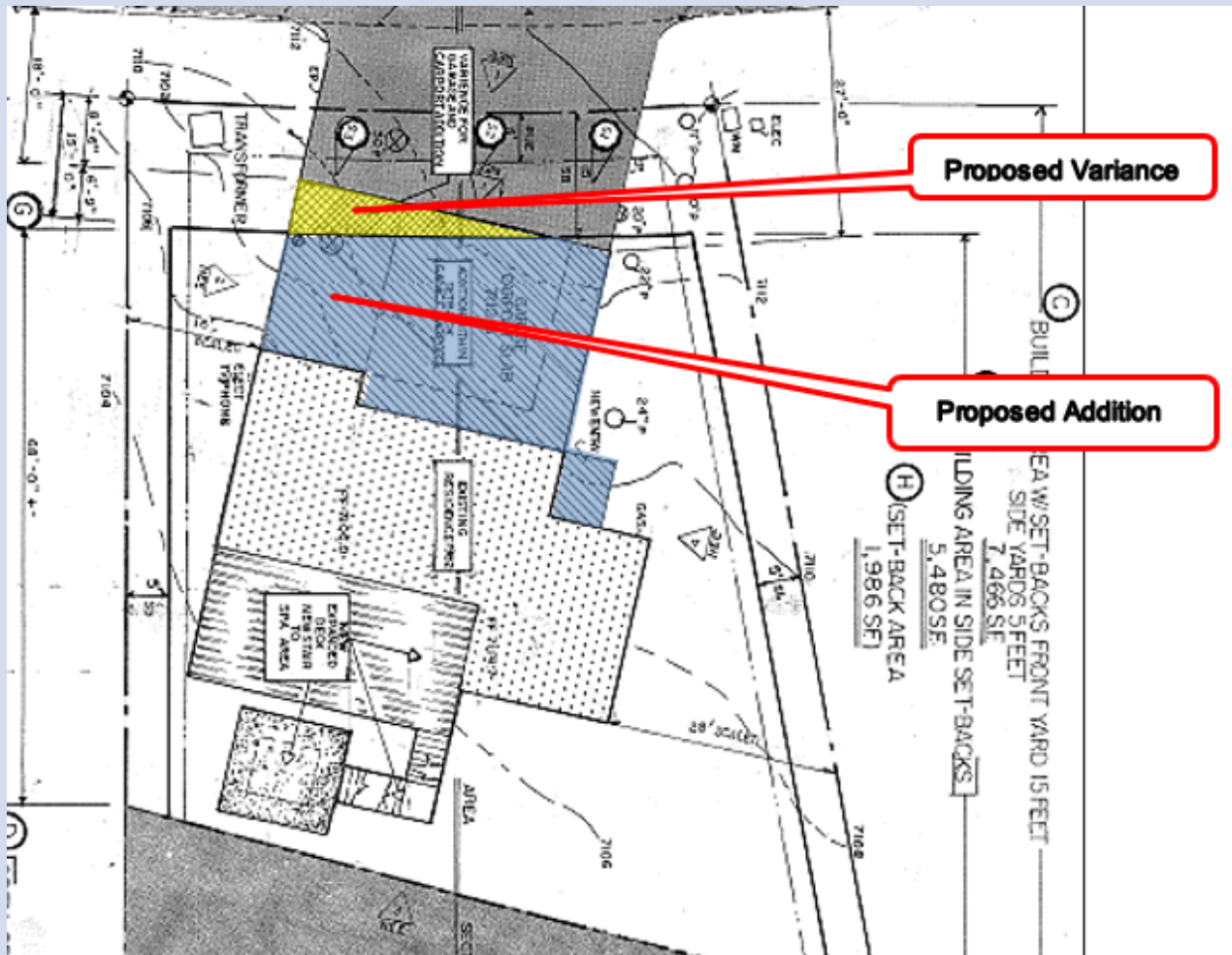




# WPVAR21-0004 (Birta Front Yard Setback Reduction)



Washoe County Board of Adjustment  
February 3, 2022



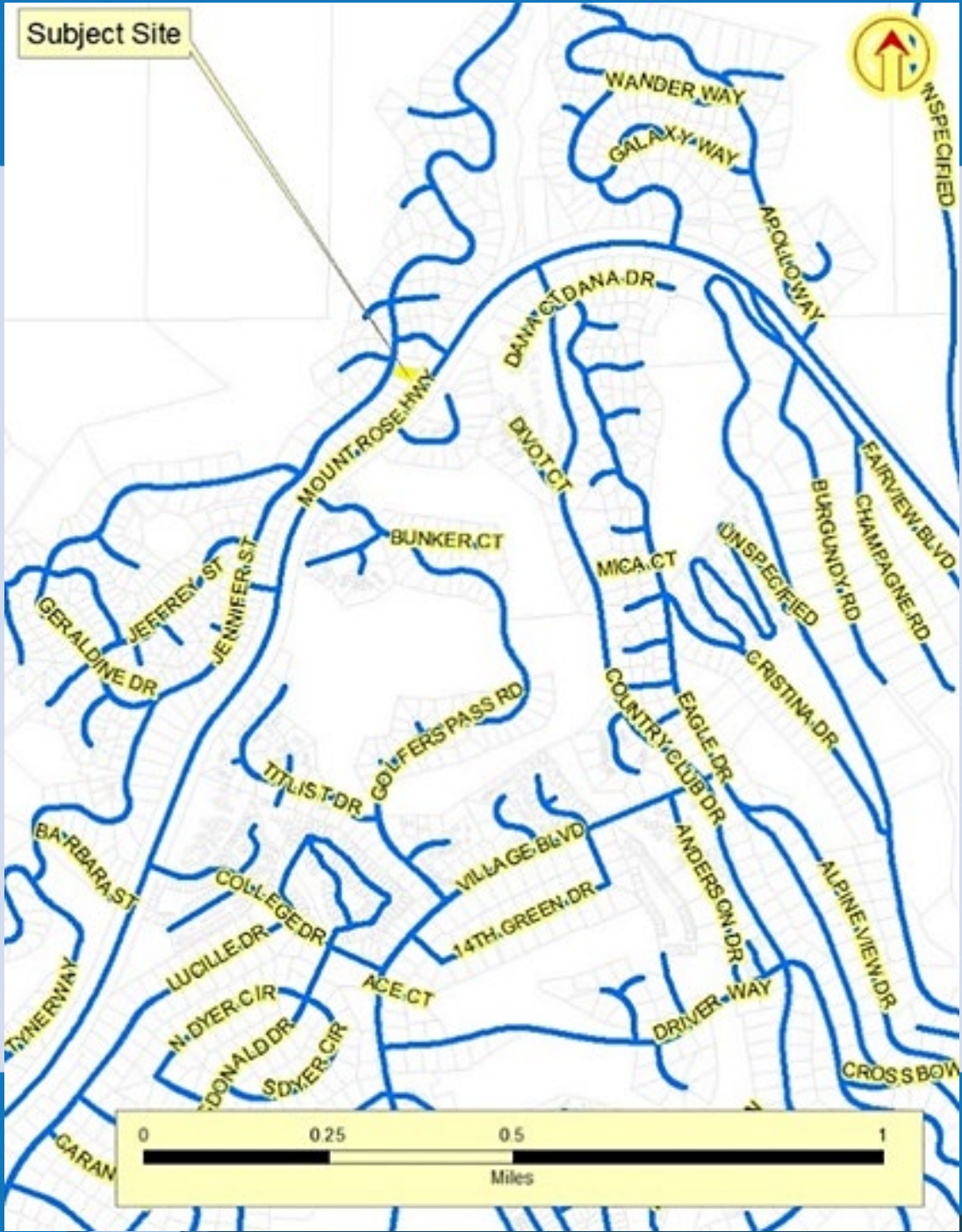
# Request

Variance to reduce the required front yard setback from 15 feet to 8 feet to facilitate the addition of a two-car garage and a one-car carport at ground level and a new master bedroom suite on the floor above.

Subject Site



# Vicinity Map

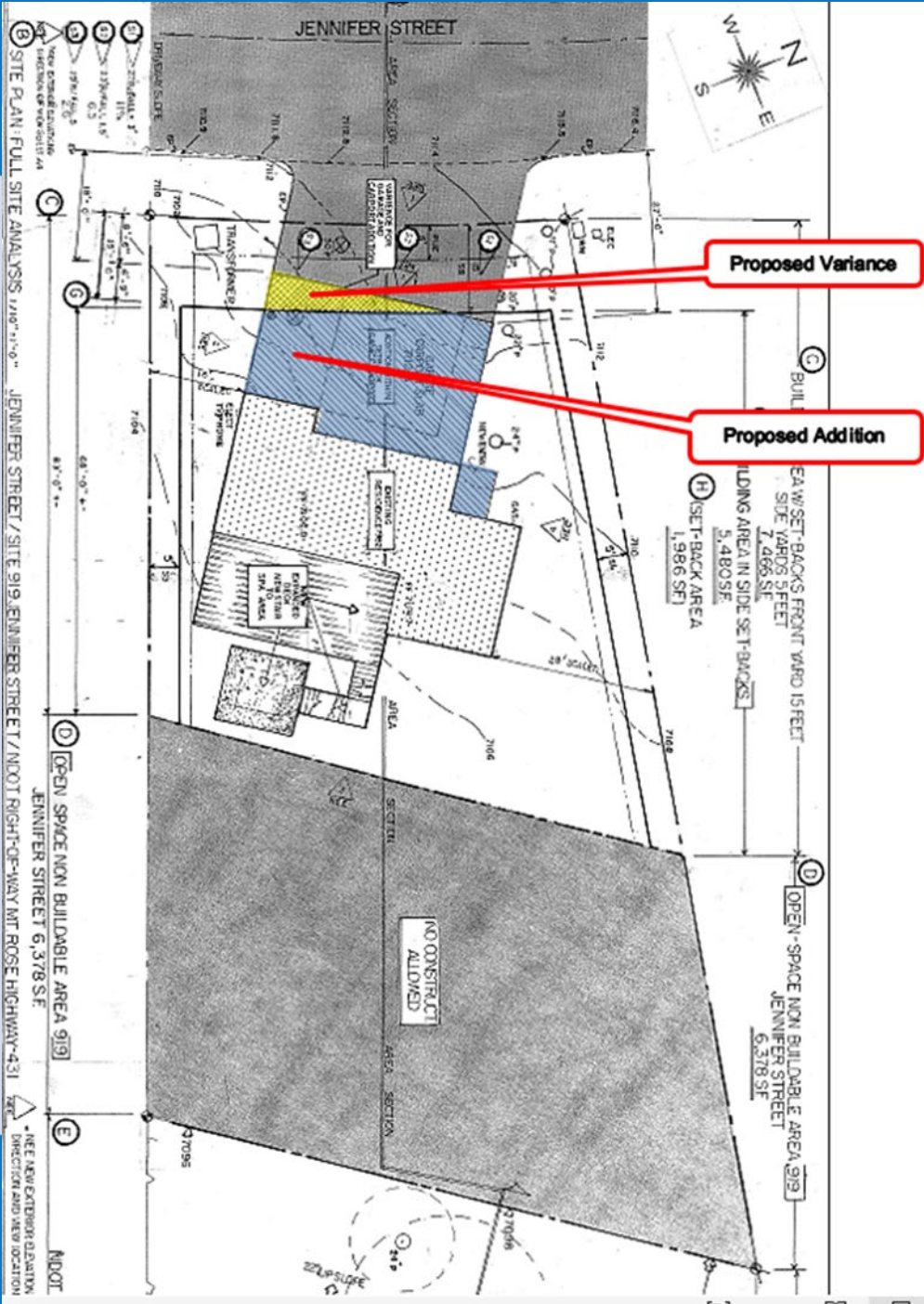




# Overhead Photo

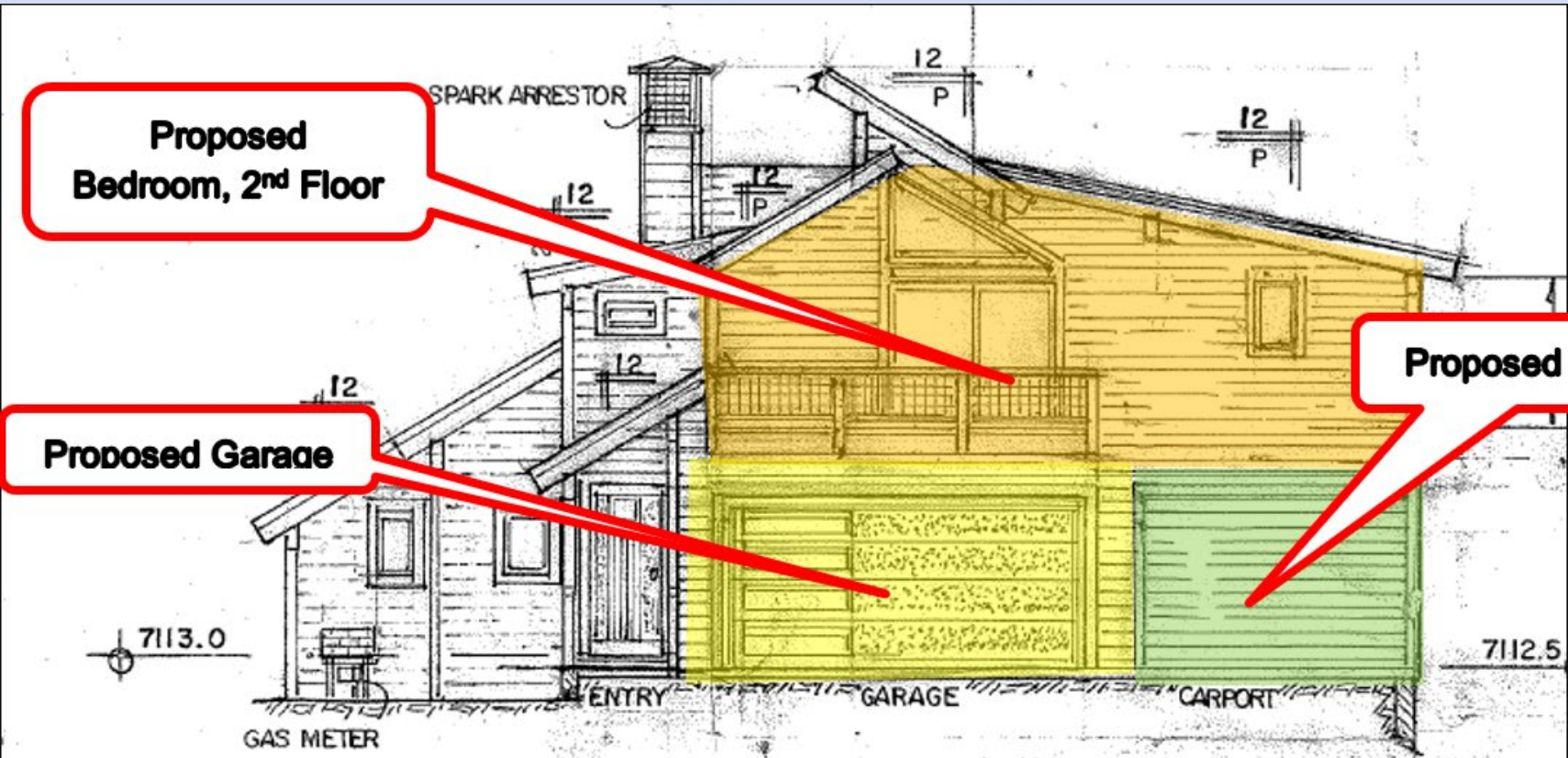


# Site Plan



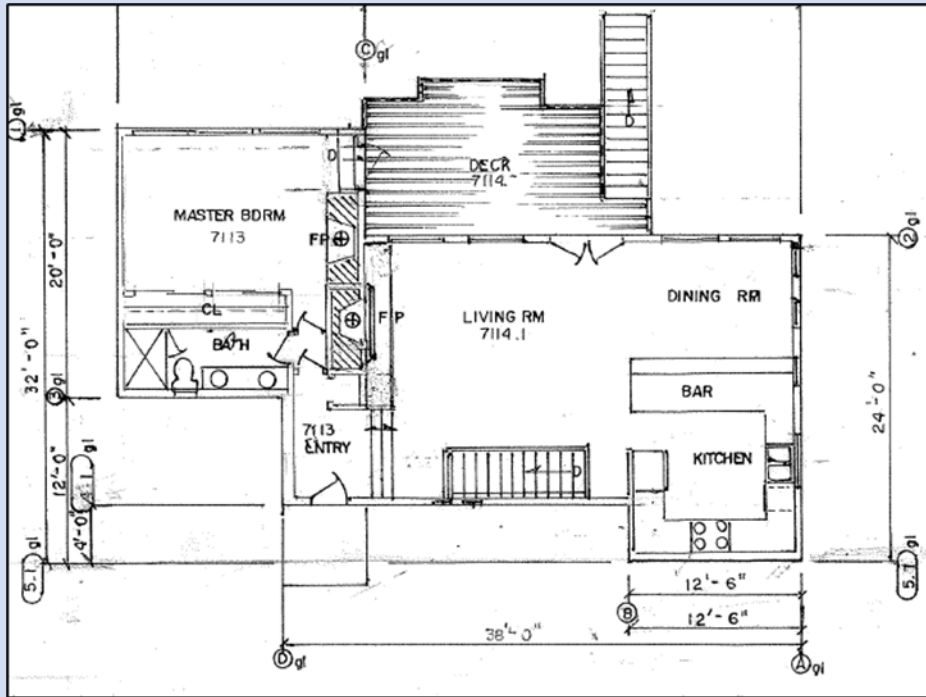


# Proposed Front Building Elevation



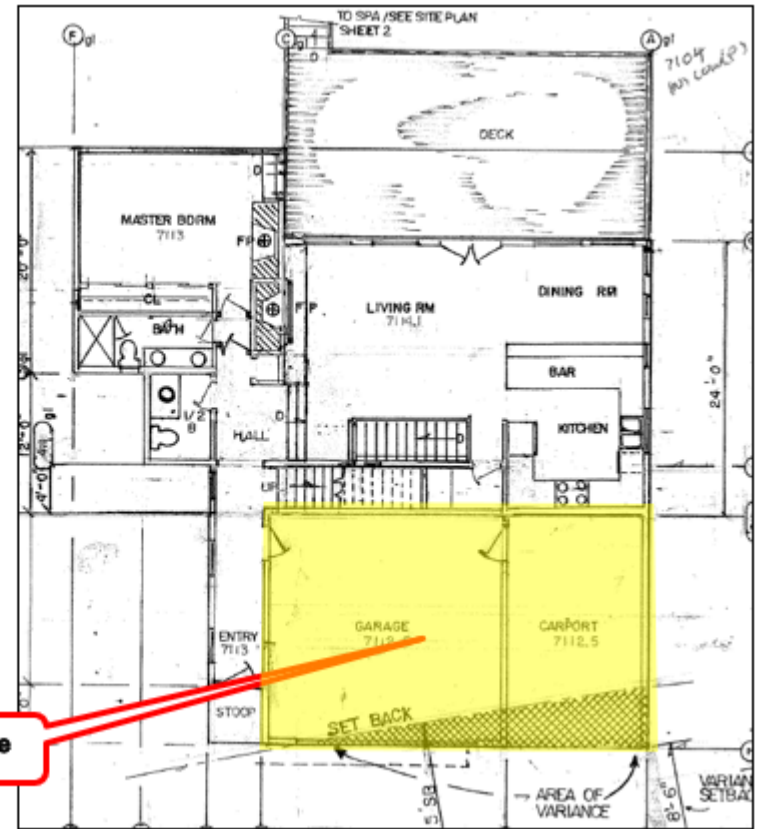


# Floor Plan, Street Level



← Existing

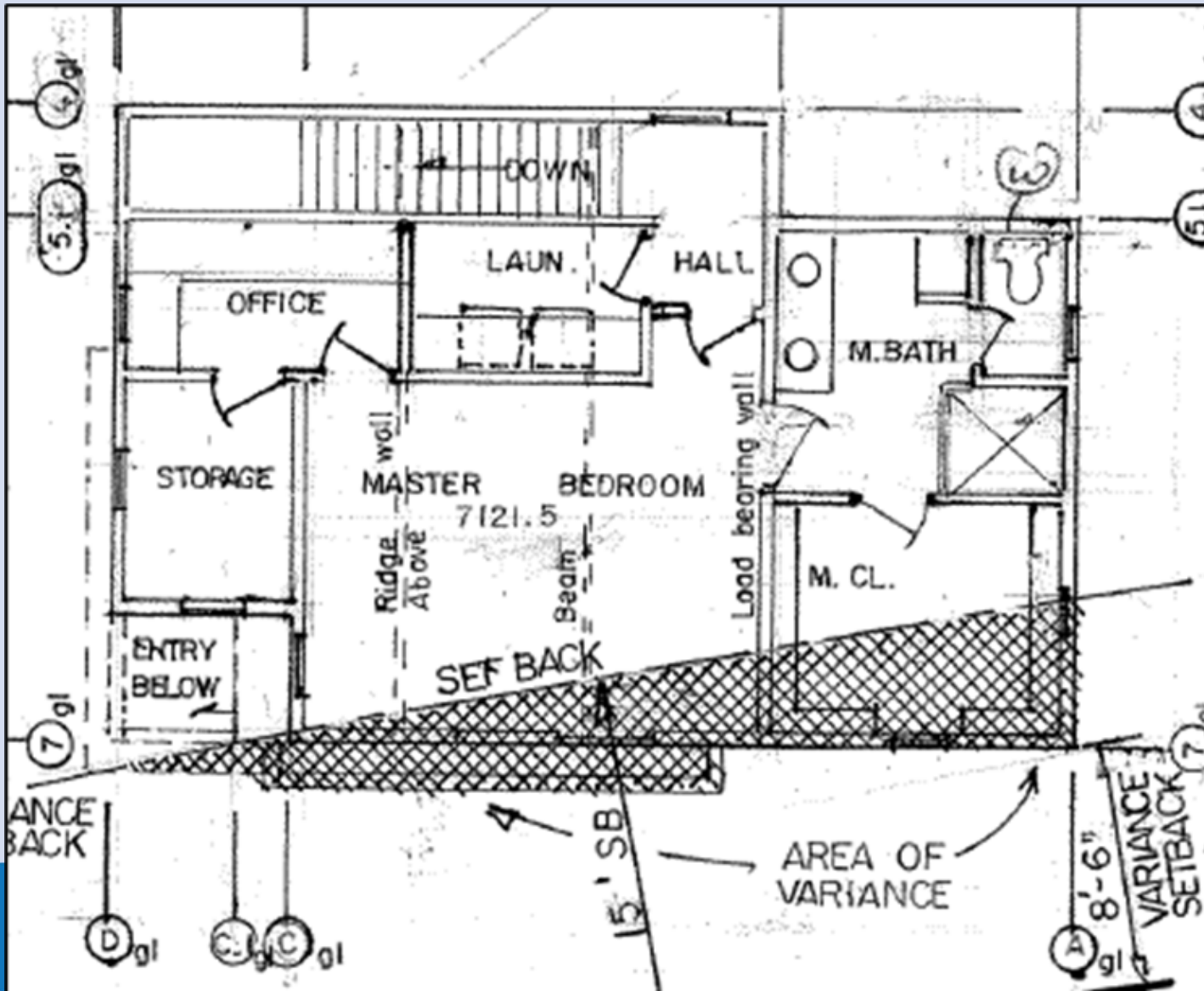
Proposed →



Proposed Garage



# Proposed New 3<sup>rd</sup> Floor Plan







# Project Evaluation

BLOCK "M"		
LOT NO.	FRONT SETBACK	FRONT SLOPE EASE
1	25'	5'
2	25'	0
3	20'	0
4	15'	0
5	20'	0
6	20'	5'
7	18'	5'

The subject parcel has the smallest required setback in that block, as can be seen by this excerpt from Tract Map #1127

General standards would require a 20-foot front yard setback.

Use Type and Parcel Size	Required Setback			Minimum Parcel Width	Minimum Parcel Size
	Front (Feet)	Side (Feet)	Rear (Feet)	(Feet)	(Square Feet)
Residential					3,700 sf.
Greater Than 2.5 Acres	30	15	30	80 ft.	
35,000 Square Feet to 2.5 Acres	30	12	30	80 ft.	
12,000 Square Feet to 34,999.99 Square Feet	20	8	20	60 ft.	
5,000 Square Feet to	20	5	20	60 ft.	



# Project Evaluation

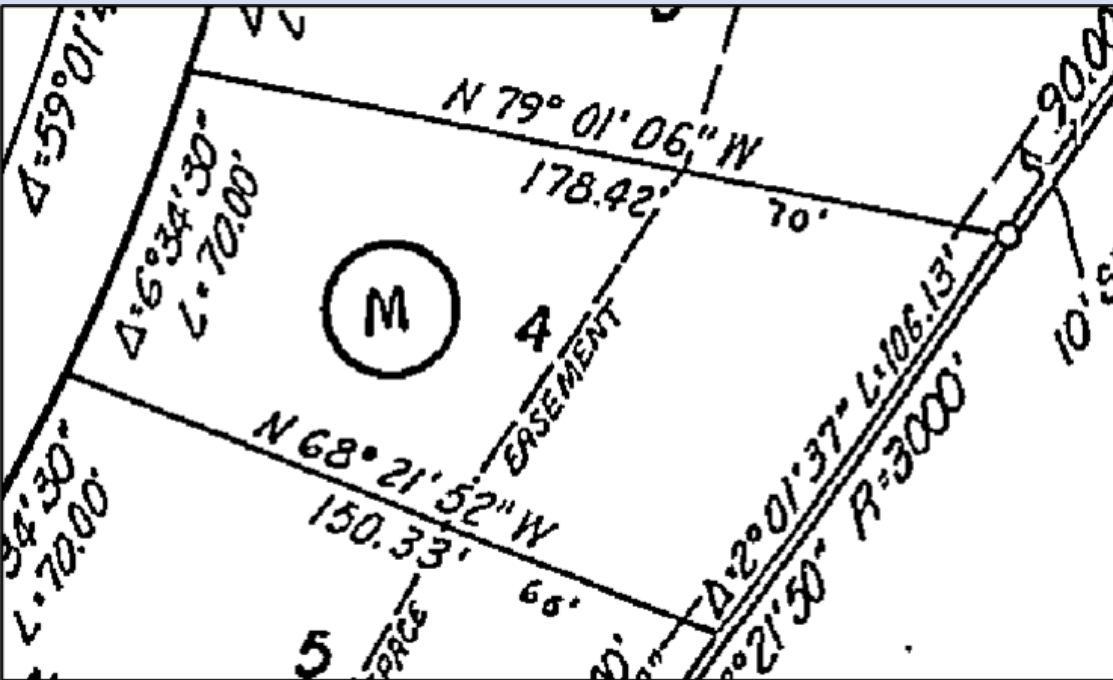
**Variations are limited to those circumstances in which the property exhibits a special circumstance that results in a hardship.**

**Those circumstances (by NRS and WCC) are:**

- 1) exceptional narrowness, shallowness, or shape of a specific piece of property; or**
- 2) by reason of exceptional topographic conditions; or**
- 3) other extraordinary and exceptional situation or condition of the piece of property.**



# Project Evaluation: Exceptional Narrowness



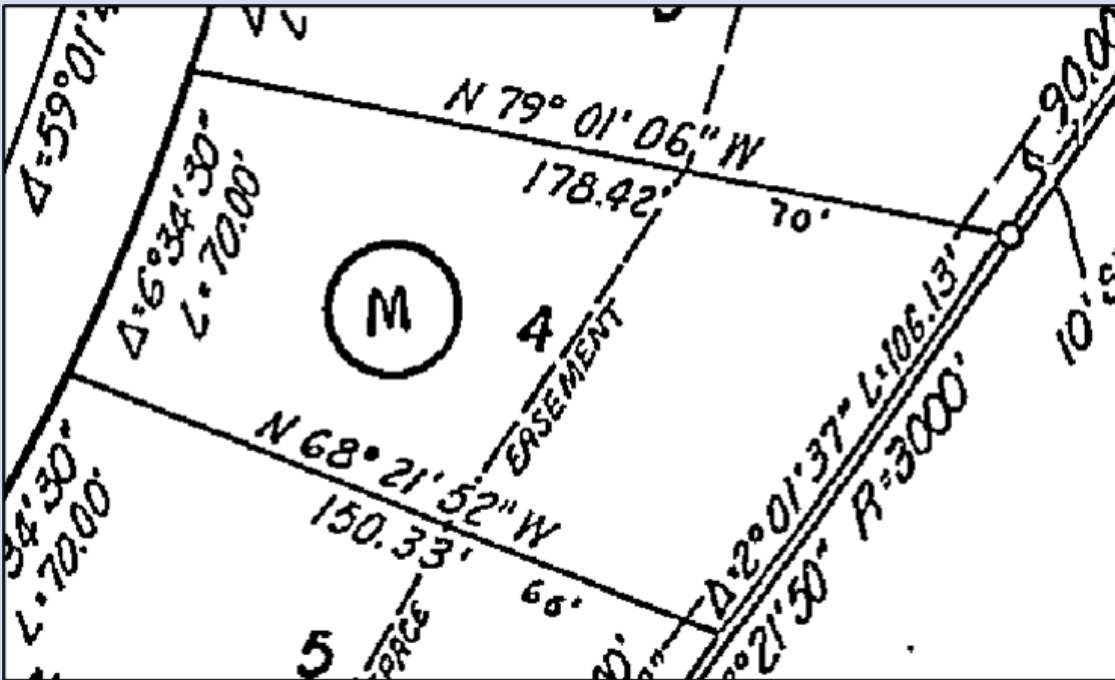
Minimum Required Lot Width:  
**60 feet**

Lot Width Subject Site:  
**88 feet**

The subject parcel is not exceptionally narrow.  
Page 8 of staff report.



# Project Evaluation: Exceptional Shallowness



Minimum Required Lot Depth:  
**60 feet**

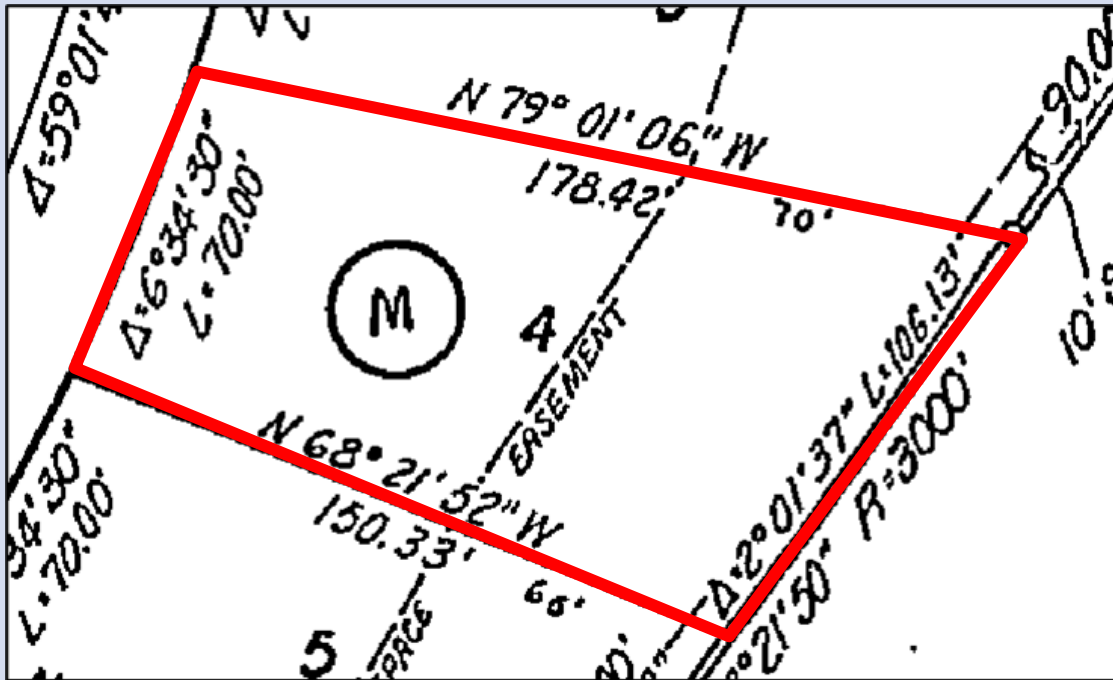
Lot Width Subject Site:  
**94 feet**

**After Open Space Easement  
is Subtracted**

The subject parcel is not exceptionally shallow.  
Page 9 of staff report.



# Project Evaluation: Exceptional Shape



The subject parcel is essentially rectangular.  
The subject parcel is not exceptionally shaped.  
Page 9 of staff report.



# Project Evaluation: Exceptional Topography

The subject parcel is slopes approximately 16 feet over a distance of approximately 116 feet = 13%

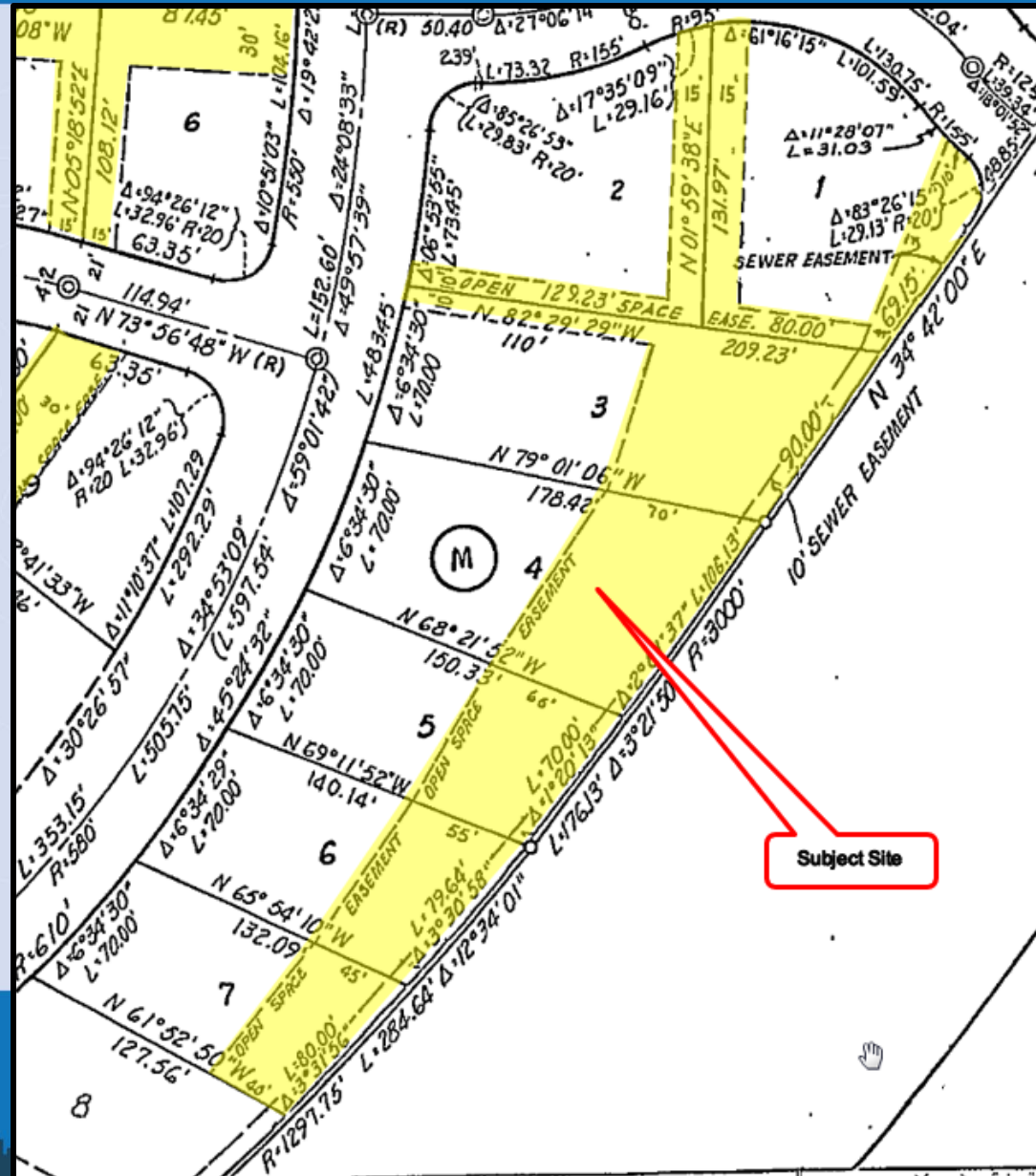
Slopes less than 15% are considered unconstrained for development.  
Page 9 of Staff Report



# Project Evaluation: Extraordinary and exceptional situation or condition of the property and/or location of surroundings

Open Space Easement is neither unique nor extraordinary.

Pages 10 & 11 of staff report.





# Project Evaluation

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.

This finding cannot be made:

Because there are no special circumstances applicable to the subject site, **approval of a variance would impair the intent of the Development Code** which requires that a finding of hardship be made, for approval of a variance to be granted





# Project Evaluation

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, is also required.

This finding cannot be made:

Because there are no special circumstances applicable to the subject site, **approval of a variance** to reduce the front yard setback (being cognizant of the fact that the setback is already among the smallest in the area) **results in a special privilege to this applicant** that is not consistent with the limitations on other properties.



# Project Evaluation

Variance does not authorize a use or activity which is not otherwise expressly authorized by the regulation governing the parcel of property is also required.

This finding can be made:

A garage is permissible on the subject site and can be done in many ways on the subject site without violating the required front yard setback.



# Project Evaluation

Variance will not have a detrimental effect on the location, purpose or mission of a military installation.

This finding can be made:

As there is **no military installation** within the area that is required to be provided with public notice for the variance request.



# Other Options for Garages

It is **not** required that staff show how to construct a garage on the parcel of land without a variance, as there is no absolute right for the applicant to construct a garage.

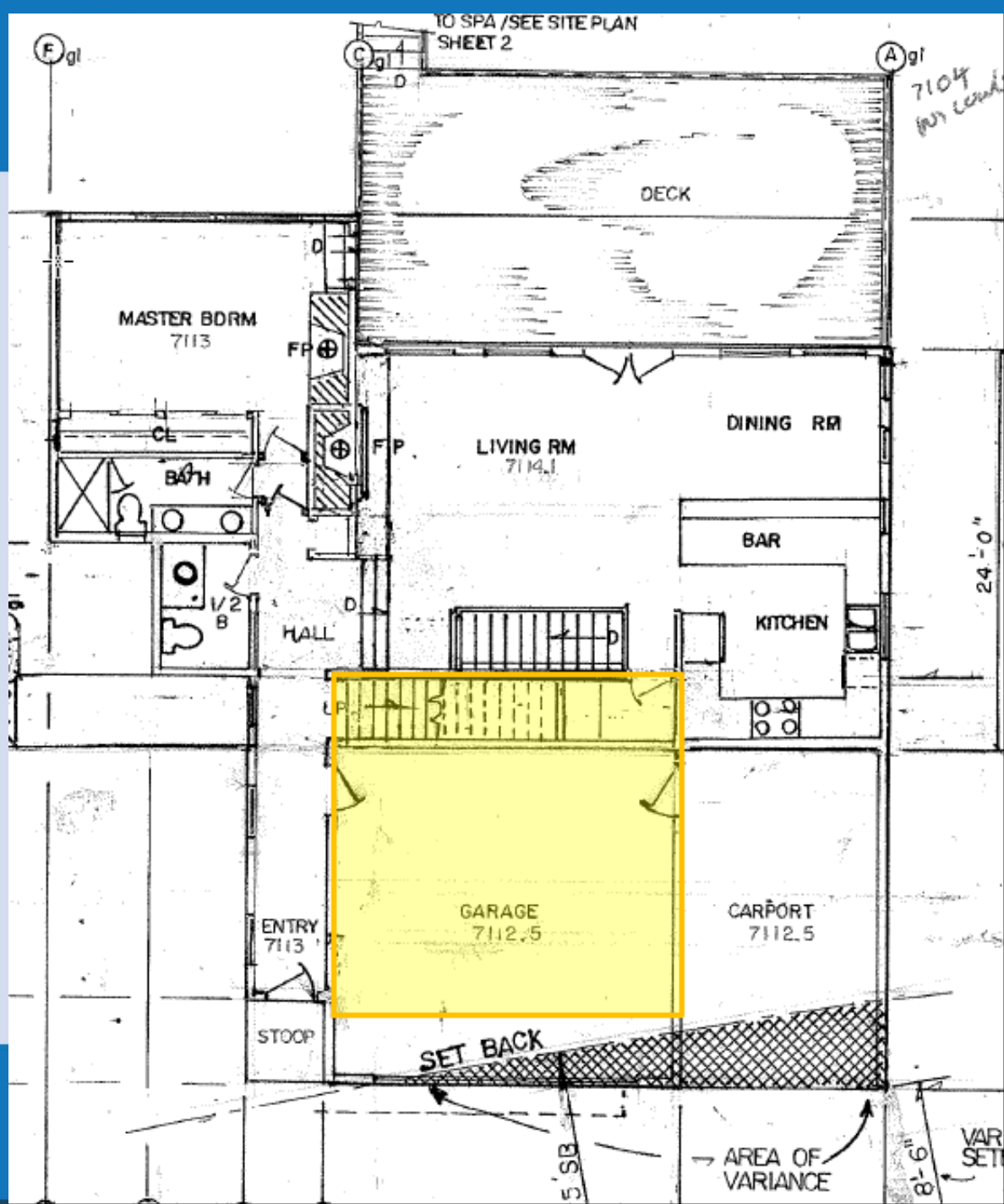
There are, however, many ways that it can be accomplished.



# Communication With Applicant

## **In anticipation of a question from the BOA:**

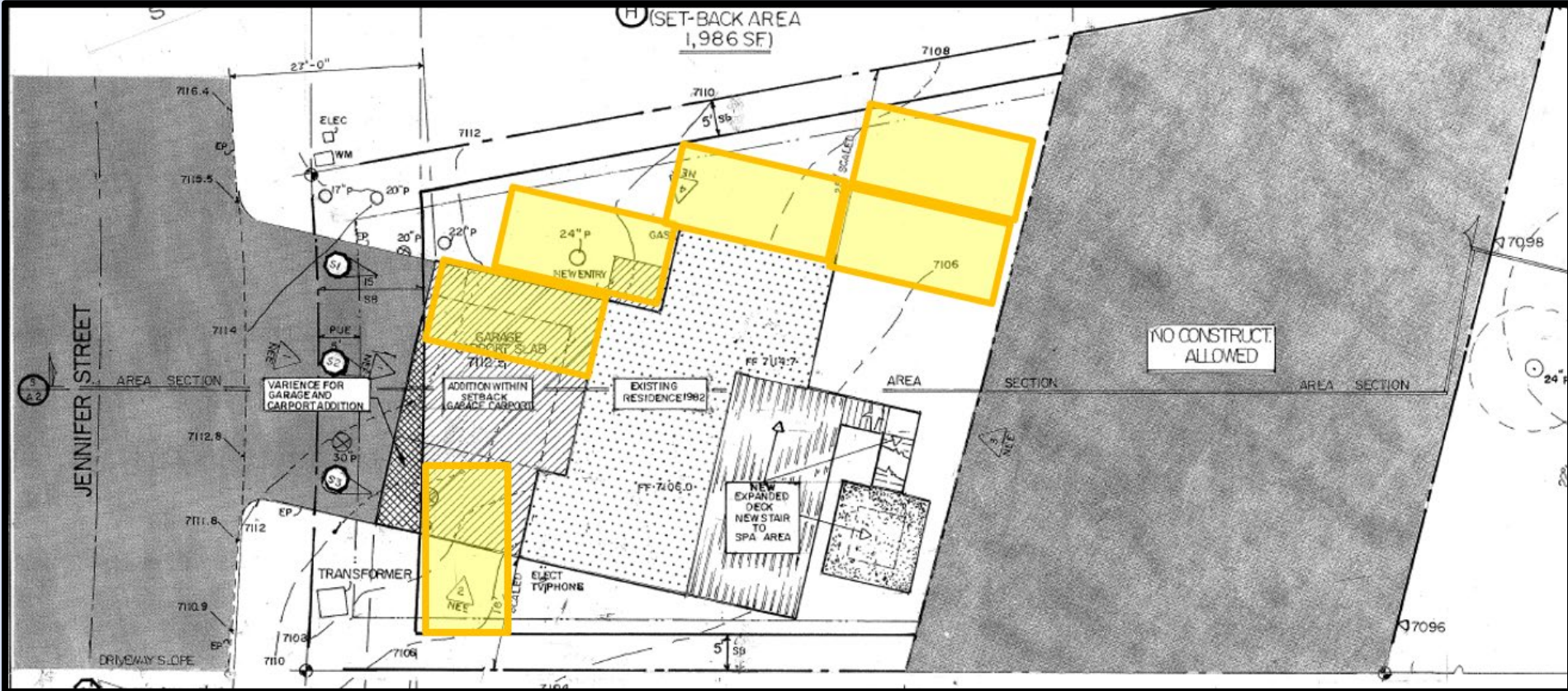
Staff spent considerable time on the phone with the applicant and the applicant's representative upon initial review of the application packet and advised that it was unlikely that a recommendation for approval was forthcoming.



# Other Options for Garages



# Other Options for Garages





# Conditions of Approval

Conditions of approval are not included with the recommendation as there is no hardship of the land; denial of the variance is recommended.





# Letter to BOA from Robert J. Angres, Esq

**ROBERT J. ANGRES, LTD.**  
Attorney and Counsellor at Law

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Reno, Nevada 89512

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E-mail: [rjangres@gmail.com](mailto:rjangres@gmail.com)

Licensed in Nevada,  
California (inactive) and Illinois (retired)  
United States Supreme Court

January 28, 2022

Washoe County Board of Adjustment  
VIA FAX: 17753286133/VIA EMAIL: [aalbarran@washoecounty.gov](mailto:aalbarran@washoecounty.gov)

Re: Birta Variance Application: #WPVAR21-0004

Dear Members of the Board of Adjustment,

The undersigned is appearing as counsel of record for Mr. Birta in support of his application for variance of the setback extant on his lot to permit construction of a garage on his home at 919 Jennifer Street in Incline Village.

While the applicant and Wayne Ford, residential designer, will ably present the case "on the ground", through a cohesive power point demonstration, I would like to present issues of law and equity for the Board to consider in reaching their decision on this application.

I have been advocating in front of this Board for nearly the entirety of my 43 years of practice in Incline Village and Reno. Each of my cases, many of which had to be appealed to the County Commissioners or pursued thereafter in the District Court, involved arguing the issues raised by staff's application and presentation of NRS 278.300, and attempting to parse the various elements which are set forth therein to guide the Board in passing on variance requests.

## **Relationship between interpretation and application of "elements" qualifying with constitutional principles:**

A key problem in staff's variance recommendations over the years, both *pro* and *con*, lies in any failures in consistently applying an interpretation of the qualifying elements. While it is admittedly a very difficult task, impacted by a felt need not to rubber stamp requests and "hold the line" (a phrase staff has frequently used over the years to express their sense of duty in administering the process on applications), everyone is human, staff changes, boards change, however what doesn't change is the need of government to appear to its constituents as even, fair, equitable, especially when applied to the fundamental rights in property guaranteed by the constitution and our laws and constitution in the State of Nevada.

When staff is tasked with interpreting elements such as "extraordinary circumstances", "special circumstances", "no detriment", "no special privileges" "use authorized" and then does so to the best of its ability and then we find that there is even one exception to what they are stating, then we find ourselves in a very concerning situation about constitutional protections and the appearance of inequality in the application of our laws respecting the fundamental rights in property. When the analysis ignores the realities on the ground (in this case serious snowfall) and the reality that Incline Village is not just a place where most people come to ski in the Winter and play on Lake Tahoe in the Summer, but where people now live full time, raise their children and pursue their livelihoods, the application of these purported requirements are under ever

increasing scrutiny if they fail the consistency and fairness tests expected by Americans of their government.

We know we are encountering a "sea change" in what constitutes extraordinary circumstances when a Federal Judge just yesterday cancelled oil and gas leases in recognition of the impact of climate change. One would have had to be asleep for the month of December, 2021 not to have acknowledged that winters at Tahoe have been more dramatically impacting basic life and safety issues in Incline, especially at altitude such as homes on Jennifer Street. There has always been a concern with safety based on extreme snowfall (at least as far back as when Mount Rose highway was not even open during the winter before 1945). However, in recent years the variability and severity has palpably increased. It is not just the safety of the homeowners and their family and guests, but the County divisions charged with clearing the roads, providing emergency services and myriad other facets of society at the Village, City and County levels. Why else would the "road department" indicate their 100% support of this variance request. It is axiomatic that residents need as much off-street and covered parking for their safety and security and the County resources and the safety of County personnel is dramatically enhanced by the residents having such off-street and covered parking.

## **Equity and the Perception of Equity:**

This Board has always encountered the challenge of public perception to avoid bias and the obligation to do justice. Again, today as we have the announcement of the retirement of Justice Breyer after he sought for 27 years to achieve workability and consensus, almost every news report focused solely on the perception of the coming nomination and approval of his replacement in terms of the public's perception of fairness.

With the exception of mentioning that while staff raised the issue of the Open Space Easement factors respecting lots in the subdivisions, it did not provide a comparison of the open space on applicant's lot *vis a vis* the percentage of open space on other lots in the subdivision and how that aspect could make Birta's lot "extraordinary" or subject to "hardship", I will leave the presentation of Mr. Ford and the applicant to address issues which we feel militate towards a finding contrary to staff's denial. The basic, underlying reality of variance requests is that the criteria is susceptible of different results on substantively identical situations depending on the particular perspective of a staff analyst on the day in question. In circumstances where often the only area of concurrence is the absence of a military installation, the difficulties for staff, the boards and the landowner are drawn in sharp relief.

This board must wrestle with this underlying problem in its mission to consistently and equitably apply regulations which are susceptible to inconsistent results, cognizant of changing climate, resources and the overarching goal of life/safety, feasibility and facilitating the highest and best use of private property.

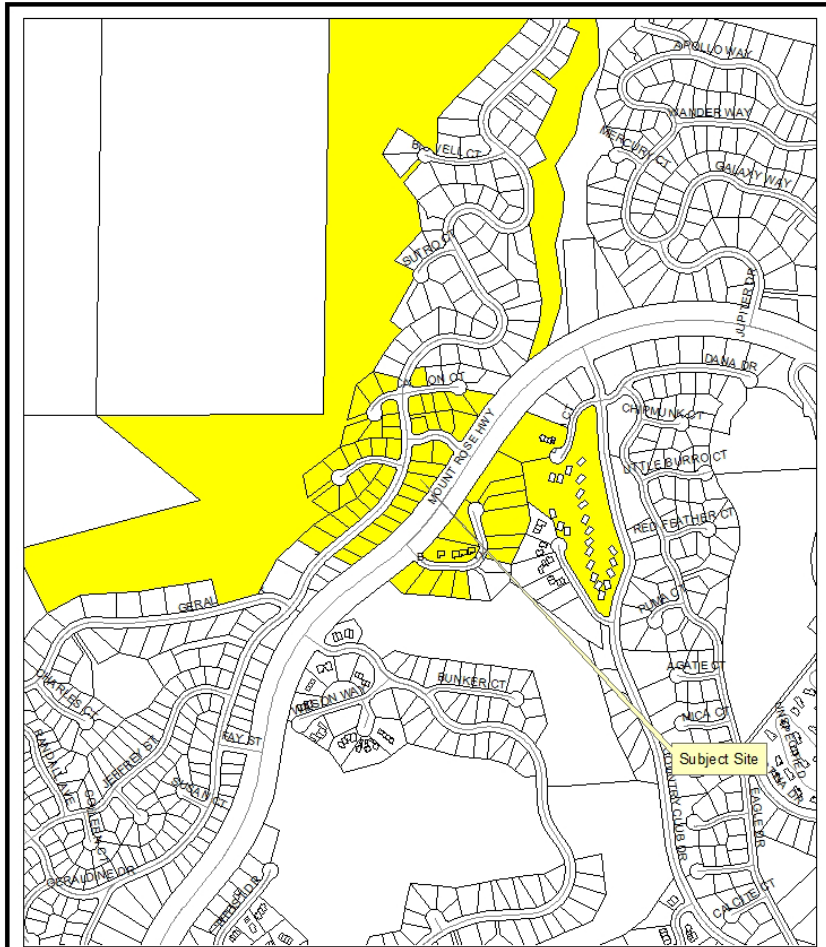
Thank you for your careful consideration of both the merits of Mr. Birta's application, with due respect for the very difficult task of staff, but with an eye to maintaining a high level of confidence in this Board and the government it represents in the minds of its constituents.

Very truly yours,  
*/s/*

Robert J. Angres, Esq.  
Cc: Robert Birta/Wayne Ford



# Public Notice



**Notice sent to 56 individual affected property owners at a distance of 500 feet from the subject site.**

Mailing and Vicinity Map

WPVAR21-0004 Notice Map  
65 parcels selected at 500 feet

0 0.075 0.15 0.3  
Miles

Community Services Department  
WASHOE COUNTY NEVADA  
1861

1001 G. Smith Dr.  
Reno, Nevada 89502 (775) 328-2800

Source: Planning and Building Division/Community Development Department/AVC/AVM/maps and mailing\_label/parcel/AVR21-0004\_Public/Date: 2/10/2021



# Variance Findings of Fact

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

After a thorough analysis and review, Variance Case Number WPVAR21-0004 is being recommended for **denial**, primarily because there are no special circumstances applicable to the property that result in a hardship.



# Possible 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 deny Variance Case Number WPVAR21-0004 for Robert and Calin Birta, being unable to make all five required findings in accordance with Washoe County Development Code Section 110.804.25**