



WPVAR20-0008

Rushing Variance

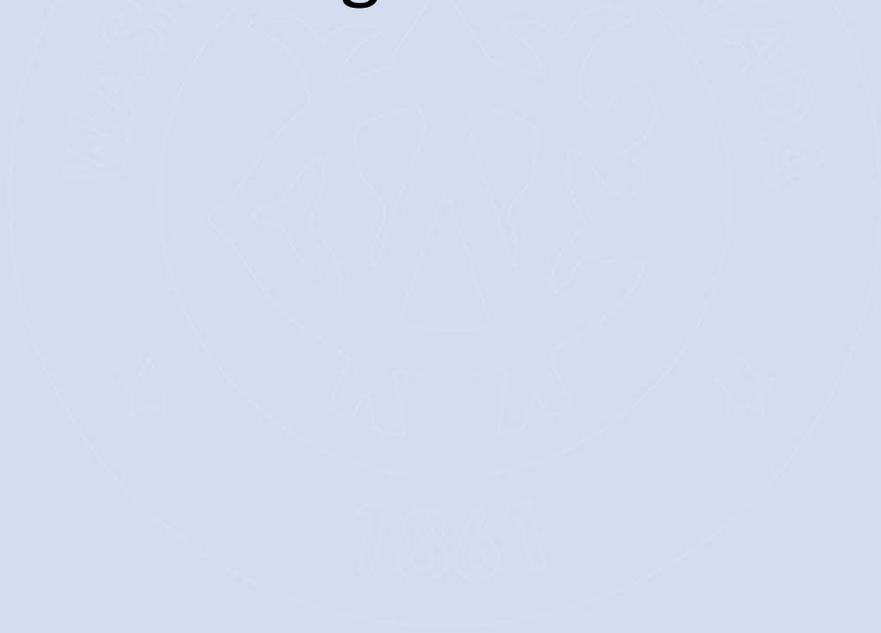


Washoe County Board of Adjustment
March 4, 2021



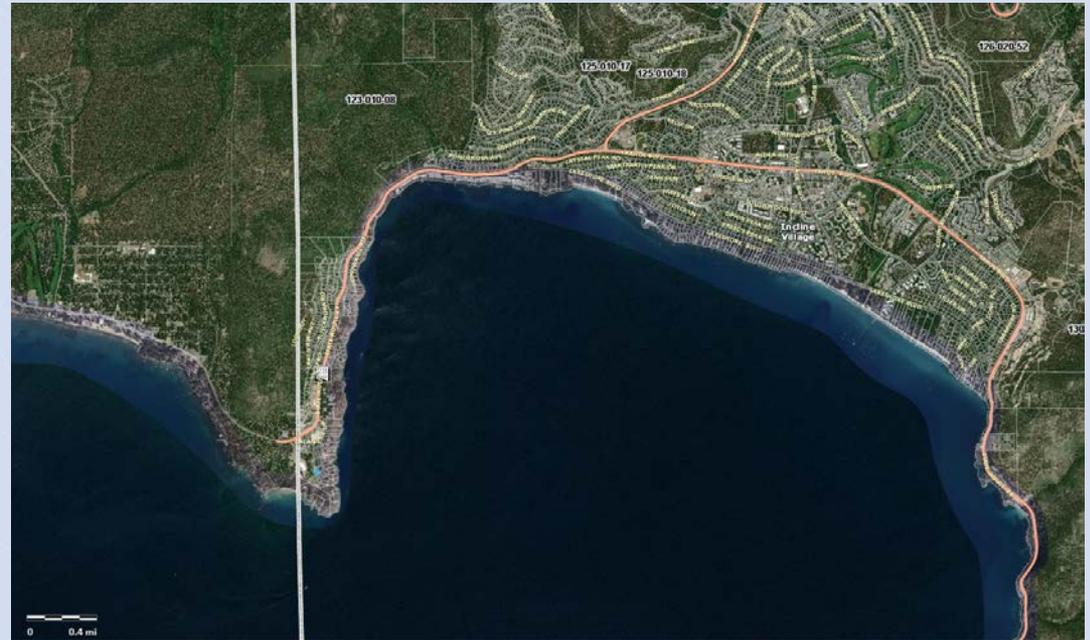
Request

1. Applicant is requesting a variance to reduce the front yard setback from 15ft to 1ft to build a 137sf addition to a 864sf legal non conforming main residence.





Vicinity Map



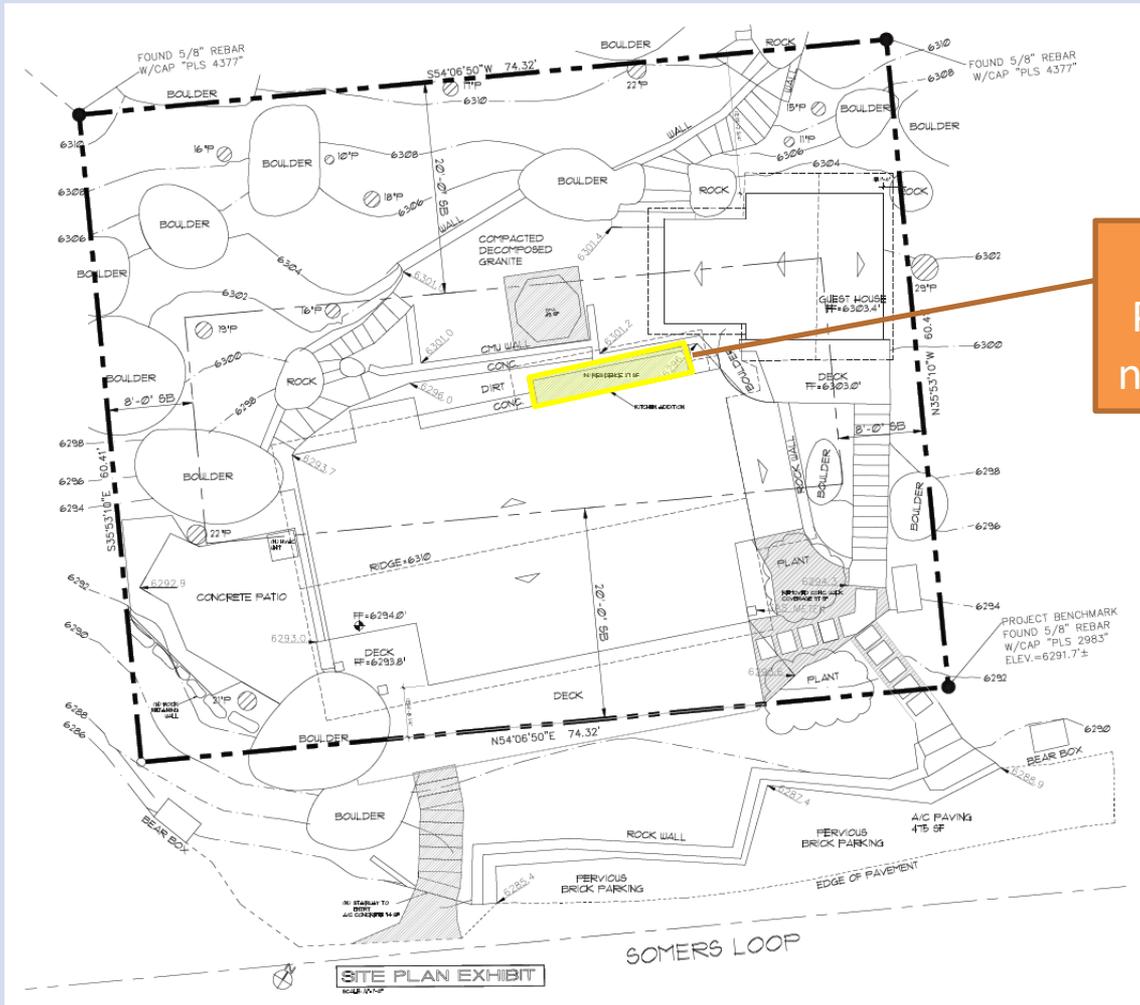


Background

- Subject parcel is zone Low Density Suburban and is 0.102 acres.
- Legal non-conforming 846sf residence built in 1936 with a 223sf guest house built in 1946
 - Both structure are currently within the existing setbacks
- Originally submitted an application for a 37sf expansion on the north side of the residence
 - Staff determined this did not require a variance and approved WBLD20-104356 on Dec 17, 2020 (pending engineering corrections)



Original Site Plan



WBLD20-104-356
Planning approved,
no variance required



Background (Cont)

- **Applicant determined they submitted the wrong plans**
- **Resubmitted a 137sf expansion within the front yard setback**
 - 46sf for a Dining Addition
 - 91sf for a Bedroom Addition



Article 406 – Building Placement Standards

– Per WCC 110.406.05

- If a lot does not meet the minimum lot size for the regulatory zoning for the lot, the yard requirements and setback dimensions **shall be based on the lot size for the next densest regulatory zone** for which the lot does meet minimum size for lots in that zone
- Next largest lot size is LDU

Zoning	Min. Lot Size	Project Lot	Front Setback	Side Setback	Rear Setback	Setback Envelope
LDS	35,000sf	4,443.12sf	30	12	30	0 sf
LDU	3,700sf	4,443.12sf	15	5	10	2,251.2sf



Setbacks



Proposed 51sf guest house expansion

37sf Kitchen expansion WBLD20-104-356; Planning approved, no variance required.

Proposed 137sf expansion

Approximate Setback Envelope:
Front – 15ft
Side 5ft
Rear – 10ft



Article 406 (Cont)

- **Applicant has ample space to build legal non-conforming 10% addition within legal setbacks**
 - Approximately 2,251.2sf available



Article 804 - Variance

▪ Variance requires making ALL 5 of the following findings

1. Special Circumstances

2. No Detriment

3. No Special Privileges

4. Use Authorized

5. Effect on a Military Installation

Staff is unable to make findings 1 and 3.



Special Circumstances

1. Shape of Property

- This parcel is rectangular and has 2,251.2sf of area to build within the setbacks

2. Topographic Conditions

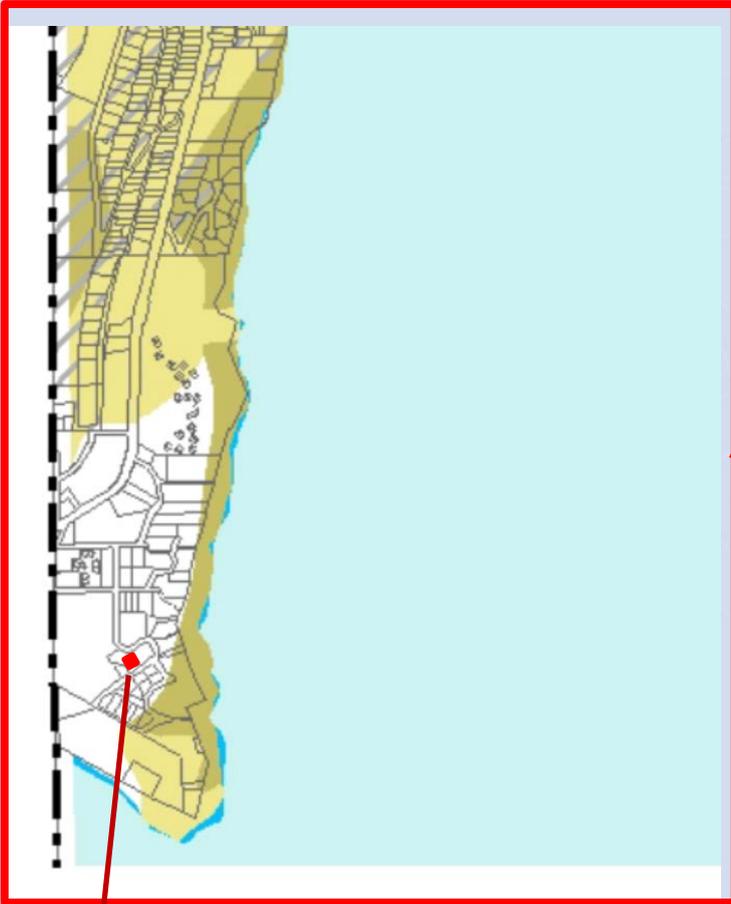
- There **are** slopes greater than 15% within the setbacks area
- Applicant has already requested to build an expansion in the buildable area under WLBD20-104356 and proposed 51sf expansion of the guest house.
- Parcel is listed as an area most suitable for development on Development Suitability Map of Tahoe Area Plan.

3. Exceptional Situation

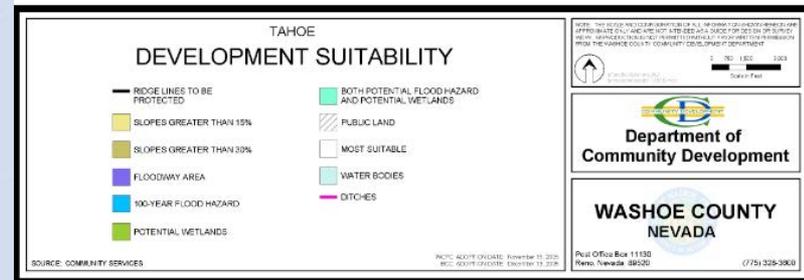
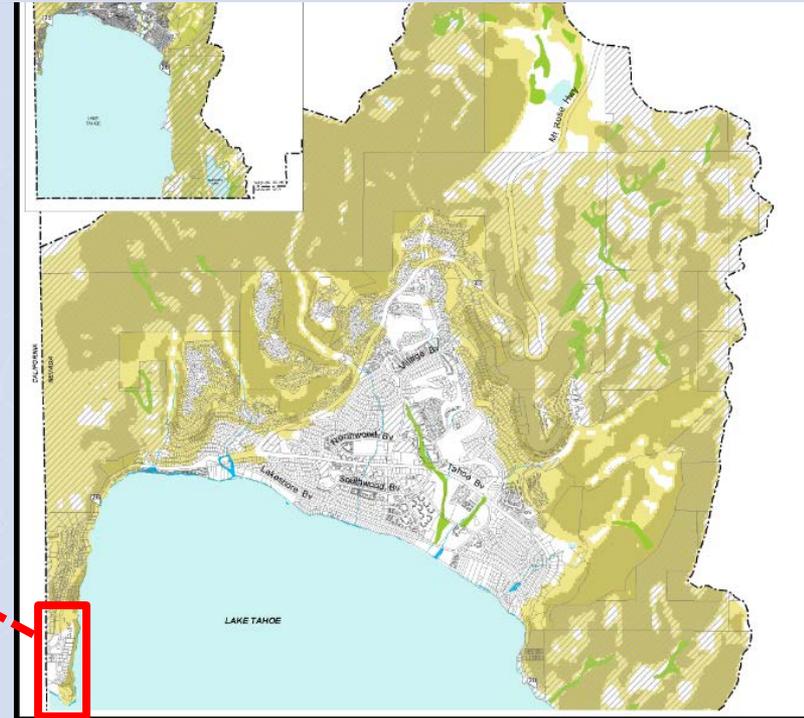
- Legal non-conformance placement of the house does not preclude the applicant from living in and using their property within the bounds of the development code
 - Property owners have done so since 1936.



Development Suitability



Subject Parcel





No Special Privileges

- **WCC 110.904.30(a)Continuation.** Any nonconforming structure may be continued as long as it remains otherwise lawful, subject to the following provisions:
 - (1) Such structure may not be enlarged more than **ten (10) percent** or altered except as specifically provided for by this section
- Proposed expansion within the setbacks is 137sf.
 - **This is greater than 10% (86.4sf)** of the 864sf legal non-conforming structure.

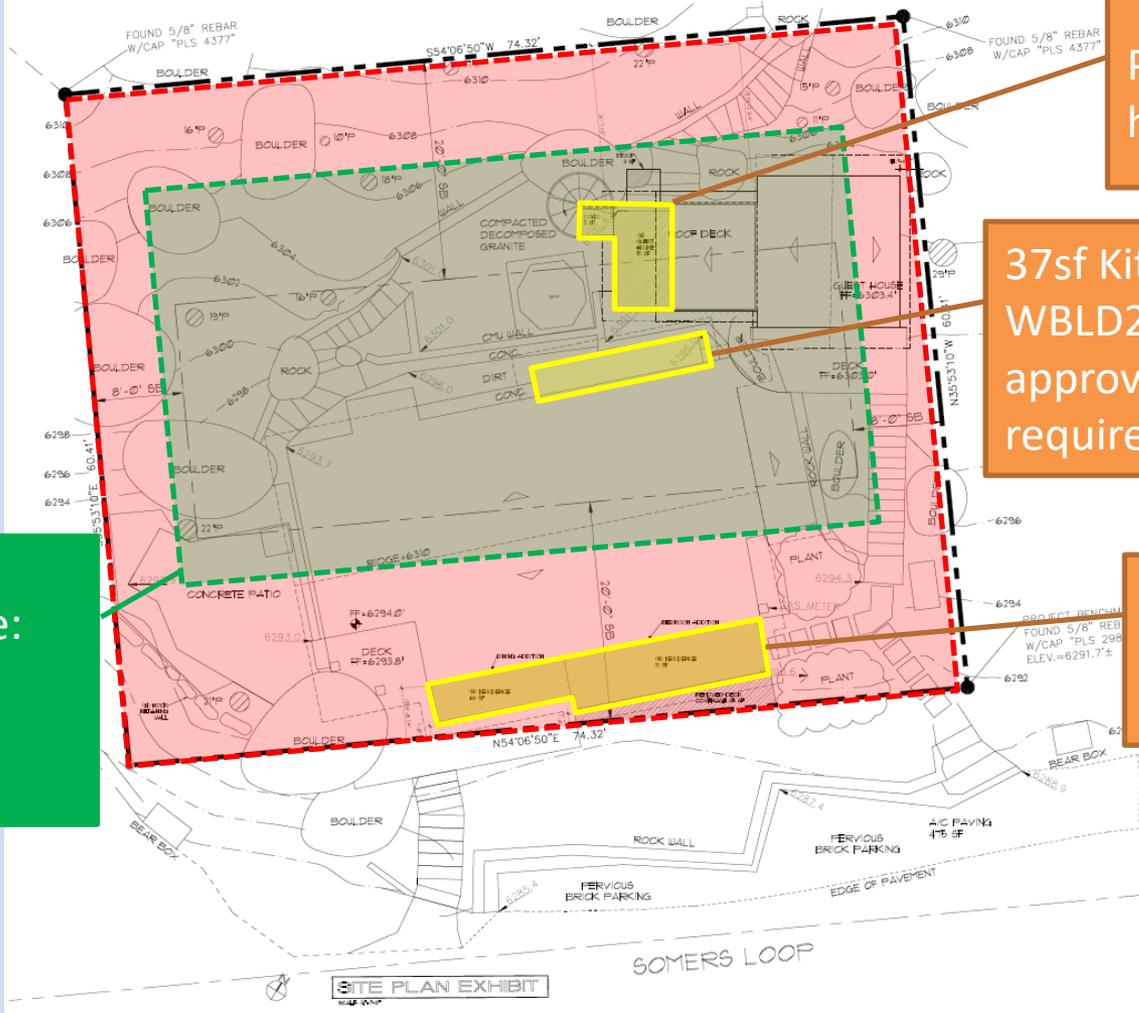


No Special Privileges (Cont.)

- **WCC 110.904.30(b) Adding New Uses or Structures.** When a nonconforming structure exists on any lot, no new use or structure shall be established or built on such land unless the lot area, dimensions and yards provided for each existing and proposed use or structure conform to the requirements of this Development Code for the regulatory zone in which the lot is located.
- **WCC 110.902.10, Structure** - "Structure" means a walled and roofed building or manufactured home, including a gas or liquid storage tank that is primarily above ground. "Structure" does not include a tent, trailer or vehicle.
- Any proposed addition to a legal nonconforming structure must be constructed within the requirements of the development code, including setbacks.



Setbacks



Proposed 51sf guest house expansion

37sf Kitchen expansion WBLD20-104-356; Planning approved, no variance required.

Proposed 137sf expansion

Approximate Setback Envelope:
Front – 15ft
Side 5ft
Rear – 10ft



Public Notice

- Notice was sent to 42 affected property owners (blue) within 750 feet of the site.





Citizen Advisory Board Meeting

- **Incline Village/Crystal Bay CAB met Feb 1, 2021**
- **CAB voted unanimously in favor of the proposed application**
- **Staff received 1 public comment letter against the proposed application**



Variance Findings

1. **Special Circumstances.** Because of the special circumstances applicable to the property, including exceptional narrowness, shallowness or shape of the specific piece of property; exceptional topographic conditions; extraordinary and exceptional situation or condition of the property and/or location of surroundings; the strict application of the regulation results in exceptional and undue hardships upon the owner of the property;
2. **No Detriment.** The relief will not create a substantial detriment to the public good, substantially impair affected natural resources or impair the intent and purpose of the Development Code or applicable policies under which the variance is granted;
3. **No Special Privileges.** The granting of the variance will not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and the identical regulatory zone in which the property is situated;
4. **Use Authorized.** The variance will not authorize a use or activity which is not otherwise expressly authorized by the regulation governing the parcel of property;
5. **Effect on a Military Installation.** Issuance of the permit will not have a detrimental effect on the location, purpose or mission of the military installation.



Recommendation

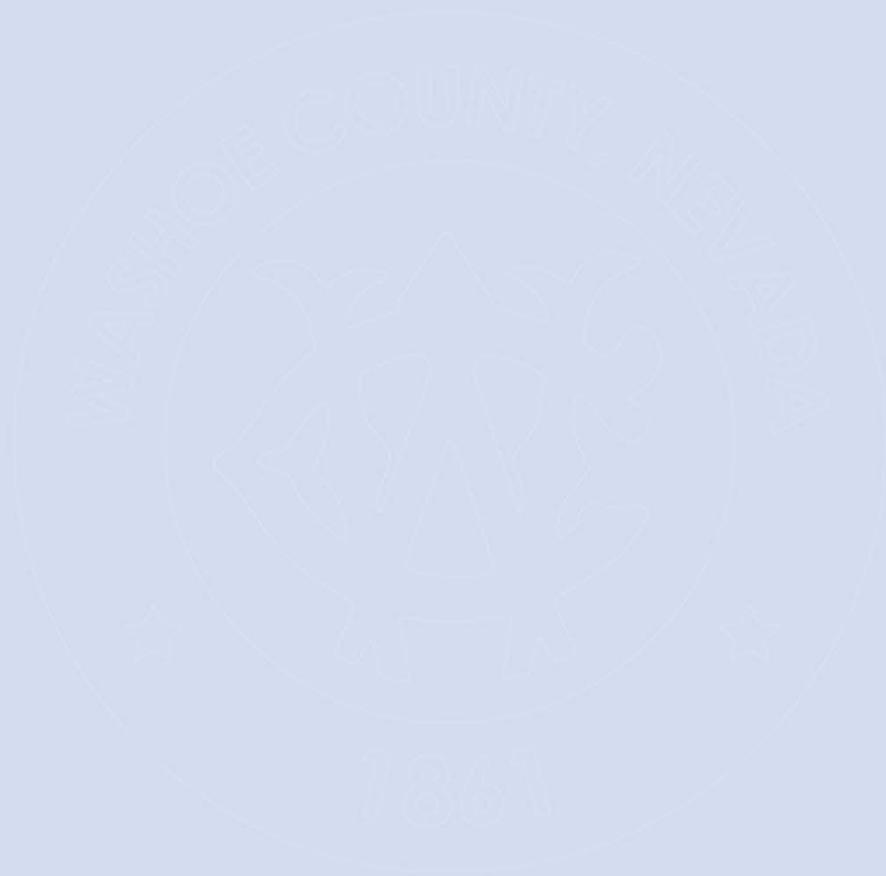
Those agencies which reviewed the application recommended conditions to address applicable codes and impacts associated with the project. After a thorough analysis and review, staff recommends that the Board of Adjustment carefully consider all aspects of Special Use Permit number WPVAR20-0008 and the nature of the stringent recommended conditions of approval and deny the requested Variance.



Possible Motion – Special Use Permit

■ **DENIAL:** I move that, after giving reasoned consideration to the information contained in the staff report and information received during the public hearing, the Washoe County Board of Adjustment deny Variance Case Number WPVAR20-0008 for Heath and Amanda Rushing, having been unable to make all five required findings in accordance with Washoe County Development Code Section 110.804.25:

1. **Special Circumstances.** Because of the special circumstances applicable to the property, including exceptional narrowness, shallowness or shape of the specific piece of property; exceptional topographic conditions; extraordinary and exceptional situation or condition of the property and/or location of surroundings; the strict application of the regulation results in exceptional and undue hardships upon the owner of the property;
2. **No Detriment.** The relief will not create a substantial detriment to the public good, substantially impair affected natural resources or impair the intent and purpose of the Development Code or applicable policies under which the variance is granted;
3. **No Special Privileges.** The granting of the variance will not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and the identical regulatory zone in which the property is situated;
4. **Use Authorized.** The variance will not authorize a use or activity which is not otherwise expressly authorized by the regulation governing the parcel of property;
5. **Effect on a Military Installation.** Issuance of the permit will not have a detrimental effect on the location, purpose or mission of the military installation.





Email to applicant – 12/21/20

From: Cahalane, Daniel <DCahalane@washoecounty.us>
Sent: Monday, December 21, 2020 3:20 PM
To: aleks@gilanfarrarchitecture.com
Subject: RE: Accela Planning Application Problems - need help ASAP

Hi Aleks,

That indeed is very different! Did a refund for this already go through on your end?

Looking at [this](#) set. I can see where the request for a variance would be, the front yard additions. The new guest house addition appears to be within the LDU setbacks.

I am not sure that the county would be supportive of a variance for the front yard setback. We are required to make the strictest findings for a variance:

- (a) **Special Circumstances.** Because of the special circumstances applicable to the property, including either the:
- (1) Exceptional narrowness, shallowness or shape of the specific piece of property, or
 - (2) By reason of exceptional topographic conditions, or
 - (3) Other extraordinary and exceptional situation or condition of the property and/or location of surroundings,
- the strict application of the regulation results in exceptional and undue hardships upon the owner of the property;
- (b) **No Detriment.** The relief will not create a substantial detriment to the public good, substantially impair affected natural resources or impair the intent and purpose of the Development Code or applicable policies under which the variance is granted;
- (c) **No Special Privileges.** The granting of the variance will not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and the identical regulatory zone in which the property is situated; and
- (d) **Use Authorized.** The variance will not authorize a use or activity which is not otherwise expressly authorized by the regulation governing the parcel of property.
- (e) **Effect on a Military Installation.** The variance will not have a detrimental effect on the location, purpose and mission of the military installation.

I believe that you can meet finding b, d, and e. I am not confident that you would be able to make finding a, special circumstances, or c, no special privileges.

The size is legal non-conforming Low Density Suburban. Per 110.406.05, the normal setbacks are changed from LDS to LDU as that is the regulatory zone that would be legal for this parcel size. This means that your setbacks change like this:
Front – 30ft -> 15ft
Side – 12ft -> 5ft
Rear – 30ft -> 10ft

That leaves you with approximately 2,275sf (65ftx 35ft) that is within the legal setbacks in which to build within eliminating the special circumstances. The request is to modify the normal regulatory zone setbacks of 15ft to be effectively 1ft. That makes it seem like a special privilege relative to neighboring property owners. Moreover, since the structures are legal non-conforming, you're only allowed to expand by up to 10% per 110.904.30(a)1. The total expansion for the main residence is approximately 134sf. This exceeds the 10% for 1087sf listed on the parcel per the assessor (though that appears to include the guest house). Even overcoming varying the front yard setback, you'd need to vary the expansion limits in article 904, making it even more of a special privilege.

You are well within your rights to continue with the variance application and see what the Board of Adjustment thinks of the application. But I wanted to provide you a heads up on the likely staff analysis of the application and provide you with the opportunity to seek a refund for the application.

Regards,



Email from applicant – 12/23/20

From: aleks@gilanfarrarchitecture.com <aleks@gilanfarrarchitecture.com>

Sent: Wednesday, December 23, 2020 3:37 PM

To: Cahalane, Daniel <DCahalane@washoecounty.us>

Subject: RE: Accela Planning Application Problems - need help ASAP

[NOTICE: This message originated outside of Washoe County -- DO NOT CLICK on links or open attachments unless you are sure the content is safe.]

Hi Dan, thanks for that! I let my architect know. I was told that we would like to continue moving forward with this and want the clock to start counting immediately if it hasn't already and we will get the findings over to you early next week. Thank you again and happy holidays!



Letter to Applicant – 12/23/20

From: Cahalane, Daniel <DCahalane@washoecounty.us>
Sent: Wednesday, December 23, 2020 4:07 PM
To: aleks@gilanfarrarchitecture.com
Subject: RE: Accela Planning Application Problems - need help ASAP

Hi Aleks,

Just to confirm, you would still like to move forward on the variance application despite the high likelihood of a denial?

Regards,



Letter from Applicant – 12/23/20

From: aleks@gilanfarrarchitecture.com <aleks@gilanfarrarchitecture.com>

Sent: Wednesday, December 23, 2020 4:33 PM

To: Cahalane, Daniel <DCahalane@washoecounty.us>

Subject: RE: Accela Planning Application Problems - need help ASAP

[NOTICE: This message originated outside of Washoe County -- DO NOT CLICK on links or open attachments unless you are sure the content is safe.]

Yes, I let my boss know and that was his response so yes please.