title 130:**

- 3.1 Sec. 130.30.080 - Hillside Development Standards; 30 Percent Slope Restriction.

This Section contains standards to implement General Plan policies applicable to development within hillside areas. This Section regulates disturbance and development on existing lots containing slope gradients 30 percent or greater in all zones, provides for exceptions to allow reasonable use of property, relieve burdens on and promote agricultural production and protect the public health and safety.

This site is exempt from the requirements of this section because it is within the jurisdiction of the TRPA. Beyond this exemption, the site complies with other exemptions of this section of the Zoning Ordinance.

Creation of this road was in 1920 with approval from the El Dorado County Board of Supervisors to be maintained by the State of California. The road grading created an

artificial slope in excess of 30%. Calculation of the site gradient excludes artificial slopes created under permit by the County.

**3.2 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.**

Rationale: Several exceptional or extraordinary circumstances limit the location of new buildings on this property. Factors are excessive slope and the coverage limits placed on the property by the TRPA Code of Ordinances. At least twice the amount of disturbance would be required if the addition were developed at the standard 20-foot front setback when compared to the proposed location.

The Site Assessment conducted in 2019 confirmed that there are 249 square feet of allowable coverage and 2,667 square feet of verified coverage. The verified coverage includes the residences, deck, driveway and steps. Staff has determined that the variance is the minimum necessary for the reasonable use of the land consistent with the TRPA land coverage requirements.

Staff finds that there are exceptional or extraordinary circumstances or conditions applying to the land, building or use referred to in this application due to significant constraints on the property as it relates to land coverage and excessively steep slopes. These circumstances have not resulted from any act of the owner or applicant. Accordingly, Finding 3.2 is made.

**3.3 The strict application of the zoning regulations as they apply to the subject property would deprive the subject property of the privileges enjoyed by other properties in the vicinity and the same zone (California Government Code Section 65906).**

Rationale: Requiring the applicant to relocate the proposed garage in accordance with the building setbacks of the Single-unit Residential Zone District, the strict application of the provisions of the ordinance, would deprive the applicant of the reasonable use of the land or building allowed for by other land in the vicinity and the same zone.

Staff finds that allowing the reduced front yard setback for the addition of a garage would not affect adjoining properties or the right of way of Fallen Leaf Road. Therefore, Finding 3.3 is made.

**3.4 The variance granted shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is situated (California Government Code Section 65906).**

Rationale: Covered parking in the Tahoe Basin is not a grant of special privileges. The development of a two-car garage is to provide onsite covered parking for two vehicles in compliance with the Parking and Loading Standards found in the Zoning Ordinance. Currently, onsite parking for a single vehicle straddles the parcel line and encroaches into the roadway easement.

Staff finds that the variance request would not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which the property is situated. Therefore, Finding 3.4 is made.

**3.5 The granting of the Variance is compatible with the maps, objectives, policies, programs, and general land uses specified in the General Plan and any applicable specific plan, and not detrimental to the public health, safety, and welfare or injurious to the neighborhood.**

Rationale: The proposed variance is compatible with the maps, objectives, policies, programs, and general land uses specified in the General Plan. It will not affect the public health, safety, and welfare, nor will it be injurious to the other residential uses in the project area.

Condition of Approval 7 requires a hold harmless and indemnification agreement protecting the County from liability arising from snow removal activity as a result of the approval of this setback variance.

Staff finds that the project is compatible with maps, objectives, policies, programs, and general land uses. Finding 3.5 is made.



**CONDITIONS OF APPROVAL**

**Variance V21-0001/Danaher  
Zoning Administrator/November 17, 2021**

**CONDITIONS OF APPROVAL:**

1. This Variance approval is based upon and limited to compliance with the project description and following exhibits:

Exhibit E .....Proposed Site Plan

Any deviations from the project description, exhibits, or Conditions of Approval set forth below shall 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 allow a reduction of the front setback from 20 feet to 0 feet to allow for the construction of a two-car garage.

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. **Project Modifications:** Building design and building placement shall be completed in conformance with the plans submitted and in conformance with the Conditions of Approval herein. Minor variations are allowed, however, any major changes in the location of buildings shall require Planning Services review and approval.
3. **Condition Compliance:** Prior to issuance of certificate of occupancy of a building permit or commencement of any use authorized by this 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.
4. **Notice of Exemption Fee:** A \$50.00 administration fee is required by the County Recorder to file the Notice of Exemption. This fee shall be made payable to El Dorado County and shall be submitted to Planning Services upon project approval.

5. **Permit Implementation:** Pursuant to Zoning Ordinance Section 130.54.060, implementation of the project must occur within 24 months of approval of this Variance, 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.
6. **Hold Harmless Agreement:** 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 applicant 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 by El Dorado County. County shall notify the applicant of any claim, action, or proceeding and County will cooperate fully in the defense.

#### **Department of Transportation**

7. Prior to Issuance of Building Permits, 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.

#### **California Office of Historical Preservation**

8. If cultural resources are encountered during the project, avoid altering the materials and their context until a qualified cultural resources professional has evaluated the project area. Project personnel should not collect cultural resources. Prehistoric-period resources include: chert or obsidian flakes, projectile points, and other flaked-stone artifacts; mortars, grinding slicks, pestles, and other groundstone tools; and dark friable soil containing shell and bone dietary debris, heat-affected rock, or human burials. Historic-period resources include: stone or adobe foundations or walls, structures and remains with square nails; mine shafts, tailing, or ditches/flumes; and refuse deposits or bottle dumps, often located in old wells or privies.