



Board of Adjustment Staff Report

Meeting Date: August 4, 2016

Subject: Variance Case Number: VA16-004
Applicant: John Powers III
Agenda Item Number: 8C
Project Summary: To reduce the front yard setback from 20 feet to 0 feet and to reduce the south side yard setback from 8 feet to 0 feet and the north side yard setback from 8 feet to 4 feet
Recommendation: Approval with Conditions
Prepared by: Trevor Lloyd - Senior Planner
Washoe County Community Services Department
Division of Planning and Development
775.328.3620
Phone: 775.328.3620
E-Mail: tlloyd@washoecounty.us

Description

Variance Case Number VA16-004 (Powers Residence) – Hearing, discussion, and possible action to approve a variance to reduce the front yard setback from 20 feet to 0 feet and to reduce the south side yard setback from 8 feet to 0 feet and the north side yard setback from 8 feet to 4 feet to allow for the remodel of an existing four story residence abutting Lake Tahoe.

- Applicant: Ken Brown
- Property Owner: John Powers III
- Location: 1707 State Route 28, South of Incline
- Assessor's Parcel Number: 130-331-02
- Parcel Size: 0.072 Acres (±3,136 square feet)
- Master Plan Category: Suburban Residential (SR)
- Regulatory Zone: Medium Density Suburban (MDS)
- Area Plan: Tahoe
- Citizen Advisory Board: Incline Village/Crystal Bay
- Development Code: Authorized in Article 804, Variances
- Commission District: 1 – Commissioner Berkbigler
- Section/Township/Range: Section 26, T16N, R18E, MDM, Washoe County, NV

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Variance Definition

The purpose of a Variance is to provide a means of altering the requirements in specific instances where the strict application of those requirements would deprive a property of privileges enjoyed by other properties with the identical Regulatory Zone because of special features or constraints unique to the property involved; and to provide for a procedure whereby such alterations might be permitted by further restricting or conditioning the project so as to mitigate or eliminate possible adverse impacts.

NRS 278.300 (1) (c) limits the power of the Board of Adjustment to grant variances only under the following circumstances:

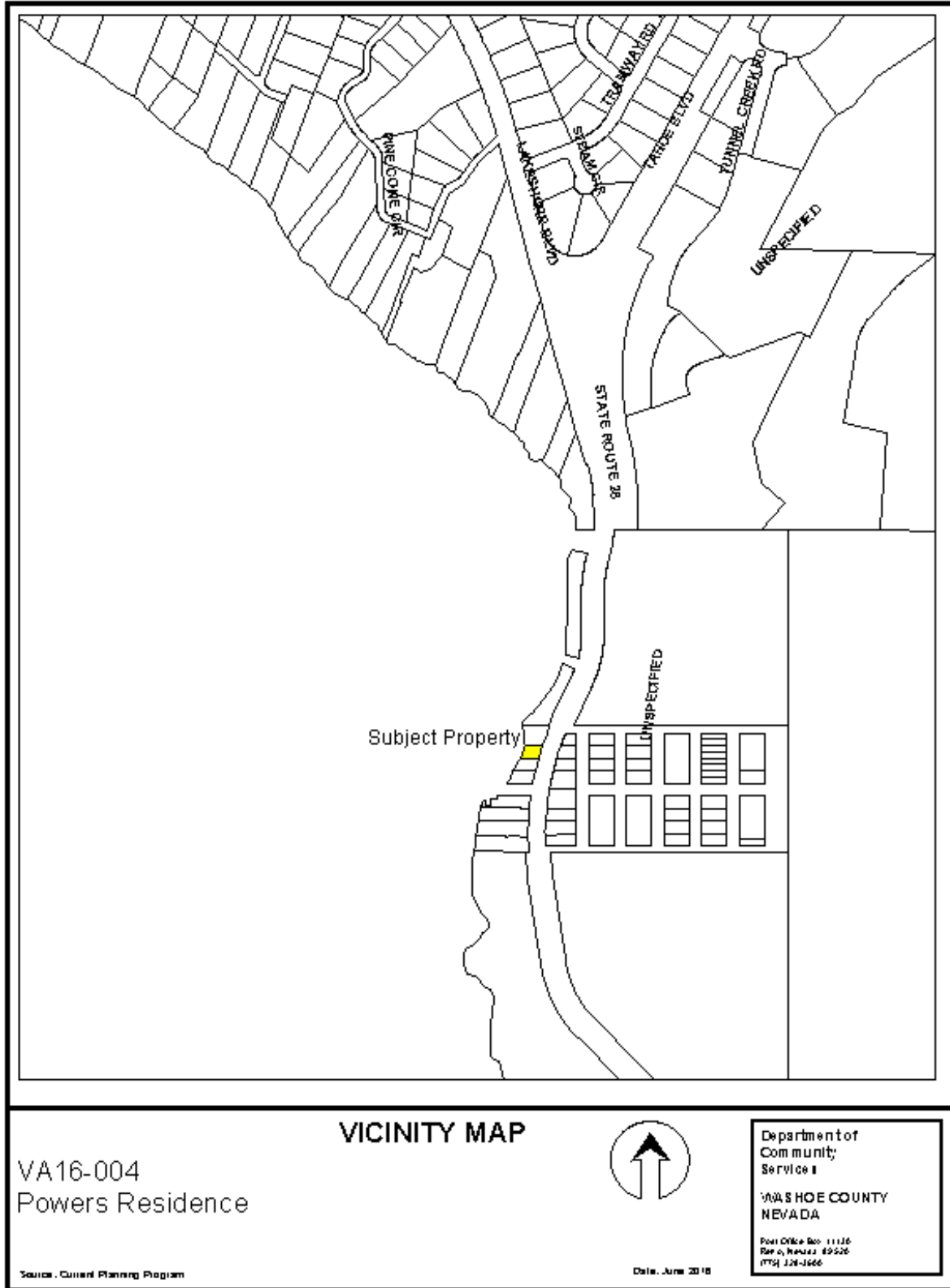
Where by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the enactment of the regulation, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of the piece of property, the strict application of any regulation enacted under NRS 278.010 to 278.630, inclusive, would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardships upon, the owner of the property, the Board of Adjustment has the power to authorize a variance from that strict application so as to relieve the difficulties or hardship, if the relief may be granted without substantial detriment to the public good, without substantial impairment of affected natural resources and without substantially impairing the intent and purpose of any ordinance or resolution.

The statute is jurisdictional in that if the circumstances are not as described above, the Board does not have the power to grant a variance from the strict application of a regulation. Along that line, under WCC Section 110.804.25, the Board must make four findings which are discussed below.

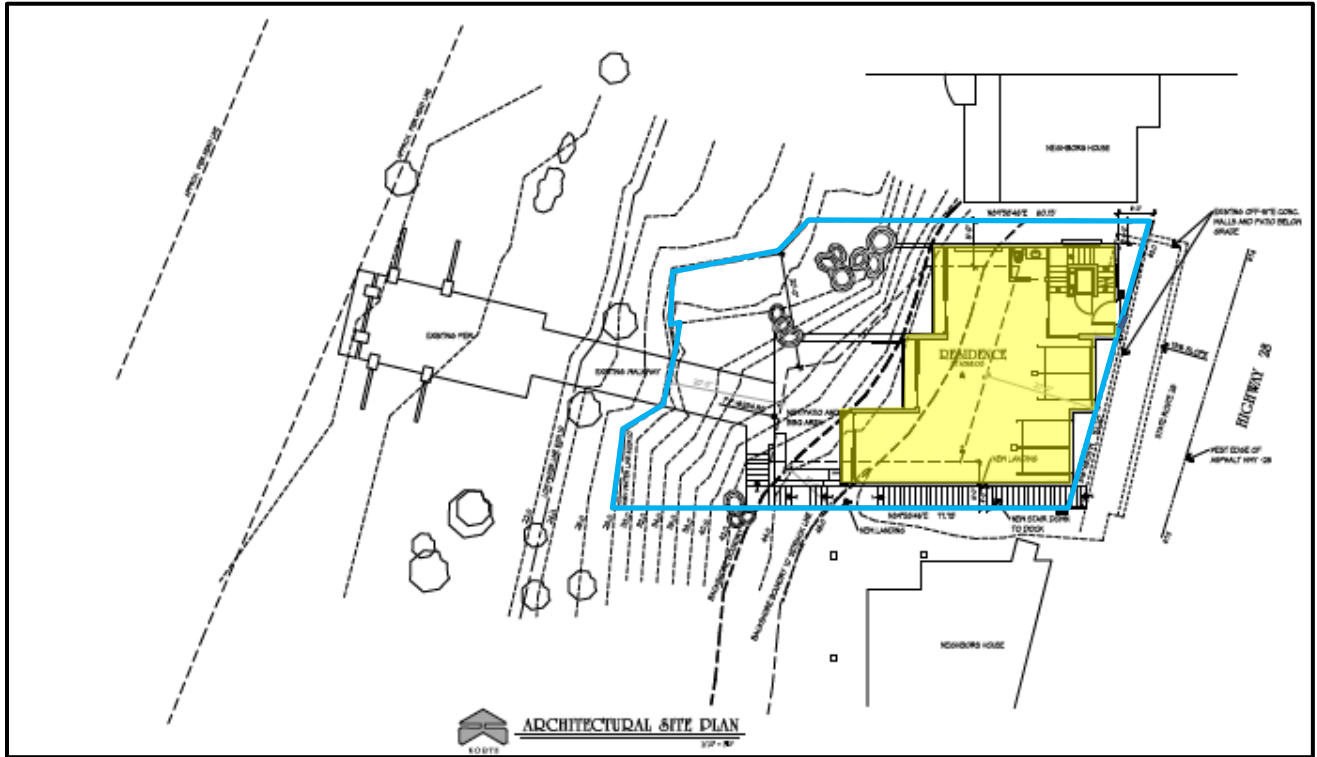
If the Board of Adjustment grants an approval of the Variance, that approval may be subject to Conditions of Approval. Conditions of Approval are requirements that need to be completed during different stages of the proposed project. Those stages are typically:

- Prior to permit issuance (i.e., a grading permit, a building permit, etc.).
- Prior to obtaining a final inspection and/or a certificate of occupancy on a structure.
- Prior to the issuance of a business license or other permits/licenses.
- Some Conditions of Approval are referred to as "Operational Conditions." These conditions must be continually complied with for the life of the business or project.

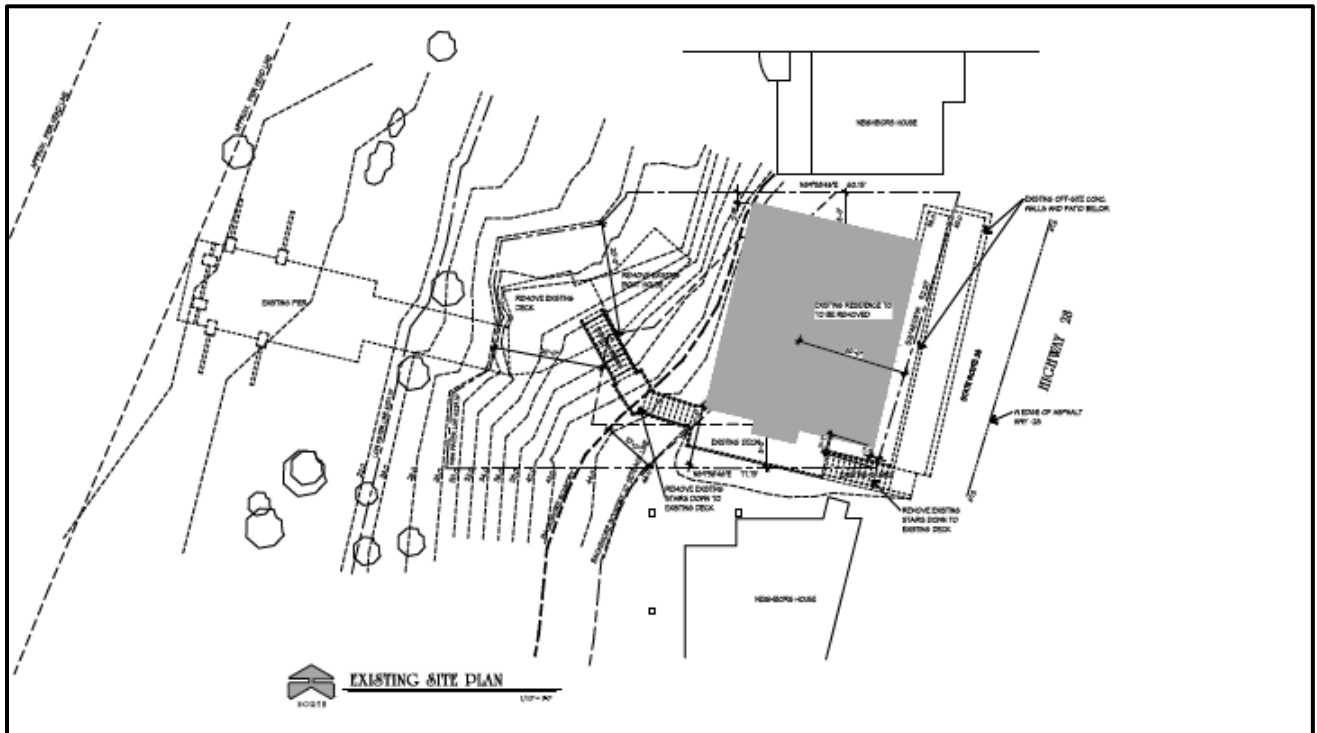
The conditions of Approval for Variance Case Number VA16-004 are attached to this staff report and if granted approval, will be included with the Action Order.



Vicinity Map



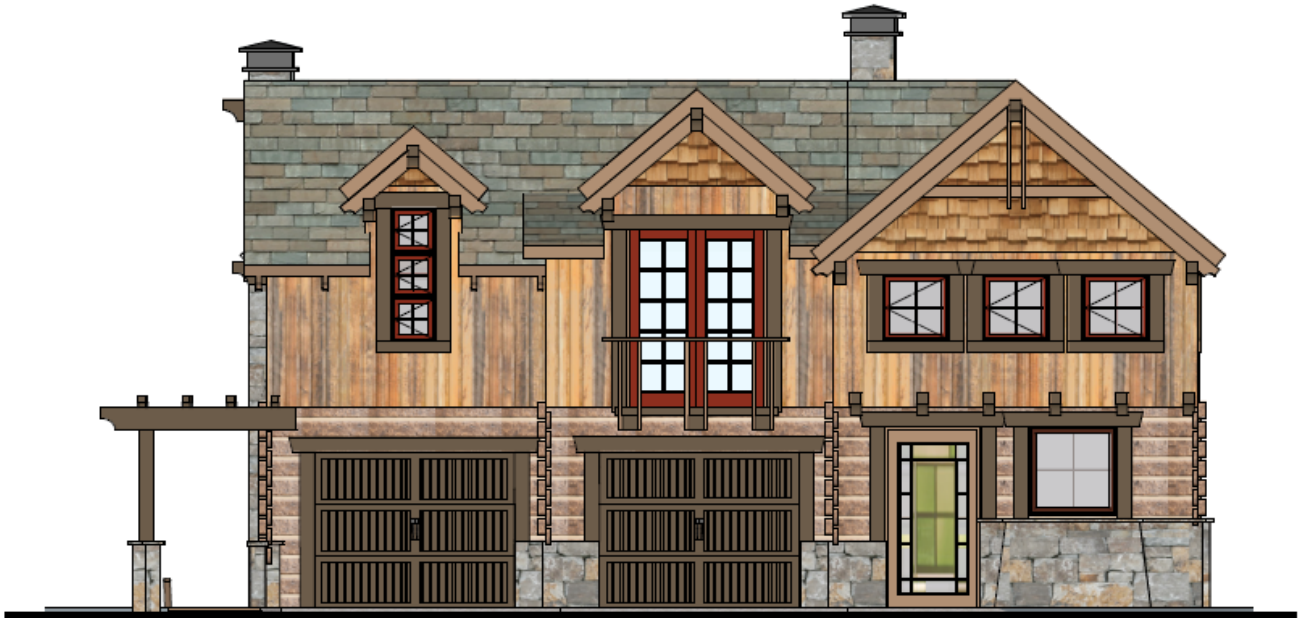
Site Plan



Existing Site Plan



Existing Front of House



Proposed Front Elevation



Existing Rear of House



Proposed Rear Elevation

Project Evaluation

The applicants are asking to vary the front and side yard setbacks to allow for a zero lot line setback along the front and south and a four foot setback along the north side yard property line. The variance is being requested to allow for the remodel of an existing residence.

The existing residence is also located within the front and side yard setbacks. The front of the house is currently located approximately one and one half feet from the front property line. The existing home is a three story residence of approximately 2,116 square feet in size. The newly proposed residence (remodel) will be four stories (with daylight basement) up to 35 feet in height and approximately 5,036 square feet in size. The new residence will extend slightly forward beyond where the existing residence is located. The front property line is located approximately 18 feet from the edge of the driving lane of State Route 28. However, the front face of the home will be staggered such that the garage doors will not be flush with the front property line but will be setback several feet from the property line. Also, the addition of a garage will help reduce the need to park cars within the right-of-way for State Route 28.

The proposed project will improve the condition of the property in several ways. Improvements will include removing the existing outside stairway and replacing it with a new stairway. Furthermore, the existing stairway is currently encroaching into the neighboring property to the south. The new stairway and landing will be realigned such that all improvements will be located within the applicant's property.

Special Circumstances/Hardship:

The special circumstances/hardships that are unique to this property include the exceptionally small size of the lot, the considerably narrow and shallowness of the lot, the extremely steep slope throughout the lot and the shoreline boundary and shoreline boundary setback which encumbers over half of the property. Staff has determined that such a remodel as requested by the applicant is not possible without the approval of a variance.

Impacts:

Due to the very close proximity of the proposed (and existing) home to the two neighboring houses and the proposed location of the front of the house in relation to State Route 28, it is inevitable that impacts will result from the proposed request. The impacts include a reduced area between the front of the house and the State Route 28 travel way. This narrow strip presents a hazard for vehicles traveling to and from the residence, however, this narrow strip is an existing condition that will be improved by the establishment of a new garage that will allow for the residents to pull into a garage instead of parking along the right of way. Additional impacts included the increased height of the residence from one story above the grade of the roadway to two stories. This increased height will not block any views of the lake as most of the properties directly east of the site are vacant and in public ownership. Staff has included a condition that no windows will be located along the south elevation of the house to help preserve privacy for the adjacent neighbors. Additionally, staff has included an additional condition that the applicants will ensure that the neighbors to the south (APN: 130-331-03) retain pedestrian access to the Lake and dock via the newly proposed stairway.

Staff has determined that the aesthetic and safety benefits resulting from the new remodel outweigh the potential negative impacts associated with this request.

Site Characteristics

The subject property is exceptionally constrained. The property is 3,136 square feet (.072 acres) which is considerably smaller than the minimum lot size for a medium density suburban (MDS) regulatory zone lot, which is 12,000 square feet. The property is 52 feet wide which is

considerably less than the minimum width required for a medium density suburban (MDS) regulatory zone, which is 80 feet wide. The property is exceptionally steep with average slopes in excess of 40 percent. Additionally, the property abuts Lake Tahoe and the property contains a backshore boundary as well as a backshore boundary setback that appears to encumber over half of the property.

Staff Comment on Required Findings

Section 110.804.25 of Article 804, *Variances*, within the Washoe County Development Code states “prior to approving an application for a variance, the Board of Adjustment, the Planning Commission or hearing examiner shall find that findings (a) through (d) apply to the property and, if a military installation is required to be noticed, finding (e):

- 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.

Staff Comment.

- o *The subject property has slopes in excess of 40% across the entire lot;*
 - o *The subject parcel is exceptionally small and narrow*
 - o *The subject parcel is encumbered by a backshore boundary and backshore boundary setback that encumbers over half 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.

Staff Comment.

- o *The variance will not create a detriment to the scenic or environmental character of the surrounding area, nor affect the Lake views of adjacent properties.*
 - o *The proposed residential addition will not create a significant impact, as it will be in a nearly the identical location of the existing residence.*
- 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.

Staff Comment.

- o *The two adjoining residences both extend into the side and front yard setbacks.*
- 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.

Staff Comment.

- o *The residential remodel is an authorized use within Article 302 of the Development Code.*

- e) Effect on a Military Installation. The variance will not have a detrimental effect on the location, purpose and mission of the military installation.

Staff Comment

- o *N/A, there is no military installation near the subject property.*

Staff has completed the analysis of the application and has determined that the proposal has met the required findings as outline within Article 804, Variances of the Development Code.

Incline Village Crystal Bay Citizen Advisory Board

The proposed project is scheduled to be heard at the Incline Village/Crystal Bay Citizen Advisory Board meeting on July 25, 2016. The Board of Adjustment will receive a complete report of the CAB meeting prior to the Board of Adjustment public hearing on August 4, 2016

Reviewing Agencies

The following agencies received a copy of the project application for review and evaluation:

- Washoe County Community Services Department
 - o Planning and Development
 - o Engineering and Capital Projects
- Washoe County Health District
 - o Vector-Borne Diseases Division
 - o Environmental Health Division
- Regional Transportation Commission
- Nevada Department of Transportation
- North Lake Tahoe Fire Protection District
- Incline Village General Improvement District
- Tahoe Regional Planning Agency

Five out of the nine above listed agencies/departments provided comments however, only two agencies/departments recommended conditions of approval in response to their evaluation of the project application. A **summary** of each agency's comments and/or recommended conditions of approval and their contact information is provided. The Conditions of Approval document is attached to this staff report and will be included with the Action Order.

- Washoe County Planning and Development addressed permitting, ensuring pedestrian access, mitigation of traffic concerns, etc.
Contact – Trevor Lloyd, 775.328.3620, tlloyd@washoecounty.us
- Washoe County Engineering and Capital Projects addressed construction improvement drawings and best management practices (BMP's), NDOT encroachment permit and FEMA flood zones.
Contact – Kimble Corbridge, 775.328.2054, kcorbridge@washoecounty.us

Staff Comment on Required Findings

Section 110.804.25 of Article 804, *Variances*, within the Washoe County Development Code, requires that all of the following findings be made to the satisfaction of the Washoe County Board of Adjustment before granting approval of the abandonment request. Staff has

completed an analysis of the application and has determined that the proposal is in compliance with the required findings as follows.

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.

Staff Comment: There are numerous special circumstances on this property that greatly encumber the use of the property including steep slopes, small lot size, exceptionally narrow and shallow lot dimensions and shoreline boundary and shoreline boundary setbacks resulting 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.

Staff Comment: The proposed variance will not create a substantial detriment. Although there are impacts associated with the request, those impacts essentially exist as the new remodel will be located in nearly the identical location as the existing house.

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.

Staff Comment: The proposed request is consistent with the development of the immediate neighbors to the north and south, each of which required similar variances for work performed on their properties:

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.

Staff Comment: The use of the property will remain a residential use which is consistent with the existing zoning of the property.

5. Effect on a Military Installation. The variance will not have a detrimental effect on the location, purpose and mission of the military installation.

Staff Comment: There are no military installations within the required noticing distance of 3,000 feet from the property; therefore, this finding is not required.

Recommendation

Those agencies which reviewed the application recommended conditions in support of approval of the project. Therefore, after a thorough analysis and review, Variance Case Number VA16-004 is being recommended for approval with conditions. Staff offers the following motion for the Board's consideration. **Motion**

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 approve Variance Case Number VA16-004 for John Powers III, having made all five 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. The variance will not have a detrimental effect on the location, purpose and mission of the military installation.

Appeal Process

Board of Adjustment action will be effective 10 calendar days after the written decision is filed with the Secretary to the Board of Adjustment and mailed to the original applicant, unless the action is appealed to the Washoe County Board of County Commissioners, in which case the outcome of the appeal shall be determined by the Washoe County Board of County Commissioners. Any appeal must be filed in writing with the Planning and Development Division within 10 calendar days after the written decision is filed with the Secretary to the Board of Adjustment and mailed to the original applicant.

xc: Owner/Applicant: John Powers III
 4118 East Elwood St.
 Phoenix, AZ 85040

Representatives: Ken Brown
 24654 N. Lakepleasant Pkwy. Suite 103-431
 Peoria, AZ 85383



EXHIBIT A

Conditions of Approval

Variance Case Number VA16-004

The project approved under Variance Case Number VA16-004 shall be carried out in accordance with the Conditions of Approval granted by the Board of Adjustment on August 4, 2016. Conditions of Approval are requirements placed on a permit or development by each reviewing agency. These Conditions of Approval may require submittal of documents, applications, fees, inspections, amendments to plans, and more. These conditions do not relieve the applicant of the obligation to obtain any other approvals and licenses from relevant authorities required under any other act or to abide by all other generally applicable Codes, and neither these conditions nor the approval by the County of this project/use override or negate any other applicable restrictions on uses or development on the property.

Unless otherwise specified, all conditions related to the approval of this Variance shall be met or financial assurance must be provided to satisfy the conditions of approval prior to issuance of a grading or building permit. The agency responsible for determining compliance with a specific condition shall determine whether the condition must be fully completed or whether the applicant shall be offered the option of providing financial assurance. All agreements, easements, or other documentation required by these conditions shall have a copy filed with the County Engineer and the Planning and Development Division.

Compliance with the conditions of approval related to this Variance is the responsibility of the applicant, his/her successor in interest, and all owners, assignees, and occupants of the property and their successors in interest. Failure to comply with any of the conditions imposed in the approval of the Variance may result in the institution of revocation procedures.

Washoe County reserves the right to review and revise the conditions of approval related to this Variance should it be determined that a subsequent license or permit issued by Washoe County violates the intent of this approval.

For the purpose of conditions imposed by Washoe County, “may” is permissive and “shall” or “must” is mandatory.

Conditions of Approval are usually complied with at different stages of the proposed project. Those stages are typically:

- Prior to permit issuance (i.e., grading permits, building permits, etc.).
- Prior to obtaining a final inspection and/or a certificate of occupancy.
- Prior to the issuance of a business license or other permits/licenses.
- Some “Conditions of Approval” are referred to as “Operational Conditions.” These conditions must be continually complied with for the life of the project or business.

The Washoe County Commission oversees many of the reviewing agencies/departments with the exception of the following agencies.

- **The DISTRICT BOARD OF HEALTH, through the Washoe County Health District, has jurisdiction over all public health matters in the Health District.**

Any conditions set by the Health District must be appealed to the District Board of Health.

FOLLOWING ARE CONDITIONS OF APPROVAL REQUIRED BY THE REVIEWING AGENCIES. EACH CONDITION MUST BE MET TO THE SATISFACTION OF THE ISSUING AGENCY.

Washoe County Planning and Development

1. The following conditions are requirements of the Planning and Development Division, which shall be responsible for determining compliance with these conditions.

Contact Name – Trevor Lloyd, 775.328.3620, tlloyd@washoecounty.us

- a. The applicant shall demonstrate substantial conformance to the plans approved as part of this variance permit. Modification to the site plan may require amendment to and reprocessing of the variance.
- b. The applicant shall submit complete construction plans and building permits shall be issued within two years from the date of approval by Washoe County. The applicant shall complete construction within the time specified by the building permits. Compliance with this condition shall be determined by Planning and Development.
- c. A copy of the Final Order stating conditional approval of this variance shall be attached to all applications for administrative permits, including building permits, issued by Washoe County.
- d. Prior to issuance of a building permit, the applicant execute Hold Harmless Agreement with the District Attorney's Office for the purposes of road maintenance and snow removal. The applicant shall submit a copy of the recorded document with the building permit application.
- e. The applicant shall install an automatic garage door opener prior the issuance of a Certificate of Occupancy or building permit final sign-off.
- f. Prior to submission of a building permit for the approved garage, the front property line shall be surveyed and marked by a surveyor licensed in Nevada. Approval of the variance shall not convey any rights or approval to construct any portion of a structure across the property line, or in the NDOT right-of-way. Neither shall any roof eaves, light fixtures or other structural or architectural elements project over the front property line.
- g. note shall be placed on all construction drawings and grading plans stating:

NOTE

Should any prehistoric or historic remains/artifacts be discovered during site development, work shall temporarily be halted at the specific site and the State Historic Preservation Office of the Department of Museums, Library and Arts shall be notified to record and photograph the site. The period of temporary delay shall be limited to a maximum of two (2) working days from the date of notification.

- h. The use of straw bales shall be prohibited during construction of the project. A filter-fabric fence or other acceptable alternative shall be utilized for erosion control.

- i. Prior to the issuance of a building permit, the applicant shall record a pedestrian access easement for lake/dock access for the benefit of the property owner of 1709 State Route 28.
- j. To avoid visual obstructions of oncoming traffic, all landscaping (trees and shrubs) shall be removed along the front of the property and no new landscaping shall be placed within the front of the property (between the front of the home and the travel way of State Route 28).
- k. No windows shall be installed along the south elevation of the new residence.

Washoe County Engineering and Capital Projects

- 2. The following conditions are requirements of the Engineering Division, which shall be responsible for determining compliance with these conditions.

Contact Name – Kimble Corbridge, 775.328.2054 – kcorbridge@washoecounty.us

- a. A complete set of construction improvement drawings, including an on-site grading plan, shall be submitted when applying for a building/grading permit. Grading shall comply with best management practices (BMP's) and shall include detailed plans for grading, site drainage, erosion control (including BMP locations and installation details), slope stabilization, and mosquito abatement. Placement or removal of any excavated materials shall be indicated on the grading plan. Silts shall be controlled on-site and not allowed onto adjacent property.
- b. An approved occupancy permit shall be obtained from the Nevada Department of Transportation (NDOT), for access to, from, or under roads and highways maintained by NDOT and a copy of said permit sent to the Engineering Division.
- c. The FEMA 100-year floodplain, floodway and/or shaded X boundaries with associated flood elevations shall appear on the site plan to the satisfaction of the County Engineer. Building permits for structures and fill in these areas shall be in conformance with the Washoe County Code Article 416.

*** End of Conditions ***

From: Corbridge, Kimble
Sent: Wednesday, June 29, 2016 3:29 PM
To: Lloyd, Trevor
Cc: Corbridge, Kimble; Smith, Dwayne E.; Vesely, Leo
Subject: VA16-004 Powers

Follow Up Flag: Follow up
Flag Status: Flagged

Trevor,
I have reviewed the referenced variance and have the following conditions:

1. A complete set of construction improvement drawings, including an on-site grading plan, shall be submitted when applying for a building/grading permit. Grading shall comply with best management practices (BMP's) and shall include detailed plans for grading, site drainage, erosion control (including BMP locations and installation details), slope stabilization, and mosquito abatement. Placement or removal of any excavated materials shall be indicated on the grading plan. Silts shall be controlled on-site and not allowed onto adjacent property.
2. An approved occupancy permit shall be obtained from the Nevada Department of Transportation (NDOT), for access to, from, or under roads and highways maintained by NDOT and a copy of said permit sent to the Engineering Division.
3. The FEMA 100-year floodplain, floodway and/or shaded X boundaries with associated flood elevations shall appear on the site plan to the satisfaction of the County Engineer. Building permits for structures and fill in these areas shall be in conformance with the Washoe County Code Article 416.

Thx,
Kimble

WASHOE COUNTY HEALTH DISTRICT

ENHANCING QUALITY OF LIFE

July 2, 2016

Trevor Lloyd, Senior Planner
Washoe County Community Services
Planning and Development Division
PO Box 11130
Reno, NV 89520-0027

RE: Powers; APN 130-331-02
Variance Case; VA16-004

Dear Mr. Lloyd:

The Washoe County Health District, Environmental Health Services Division (Division) Engineering and Vector have reviewed the above referenced project. The variance is proposing to reduce the front, rear, and side yard setbacks for the proposed structure. Approval by this Division is subject to the following conditions:

1. The parcel is a private dwelling in the Incline Village GID service area and is served by municipal water and sewer. The WCHD has no objections to the approval of this project as proposed.

If you have any questions regarding the foregoing, please call Jim English 328-2610 or Jim Shaffer 785-4599 regarding engineering or vector comments, respectively.

Sincerely,

James English
Environmental Health Specialist Supervisor
Environmental Health Services

J.L. Shaffer
Program Coordinator/Planner
Vector-Borne Diseases Program
Environmental Health Services

JE/JS/:wr

cc: File - Washoe County Health District
Ken Brown – kenbrownjr@earthlink.net

OFFICIAL NOTICE OF PUBLIC HEARING

DATE: July 22, 2016

You are hereby notified that the **Washoe County Board of Adjustment** will conduct a public hearing at the following time and location:

1:30 p.m., Thursday, August 4, 2016
County Commission Chambers, 1001 East Ninth Street, Reno, NV 89512

RE: Variance Case Number VA16-004 (Powers Residence) – Hearing, discussion, and possible action to approve a variance to reduce the front yard setback from 20 feet to 0 feet and to reduce the south side yard setback from 8 feet to 0 feet and the north side yard setback from 8 feet to 4 feet to allow for the remodel of an existing four story residence abutting Lake Tahoe.

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- Property Owner: John Powers III
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- Regulatory Zone: Medium Density Suburban (MDS)
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- Development Code: Authorized in Article 804, Variances
- Commission District: 1 – Commissioner Berkbigler
- Section/Township/Range: Section 26, T16N, R18E, MDM,
Washoe County, NV
- Staff: Trevor Lloyd - Senior Planner
Washoe County Community Services Department
Division of Planning and Development
- Phone: 775.328.3620
- E-Mail: tlloyd@washoecounty.us

As an owner of property in the vicinity, you are invited to present testimony relative to these matters.

To access additional information about this item, please visit our website at www.washoecounty.us/csd/planning_and_development/, choose **Boards and Commissions**, then **Board of Adjustment, Meetings, +2016**. Then click on the above referenced meeting date.