



WASHOE COUNTY BOARD OF ADJUSTMENT **DRAFT** Meeting Minutes

Board of Adjustment Members

Clay Thomas, Chair
Rob Pierce, Vice Chair
Don Christensen
Kathie Julian
Brad Stanley

Thursday, June 1, 2023
1:30 p.m.

Washoe County Administrative Complex
Commission Chambers
1001 East Ninth Street
Reno, NV

Secretary

Trevor Lloyd

and available via
Zoom Webinar

1. Determination of Quorum

Chair Thomas called the meeting to order at 1:30 p.m. The following members and staff were present:

Members Present: Rob Pierce, Vice-Chair
Don Christensen
Kathie Julian
Brad Stanley

Members Absent: Clay Thomas, Chair

Staff Present: Julee Olander, Planner, Planning and Building Division
Roger Pelham, Sr. Planner, Planning and Building Division
Courtney Weiche, Sr. Planner, Planning and Building Division
Michael Large, Deputy District Attorney, District Attorney's Office
Adriana Albarran, Recording Secretary, Planning and Building Division
Brandon Roman, Recording Secretary, Planning and Building Division

2. Pledge of Allegiance

Member Christensen led the pledge of allegiance.

3. Ethics Law Announcement

Deputy District Attorney Large recited the Ethics Law standards.

4. Appeal Procedure

Secretary Lloyd recited the appeal procedure for items heard before the Board of Adjustment.

5. Public Comment

Amanda Bloomer (Chambers) said, "this is in regard to the availability for disabled persons. Raley's shopping center on highway 28 has unclear marking for disabled parking, limited parking for disabled. This is causing able bodied persons to use due to this nature. It needs to be addressed. The Village shopping center on Mays Boulevard has unclear parking, no disabled parking by family services or by the postal Express. Postal Express has a ramp for multi-use with a disabled sign; however, it's a ramp only, no designated disabled parking marked. This needs to change the disabled have rights. Thank you."

There was no further response to the request for public comment.

6. Approval of the June 1, 2023 Agenda

Member Pierce noted that item 8D needed to read WADMIN23-0008 not WSUP23-0008 and the agenda incorrectly included two #10's.

In accordance with the Open Meeting Law, Member Stanley moved to approve the agenda of June 1, 2023 as corrected. Member Julian seconded the motion which carried unanimously.

7. Approval of the May 4, 2023 Draft Minutes

Member Stanley moved to approve the minutes of May 4, 2023 as written. Member Julian seconded the motion which carried unanimously.

8. Public Hearing Items

A. Amendment of Conditions Case Number WAC23-0004 (Rose DADAR) for Special Use Permit WSUP22-0023 – For hearing, discussion, and possible action to approve an amendment of conditions for Special Use Permit Case Number WSUP22-0023 (Rose Detached Accessory Dwelling) to amend the approved special use permit to allow the detached accessory dwelling on the first floor, rather than the second floor of the existing detached accessory structure.

- Applicant / Owner: Kenneth G. Rose Family Trust
- Location: 35 Riata Court
- APN: 140-051-16
- Parcel Size: 0.508 acres
- Master Plan: Suburban Residential (SR)
- Regulatory Zone: Medium Density Suburban (MDS)
- Area Plan: Southeast Truckee Meadows
- Development Code: Authorized in Article 810, Special Use Permits
- Commission District: 2 - Commissioner Clark
- Staff: Roger Pelham, Senior Planner
Washoe County Community Services Department
Planning and Building
- Phone: 775.328.3622
- Email: rpelham@washoecounty.gov

Senior Planner Pelham provided a presentation. Kenneth Rose, the Applicant, was available for questions.

There were no requests for public comment.

Member Pierce said it looks like a straightforward project.

Motion: Member Stanley moved 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 Amendment of Conditions Case Number WAC23-0004 (Rose Detached Accessory Dwelling) for Special Use Permit Case Number WSUP22-0023 for Kenneth G. Rose, with the conditions included as Exhibit A to this matter, having made all five findings in accordance with Washoe County Code Section 110.810.30.

- (a) **Consistency.** That the proposed use is consistent with the action programs, policies, standards and maps of the Master Plan and the Southeast Truckee Meadows Area Plan;
- (b) **Improvements.** That adequate utilities, roadway improvements, sanitation, water supply, drainage, and other necessary facilities have been provided, the proposed improvements are properly related to existing and proposed roadways, and an adequate public facilities determination has been made in accordance with Division Seven;
- (c) **Site Suitability.** That the site is physically suitable for a detached accessory dwelling, and for the intensity of such a development;
- (d) **Issuance Not Detrimental.** That issuance of the permit will not be significantly detrimental to the public health, safety or welfare; injurious to the property or improvements of adjacent properties; or detrimental to the character of the surrounding area;
- (e) **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.

Member Julian seconded the motion which carried 4 - 0. Chair Thomas was absent.

B. Administrative Permit Case Number WADMIN23-0006 (Community Breakfast) – For hearing, discussion, and possible action to approve an administrative permit for an Outdoor Community Event business license; for a pancake breakfast at the North Lake Tahoe Fire Protection District Station, at 875 Tanager Street, on July 2, 2023 from 8:00 a.m. to 10:00 a.m. with approximately 500 people in attendance.

- Applicant / Owner: North Lake Tahoe Fire Protection District
- Location: 875 Tanager Street
- APN: 132-223-14
- Parcel Size: 37,284 SF
- Master Plan: Incline Village
- Regulatory Zone: TA_IVC
- Area Plan: Tahoe
- Development Code: Authorized in Article 808, Administrative Permits
- Commission District: 1 – Commissioner Hill
- Staff: Julee Olander, Planner
Washoe County Community Services Department
Planning and Building
- Phone: 775.328.3627
- Email: jolander@washoecounty.gov

The Board did not require a presentation, Planner Olander was available for questions.

There were no requests for public comment.

Motion: Member Julian moved that, after giving reasoned consideration to the information contained in the staff report and information received during the public hearing, the Board

of Adjustment approve Administrative Permit Case Number WADMIN23-0006 for North Lake Tahoe Fire Protection District, with the conditions included as Exhibit A to this matter, having made all five findings in accordance with Washoe County Development Code Section 110.808.25:

- (a) **Consistency**. That the proposed use is consistent with the action programs, policies, standards and maps of the Master Plan and the Tahoe Area Plan;
- (b) **Improvements**. That adequate utilities, roadway improvements, sanitation, water supply, drainage, and other necessary facilities have been provided, the proposed improvements are properly related to existing and proposed roadways, and an adequate public facilities determination has been made in accordance with Division Seven;
- (c) **Site Suitability**. That the site is physically suitable for a one-day community pancake breakfast within the North Lake Tahoe Fire Station and for the intensity of such a development;
- (d) **Issuance Not Detrimental**. That issuance of the permit will not be significantly detrimental to the public health, safety or welfare; injurious to the property or improvements of adjacent properties; or detrimental to the character of the surrounding area;
- (e) **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.

Member Christensen seconded the motion which carried 4 - 0. Chair Thomas was absent.

C. Administrative Permit Case Number WADMIN23-0007 (League to Save Lake Tahoe Fashion Show and Luncheon) – For hearing, discussion, and possible action to approve an administrative permit for an outdoor community event for League to Save Lake Tahoe for their Annual Fashion Show and Luncheon, scheduled to be held on August 5, 2023 from 11am until 2pm. The event is proposed to consist of an invitation-only fashion show and luncheon within a temporary tent structure located on the beach adjacent to Lake Tahoe. The event organizer estimates a maximum of 400 people, which includes 50 support persons.

- Applicant: League to Save Lake Tahoe
- Property Owner: KWS Nevada Residential LLC and Lakeshore Trust
- Location: 1047 and 1055 Lakeshore Boulevard, Incline Village, NV
- APN: 130-230-14, -16 & -17
- Parcel Size: ±6.18 acres, ±3.58 acres and ±1 acre
- Master Plan: Tahoe
- Regulatory Zone: Mill Creek
- Area Plan: Tahoe
- Development Code: Authorized in Article 808, Administrative Permits
- Commission District: 1 – Commissioner Hill
- Staff: Courtney Weiche, Senior Planner
Washoe County Community Services Department
Planning and Building
- Phone: 775.328.3608
- Email: cweiche@washoecounty.gov

The Board did not require a presentation, Senior Planner Weiche was available for questions.

There were no requests for public comment.

Motion: Member Julian moved 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 Administrative Permit Case Number WADMIN23-0007 for League to Save Lake Tahoe, with the conditions included as Exhibit A to this matter, having made all five findings in accordance with Washoe County Development Code Section 110.808.25.

- (a) Consistency.** That the proposed use is consistent with the action programs, policies, standards and maps of the Master Plan and the Tahoe Area Plan;
- (b) Improvements.** That adequate utilities, roadway improvements, sanitation, water supply, drainage, and other necessary facilities have been provided, the proposed improvements are properly related to existing and proposed roadways, and an adequate public facilities determination has been made in accordance with Division Seven;
- (c) Site Suitability.** That the site is physically suitable for invitation-only fashion show and luncheon within a temporary tent structure located on the beach adjacent to Lake Tahoe and for the intensity of such a development; and;
- (d) Issuance Not Detrimental.** That issuance of the permit will not be significantly detrimental to the public health, safety or welfare; injurious to the property or improvements of adjacent properties; or detrimental to the character of the surrounding area.

Member Christensen seconded the motion which carried 4 - 0. Chair Thomas was absent.

D. Administrative Permit Case Number WADMIN23-0008 (Beach Boy Concert) – For hearing, discussion, and possible action to approve an administrative permit for an outdoor community event for the Incline Village Hospital Foundation with a Beach Boys Benefit and Fundraising Concert. The event will be held at 1047 Lakeshore Blvd. on July 22, 2023, from 11:00 a.m. to 6:00 p.m. with approximately 400-500 people in attendance.

- Applicant: Karli Epstein
- Property Owner: KWS Nevada Residential LLC
- Location: 1047 Lakeshore Blvd.
- APN: 130-230-16, 17 & 18
- Parcel Size: 3.5, 1.0, 1.0 acres
- Master Plan: Mill Creek
- Regulatory Zone: TA_MC
- Area Plan: Tahoe
- Development Code: Authorized in Article 808, Administrative Permits
- Commission District: 1 – Commissioner Hill
- Staff: Julee Olander, Planner
Washoe County Community Services Department
Planning and Building
- Phone: 775.328.3627
- Email: jolander@washoecounty.gov

The Board did not require a presentation, Planner Olander was available for questions.

There were no requests for public comment.

Member Stanley asked about guests and security issues. How is offshore or lake security handled? What about the guys in the boats getting offshore? Planner Olander said, as far as I know, there hasn't been an issue. I don't believe the applicant has proposed to do anything.

They've never spoken about any issues from people on boats. They haven't had a problem at that site before. You could sit out there in your boat and listen to Beach Boys. I don't know how the stage is set up; it probably would not be heard that well. I believe that's the reason they've never had any issues with people going and anchoring out there. They haven't needed security for that.

Motion: Member Christensen moved 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 Administrative Permit Case Number WADMIN23-0008 for Karli Epstein, with the conditions included as Exhibit A to this matter, having made all five findings in accordance with Washoe County Development Code Section 110.808.25:

- (a) Consistency.** That the proposed use is consistent with the action programs, policies, standards and maps of the Master Plan and the Tahoe Area Plan;
- (b) Improvements.** That adequate utilities, roadway improvements, sanitation, water supply, drainage, and other necessary facilities have been provided, the proposed improvements are properly related to existing and proposed roadways, and an adequate public facilities determination has been made in accordance with Division Seven;
- (c) Site Suitability.** That the site is physically suitable for a one-day event and for the intensity of such a development;
- (d) Issuance Not Detrimental.** That issuance of the permit will not be significantly detrimental to the public health, safety or welfare; injurious to the property or improvements of adjacent properties; or detrimental to the character of the surrounding area;
- (e) 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.

Member Stanley seconded the motion which carried 4 - 0. Chair Thomas was absent.

E. Variance Case Number WPVAR23-0001 (Harold Drive) – For hearing, discussion, and possible action to approve a variance of a 20-foot front yard setback to 3 feet and 5 ½ inches to allow for the construction of a two-story building with a two-car garage with a master suite on the second floor.

- Applicant / Property Owner: Eric Ostertag
- Location: 940 Harold Drive
- APN: 131-132-06
- Parcel Size: 6,000 SF
- Master Plan: Fairway
- Regulatory Zone: Fairway (TA_F)
- Area Plan: Tahoe
- Development Code: Authorized in Article 804, Variances
- Commission District: 1 – Commissioner Hill
- Staff: Julee Olander, Planner
Washoe County Community Services Department
Planning and Building
- Phone: 775.328.3627
- Email: jolander@washoecounty.gov

Planner Olander provided a presentation. Nick Exline, the Applicant Representative provided a presentation.

Member Stanley mentioned Washoe County code and section 110.410.10. Planner Olander said the requirement for parking for residential is an enclosed garage for at least one car. She said it's not stated correctly in the application itself. One is required to be enclosed.

Member Christensen said I'm having a little trouble with some of the illustrations of the unpaved right-of-way, which would be immediately in front of the garage door and the proposed garage. What is the current use of that? Is that the driveway? It's kind of unclear. Planner Olander said the unpaved right-of-way of 24 feet is primarily used for snow storage during winter. As this picture shows, it's not unusual in the Tahoe area to have large swaths of right-of-way used for snow storage. That area would still be available. They're not proposing to build into the right-of-way. But they're proposing to be three feet from that area. Member Christensen asked how do they have access to the garage? Planner Olander said they would still have access. If you look at this diagram, 24 feet is still available. That's where the snow storage would be. But right after that 24 feet, three feet later would be the garage. Secretary Lloyd said it is currently being used as a driveway.

Member Julian asked if the applicant would drive into the garage across the unpaved right-of-way. Planner Olander said that's correct. Member Julian said in the winter, that area for snow storage would be lost for the community. Planner Olander said the unpaved right-of-way would still exist, they're not proposing to change that. Typically, for driveways, we have a setback of 20 feet, as the 20-foot line shows. But now the garage would only be three feet from that right-of-way. Member Julian said in the winter, either you would lose that area for snow storage, or they would lose the ability to drive into their driveway because of the snow storage, correct? Planner Olander said I don't think so. If you look at this picture with the snow on it, you see the two big fir trees, basically right on the other side of those fir trees is where they're proposing to put the garage so they can still drive in, and the snow could still be stored along the right-of-way. Member Julian said that wasn't my understanding of that diagram. Planner Olander said the garage was going to be built to the left the house, not where the driveway is right now. So even if it is to the left, you're still going to have that 24 feet of unpaved right-of-way there. Member Julian said the snow needs to go somewhere. Planner Olander said it can still go in the public right-of-way and you are correct the sense the driveway is going to be moved over. The garage is going to be on the other side of the house. Member Julian said I would assume that the community would lose that space for snow storage or they could not get into their driveway during the winter because the right-of-way would be used for snow storage. Planner Olander said if you look at this picture again, you can still store snow on the right-of-way. Member Julian asked where is the entry into the garage. Planner Olander said the entry into the garage was through that driveway. On the overhead, there is still the right-of-way area down there so the snow storage could still be there. Right now, they drive into their house without snow storage on their driveway. If we go back to that other picture, and it's kind of the same thing with the new garage, the snow storage will still be on either side of the driveway. Member Julian said its paved with asphalt; they wouldn't be storing snow if this were to go through.

Member Christensen said can you indicate where the garage door is? Planner Olander showed on the overhead the garage doors, they drive in off the street into the garage right through here. And then they have to get the second car, they have to set a curb over here and come in. But storage will still be available on this unpaved right-of-way in front of this house and then the houses along here. So the 20 feet of unpaved right-of-way there right now, if we go back to that other picture, you can see that they're not storing snow on their driveway. Right now, they can drive right in. And let's just move this driveway over to here, so this area is going to be where the snow storage is and the driveway is going to be right here.

Member Julian said I have a follow up question. The steps stones that I see in that diagram appear to be going up on the right side and into the house. So that would imply that they intend to use that portion of the right-of-way for their entry into their main house, so that leaves me wondering,

where does the snow go? Planner Olander said I'll let the applicant answer; that's not part of the application. It was really just to do the variance. Obviously, they won't be able to put structures in the public right-of-way. That's not going to be allowed. They have three feet so they could come right off the front of the garage and maybe possibly move those steps over to where they have the three feet instead of on the public right-of-way. Member Julian said staff is recommending denial. Planner Olander said we recommend denial because it can't meet the findings. Not because of the snow storage, not because of the location of the garage, but because it doesn't meet any of those exceptions that it needs to meet per NRS.

Member Stanley said the reason for the denial recommendation is because the lot did not meet the NRS requirements for a variance. It has nothing to do with their application or proposal for what they will do on that non-variance lot. Planner Olander said that was correct. The NRS requirements for a variance are very strict. It has to do with the lot; it has to be narrow, shallow, have exceptional shape; topography issues; and extraordinary, exceptional situations or conditions. Staff could not find that this property, which is a rectangle, and meets the width requirement of that parcel size. It didn't fit any of the requirement categories.

The Applicant Representative, Nick Exline, provided a presentation.

Public Comment:

Eric Ostertag (Chambers) said, "I'm the property owner. I want to thank the Board for the opportunity to present our case. I received a letter from Staff which opened by saying the purpose of the variance is to provide a means of altering the requirements in a specific instance where the strict application of those requirements deprives a property of privileges enjoyed by other properties with the identical regulatory zone because of special features or constraints unique to the property involved. I invited Staff to come out to take a look at our circumstances. And that didn't happen. I invite you to visit our little neighborhood and beautiful Incline. But I can tell you all the lots are very much the same. They're zoned the same; they're about the same size. If you were to stand in front of our house, looking at the house. In that case, the house to our left, the house to our right, the house behind us, the house across the street in front of us, every single one has exactly what we're asking for. It has a garage of similar size, and similar setback, if not identical. And we hired a surveyor, and we hired an architect. And we were told this is the only place on your lot where you can put a functional garage, which is why we're asking for the variance. Now, I was a little surprised, if not shocked, to hear that the recommendation was that we ripped down the house. Nick already shared some of the arguments about why that's not practical. But I can tell you, for us, that's just not economically practical. We saved and worked very hard to get this property, and to ask us to just rip the entire house down is just not practical. So thank you for your consideration."

Zary Tavakoli (Chambers) said, "I'm Eric's wife. We have a nine-year-old daughter, Cora, and I disagree with you about health and safety and I think this winter really proved that. Cora has fallen multiple times on our driveway, and I have, too, because of ice and snow. I have to get up 45 minutes before we need to leave to warm up the car to scrape up the ice so she can get into the car and then drive safely to school, which is just down the road. We live there all winter. We live there all year. It's just not feasible to live without a garage. In particular, as Nick has pointed out, as Eric has pointed out, we will be exactly in line with all our neighbors. We're not building some obnoxious structure. It's just the garage, 24 feet away from the road with plenty of space for snow. It's very emotional. We are getting up and having to scrape off ice and put down the salt. I have to wash off the dog's paws for the salt so his paws don't burn. It's kind of unrealistic. It's been a bad winter consistently. We had good snow. But winters aren't going away. I would understand the denial if we were completely out of line with what our neighborhood has done. But it is completely in line. I just don't see what other options there are, nor were any presented to us other than ripping down the house, which is 1000 square feet. We already bought modestly.

Obviously, we can't do that. I'm speaking straight from the heart. I really see this as how to make it work for us to live in Incline."

Melinda Suszan (Zoom) said, "I represent the NEF condo association in Incline, and I'm speaking for our condo association. We are not in favor of the variance. The codes are set up to maintain the integrity, atmosphere, and character aesthetics of the neighborhood. And we feel that this variance is not warranted, as supported by the findings. We live in a nice, wooded area. Everybody moves to Incline for the character of the area in the snow and the ski opportunities, the outdoor recreation opportunities. We believe this would detract from the fact that several trees are required to be removed. It will take down our wooded character. And we think it sets a bad precedent for other buildings to come in and change the aesthetic. And the very reason we moved and chose Incline was for the wooded area. We're taking down trees, we're adding a structure that's already not been recommended or supported by the findings, and we don't think it's keeping with the rest of the parcels and houses in the area. It's already very congested. And we just support the findings that the variance is not given. Thank you."

Member Julian said I would like to know the length of the proposed garage in feet? And what is the length of a typical car?

Mr. Exline showed it on the overhead presentation. He said the average length of an automobile is 14.7 feet. The average width of an automobile is 5.8 feet. I don't have the dimensions required by the county code, but the length of the garage is 28 feet in alignment with the code. Member Julian said twice as long as the car. Mr. Exline said no. In the garage, you need space to get in the door from ingress-egress. The idea that you would have a garage two times as long is not how it's represented. If you were to look at any single-family residents in Washoe County, Reno, Sparks, and Tahoe, you're going to find it's normal for a single-family residence. This is in alignment with standard dimensions as it relates to garages and in particular, as they relate to Washoe County code. I think that's important. This garage is not being developed to give extras. This is being done to the minimum size that we need per code. And so that's how we developed this particular plan. It would have been advantageous to us to, regardless of anything, the variance would still have been requested but more advantageous to make it as little as possible. And so again, there were no extras. This is in alignment with code and standard building practices all over.

Mr. Ostertag said that the front of the garage where the cars face is also the way we would enter the home. We're removing the entire driveway and restoring that all to a natural state. And that would be the only way to get into the home. My architect told us the pavers were required for code. I couldn't care less if they were there or if they were removed.

Member Stanley said I understood you correctly; in your initial presentation, I understood you to say that the lot really is narrow. And as I recall from Planner Olander's presentation, the requirement is 60 feet. Can you show us how it's less than 60 Feet? Mr. Exline said no. So the concept of it being narrow because it's not just a lot unto itself; it's all the variables that align with a lot. And what I mean by that is the existence of a residence has redevelopment or expansion limitations. As we look at the lot, the narrowness of the lot is a relatively standard subdivision size for this particular area. But if you look at the residence and existing configuration, there is no possible way to propose a garage that does not encroach into the front yard setback. So the narrowness is caused by the variables associated with a lot. And that the most important variable is the existing built environment. It was an existing residence that was built in 1977. And if we want to add a garage, the dimensions from the front of the house to the front yard setback do not allow for that to exist. The question I have is, well, then, how can it not be too narrow? Because if it wasn't too narrow, we would put it in there. But we're just stuck in this situation.

Member Stanley said the way I read it as a layperson is the code is referenced here, I see 'may' rather than 'shall,' and I thought I saw you could either have a single or a double garage. That was either implied or inferred. So some clarification on that, how did you interpret that?

Mr. Exline said this goes back to my experience in Washoe County. When I first got a job here, I was doing variances in Washoe County. I took it as like an amazing opportunity. How thoughtful it was I got to work in Tahoe, but it was because people didn't want to deal with all the stress in Lake Tahoe, so be careful what you're given. Here's the code citation. If there was any misrepresentation on anything, I sincerely apologize. There was obviously no intent in that, but where it states in the code and in the table in front of you are two spaces for a single-family residence, one of which must be enclosed. Member Stanley said what you have up there says 'may be' enclosed. Am I missing something? Mr. Exline said no, it says a single family. Single Family attached, two per dwelling unit, one of which must be in an enclosed garage. Member Stanley said when it says one of which does that mean? A single or double? Mr. Exline said I think technically per the letter of the code, you could do a single-car garage, although looking at the extension within the front yard setback remains constant, whether it was one or two-car garage and due to kind of the functionality and just typically how people operate, you don't get a lot of single cars garages built anymore today.

Member Stanley asked DDA Large, I'm seeing a 'may' and a 'must.' May we have a word for that, please? DDA Large said in terms of what the code reads, what Mr. Exline said is exactly correct. If you're going to do a new building up there, you have to have two parking spots and one must be enclosed. So if they're going to build a garage for a single-family residence, you're going to have to have two spots. At least one of them will have to be covered for new construction, or if this variance was granted, it would have to be at least one car garage.

Member Christensen said I have a question for the owner. When did you acquire this residence? Mr. Ostertag said we acquired it in the summer 2021. Member Christensen said I think I'll reserve the rest of my comments for our discussion. I believe it was your wife who said that you are a year-round resident there. Mr. Ostertag said yes, our daughter attends the Incline school.

Member Julian said in terms of the finding that it is not in compliance with the exception, could someone speak to why that approach was adopted in terms of our code in the county and speak to the meat behind that? DDA Large said this isn't just based on County code; variances are controlled by NRS 278.300, which states specifically, by reason of exceptional narrowness, shallowness, or the shape of a specific piece of property, or by reason of exceptional topography, or topographic conditions, or other extraordinary and exceptional situation or condition of the piece of property. Based on the staff report and how I've read it, and Mr. Exline, forgive me if I'm wrong, it's not based on shallowness or narrowness; they are basing it on other extraordinary and exceptional situations or conditions of the property. And that is specifically the location of the residence in this case. It's not based on county code, it's based on Nevada statute. The legislature put that into place.

Secretary Lloyd said I don't have much to add, I do understand the frustration and we share that frustration based on this NRS statute that we're all bound to. It is based on the property itself, the constraints, and the hardships that are found on the property, not a self-induced hardship, which would be the construction of a building on that property.

Member Julian said in this case, the construction of the building was unfortunate because it was built in the middle of the lot. Secretary Lloyd said that is correct. And as you found in the staff report, at that time, these were built essentially as summer homes, it was not envisioned at the time of construction, that there would be year round residents.

DDA Large said I want to make this very clear to this Board. It is within this Board's power to make the findings of exceptional circumstances or an extraordinary situation on a piece of property. This Board is empowered to do that and make its own interpretation based on the facts that have been presented today. So you can agree with Staff or disagree with Staff that is completely within this Board's discretion. You're not bound by Staff interpretation of anything.

Mr. Exline said I just want to add one more detail. I think the importance of this is that if this house was built in 2014, I wouldn't be up here in front of you making a statement. The house was constructed in 1977 and existed in a much different regulatory reality than we exist here today. And so it's not apples to apples, it wasn't a choice to develop this thinking in 40 years, there would, in this series of years, be ordinances and laws enacted that would prevent a future garage. There was no planning here. It's important to understand the timeline of how this moves forward. The house was built before these regulations that we're now discussing were in place. And so now we're being held to regulations that were established post-fact of the development of the residence. I really appreciate Mr. Large's comments regarding this matter. And that's why it makes it so unique because of that timeline.

DDA Large asked what year those variances you referenced in the neighborhood were granted. Mr. Exline said the late 90s, early 2000s.

Member Julian asked how was it that they found those to be in line, given the NRS? DDA Large said I don't know what code was in place then. In regard to that, I'd have to go back and research exactly what the code provided, and what the findings on variances were. I can tell you that the statute was modified in 2013 and, before that, 1979. So I don't know what the variance statute is because I don't have it in front of me right now.

Mr. Exline said I've mentioned several times as I worked here in 2005-2006. These were the same findings that had to be made in 2005-2006. So if we're going to look at Mr. Large's timeline, from the adoption of the ordinances, and then they were amended in 2013. So clearly, the amendment in 2013 did not impact the findings that had to be made, because those same findings had to be made in 2005.

Member Stanley said under the argument that there are hardships imposed other than the three normal ones that have to do with the lot itself and are encumbered by previous construction. Did you have a chance to advise them that this didn't seem to be making the findings for a variance? Would it have passed with a single car garage? Planner Olander said to answer your first question, I had a conversation with Nick Exline about this concern I had that I was not going to be able to make the findings, because of the size of the lot. And as far as I could see, it was unfortunate that the house was placed where it was and that you, as the Board, could find this exceptional. And that would be up to you. But as staff, it would be difficult for me to see this as exceptional because a variance from my perspective has to do with the land. It doesn't have to do with any structure on the land, as Secretary Lloyd referred to; it has to do with the land itself. The land is constrained in such a way that you can't do what the code requires you to do. So, it's an exceptional situation. However, you can see that differently. I don't believe the way that the garage is laid out, maybe they could shift it in a different direction. The other possibility is they could make the house into a two-story house and put the garage underneath it. I never recommended they tear the house down. That was never suggested on my part. But I don't recommend that. I don't think that it should come to that. However, I find it very challenging up there because they get a lot of snow and it's not easy to get around. I don't want anybody to be injured; however, it's just the variance is very limiting for staff. And when people ask for a variance, I cringed a bit because I don't find them easy to find a way through. You've heard them before. And some of the lots up there have constraints, obviously, with slope. You have granted variances in the past. I can't speak to the ones that were granted in that specific neighborhood and why they were allowed in 2002-03.

Member Stanley asked if there were any other options other than the two-car garage discussed? Planner Olander said they were not presented to me, they might have been presented to other staff, or it might have been a conversation that the homeowner had with the developer and the consultant. However, what I presented today is the only design I ever saw. Mr. Stanley said thank you for your sensitivity to those areas outside the three primary parameters for a variance having to do with the actual law itself.

Member Pierce said a comment was made that some trees would have to be cut down. Would you be willing to re-plant trees if this gets approved, one-for-one, anywhere on your lot, any type you would like? Mr. Ostertag said yes, I would be. There are really only two trees that are being removed. And if you visit our lot, you will see that many of the trees are overgrown, they're growing into each other. With or without this garage, there would be a need for some tree removal. But having said that, I'm happy to plant two trees somewhere on our lot or anywhere else in Incline.

Member Christensen said there are several points here that really stick out and are bothering me a lot. A variance is, it's a serious thing. These laws are in place, and we set precedent. It's something that weighs very heavily on us. Someone used the term 'economic viability' of this residence, and over time, four to six years to be exact, I think economic viability as a residence has been established, clearly. And we talked about how these were planned as summer homes. Well, no matter what the planning was, there have been and are year-round residents there now. And the owner before us has come into this thing very, very late in the timeline, and is now wanting to change what is a very well established precedent. So what we're looking at is almost Washoe County code versus the NRS. But more importantly, I guess it's the NRS versus the NRS. And I know what's within our purview to make this finding if we so desire, but personally, I don't think it's been established in the terms of hardship or some of the other criteria that we look at. It really stuck out to me, and I was particularly offended that someone came up with the notion of tearing down the residence as an alternative. I apologized to our planner because I pored over this thing. I didn't see where you recommended that. And I admire you for that, though. That's drastic. I'm personally offended by someone that wanted to propose that. It's inflammatory. And it's a straw soldier, you repeated it. And it's not either in the code or the statute or the recommendations of staff. I'm very strongly in support of denying this application.

Member Stanley said I largely agree with my colleague, Mr. Christiansen, except for the input from the DDA about there being a fourth consideration, and as I understood it, it gives us the ability, or the leeway, or the authorization to see a hardship that's not imposed by the size or shape of the lot. And from everything I've heard, including the fact that so many people in the neighborhood already have the parking arrangements the applicant is requesting, although I didn't come in with this point of view, I'm now thinking that I would vote for approval rather than denial.

Member Julian said I live in Incline Village. And I did come out and see that location. I'm torn because there are many people who would buy properties in this town if there were a garage. But they don't buy the properties because there is no garage. I have a concern that by setting this precedent, after 2002, which is a long time ago, we might be opening up a floodgate for innumerable properties in Incline Village to want to change the setback requirements and come before our Board because they want to build ADUs because they want to build STR opportunities because it's going to improve their land value significantly. I think it does have an impact on the neighborhood. It does have an impact on snow removal, and that's why I was concerned about where's the snow going to go. Because it needs to go someplace. I do have concerns about setting those precedents. While I certainly understand the concept of digging out your car, I do feel for that. I am also concerned, and I suppose I could ask the question, how many people have garages versus how many don't? And how it will impact the neighborhood. Because my primary concern is the people in the neighborhood immediately affected and their views. And I'm

concerned that the Housing Association commented. But I'm more concerned about setting a precedent. And so I'd like to hear your view as chair.

Member Pierce said if I remember correctly, they were mentioning that several houses around them and down the street already have this. So that's already been established. I think that these people have an exceptional circumstance. It's not their fault that the house was built where it is. I do feel for the snow and the child in this situation. Given all the information I received I would favor approving this garage based upon the extraordinary, exceptional circumstances.

Member Julian said the construction of the upper floor, the additional bedroom, is the entry to that facility from the outside or from the inside? Mr. Ostertag said the proposals for the garage is you would walk to the staircase, and you could either go into the existing front entrance, or up to that part of the house. They're all connected. Ms. Tavakoli said it's part of the home. It's 1000 square feet. So it's just a little bit more space. It's part of our home. It doesn't double if you include the garage, but it's just a smaller space above the garage. It's a little bit more storage and we can have a guest over. Mr. Osterag said to answer your previous question, I'm not aware in that neighborhood of any units without a garage.

Member Pierce said I would approve allowing them to build a garage as long as we put the condition in there that for every tree they remove, one should be added.

Secretary Lloyd said I would recommend you subject that consideration by North Lake Tahoe Fire Protection District. It's a fire hazard area and there's a requirement for defensible space.

Member Julian said I am very concerned about the concept of precedent. Because I know what is coming down the pike in Incline Village, a request for ADUs, a request for ADUs above garages. There will be discussions of STRs, and so forth. And I'd like to understand better how this can be used against us in terms of changing the complexion of the Incline Village neighborhood.

Secretary Lloyd said I don't believe that this would set a precedent. Every application is subject to its own criteria. It has to be approved based on its own merits. We would apply this finding based on the criteria established for each property separately. I don't believe it would set a precedent.

Member Julian said and on the snow storage, the applicant, as I understand, is taking out the asphalt driveway. And that would then be available for snow storage. And I know this gets into the nitty gritty of things, but if we're going to make this kind of exception in my mind, then we should be getting into the nitty gritty. Is it possible to make that a condition? to make sure that there is that still space for snow storage?

Planner Olander said that's in the public right-of-way, so they cannot infringe on the public right-of-way. This variance is on their property. Anything along the public right-of-way is still being maintained. That driveway will go through the public right-of-way, and that is allowed. They get an encroachment permit from the county to encroach on the right-of-way to access their property. However, that swath of 20 feet which might not be the norm up there, in all places, by any means, that will be maintained. All they get is the one driveway. Member Julian said but they will be getting rid of that. Planner Olander said they would then replace it with a new driveway Member Julian said the encroachment permit on the existing driveway would go away.

DDA Large said there's no encroachment permit at this point. What you have is 23 feet of space and they're allowed to use it to bypass the public right-of-way. But the Board doesn't have the power to condition a variance off of the actual property. So the public right-of-way is going to have to be maintained at one point or the other. All they're going to get is that certain amount of space to get to the driveway.

Member Stanley said I want to thank Planner Olander for giving us more of the nitty gritty, which I thought you did an excellent job on in the package. And as a general statement, this is one of the not-every-time things, Both cases makes sense. When that happens, it is my predilection to side with the person who owns the property. And so that's why my vote would be to affirm their ability to claim this variance.

DDA Large said the only condition that's been mentioned is the consultation with North Lake Fire regarding the removal of trees. Planner Olander said, can I give you a possible condition to add: Any trees removed will be replaced, like for like with the approval of the North Lake Fire Protection District.

Motion: Member Stanley moved 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 with conditions Variance Case Number WPVAR23-0001 for Eric Ostertag, having been able to make all four required findings in accordance with Washoe County Development Code Section 110.804.25:

- (a) 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;**
- (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;**
- (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;**

And including conditions identified earlier.

Member Julian seconded the motion, Member Christensen opposed the motion. The motion passed 3 - 1. Chair Thomas was absent.

F. Variance Case Number WPVAR23-0002 (Eget) – For hearing, discussion, and possible action to approve a variance to vary two (2) front yard setbacks from 20' to 4' and 1' 6", a side yard from 5' to 3' to construct a garage with living space and to increase the maximum height of a front yard fence from 4' to 6'.

- Applicant / Property Owner: Wayne Ford
- Location: Jeffery D Eget 1990 Trust
- APN: 45 E. Tuscarora Road
- Parcel Size: 123-36-02
- Master Plan: .197 acres
- Regulatory Zone: Crystal Bay
- Area Plan: Crystal Bay
- Development Code: Tahoe
- Commission District: Authorized in Article 804, Variances
- Staff: Courtney Weiche, Senior Planner

Washoe County Community Services Department
Planning and Building
775.328.3608
cweiche@washoecounty.gov

- Phone:
- Email:

Member Julian disclosed that she had a brief discussion with the architect; but didn't talk specifically about this project.

The Board took a brief recess.

Sr. Planner Weiche provided a presentation.

Member Stanley said maybe I missed it, but was there any building done associated with the 2017 finding? And secondly, if not, why not? Sr. Planner Weiche said that may be a question best addressed by the property owner or applicant. But in my research, the building permit I believe was closed. I'm not aware that it was complete.

Member Julian said the 2017 application was for a much smaller variance than this current variance. Could you please go through those numbers again? Sr. Planner Weiche said that was correct. The previous variance request also included improvements to the existing residents. And I believe those improvements were completed, it's the subject garage that we have before us today in a different size from the previous proposal. The previous proposal or request was to have a 10-foot front yard setback off of Teresa Court, which is now proposed at four- and eight-foot setback off of Tuscarora Road, which is now proposed at one foot six inches. Those are both front yard setbacks requiring 20 feet. And then the east side yard setback was reduced from the previous request of five feet to three feet six inches as well as the entirety of the corridor, which was not proposed to be enclosed previously.

Member Stanley said before the BLA, were the three traditional ways of determining viability or the legitimacy of a variance already in place, or did the BLA make it a peculiar shape which then checked the variance box? Sr. Planner Weiche said BLA intended to correct the original structure, back in 1936 it encroached onto the neighboring property. It was intended solely to ensure the structure is located on the parcel. To make any improvements to the structure, they need to be on their property. So that was the intent of the BLA. As far as whether or not that would impact a future variance, if anything, I would say that brought the parcel more into conformance and would less likely be in support of variance because it's wider and coming more into conformance. The argument is almost the opposite.

Member Stanley said this was pre the 2017 ruling? Sr. Planner Weiche said correct. That was already in place I believe in 1999. There was a lot of history to this parcel.

The Applicant representatives, Robert Angres and Wayne Ford provided a presentation.

Public Comment:

Amanda Bloomer (Chambers) said, "I'm here on behalf of Jeff Murena. They need this. She became ill after the purchase of this home; it wasn't something that was known to be going to happen. She will have great difficulty getting into her home when she's disabled to the point of being in a wheelchair. They run the risk because of the location. You had heard about the fire department ambulance's ability to get to her within proper timeline. The rights of a disabled person to use their home. Making needed modifications in the space they have for this project should be allowed. Forcing a person to have to leave their home because of an injury or illness sounds like discrimination to me. And to me, it's completely against the disabled. I pray that no one here ever has to have this experience with their own self; being in their home and being told that you can't

do what you need to do in order to live there safely. And I just fall on the mercy of this Board for this couple. And I hope some changes can happen with an NRS eventually. Thank you for hearing me."

Jeffery Eget (Chambers) said "Marina and I are both the owners of this cabin. And I find myself very emotional. Usually, I'm an extremely upbeat, happy person. But we've been put through the wringer. I am so fed up. I'm shaking here. Marina has Parkinson's; she's exhibiting symptoms of Parkinson's. It's just been a nightmare. We've called our paramedics. She's been taken to Renown hospital. She has broken bones because in 2017 we got through some red tape, and something got overruled from a variance to administrative permit. This whole thing's been a nightmare. I had fallen in the snow and had to have my shoulder replaced. I've had two heart attacks. I'm sitting there shoveling snow. It's certainly not good for the heart. We need to have a little bit of compassion here. I'm so tired. I want to apologize. You guys are all doing a really good job and I appreciate your effort. But this has been a nightmare. In 2017, this was already supposed to happen. She's already going through enough stuff. We go every week to Carson City. She gets blood transfusions and intravenous stuff. We can't even get out of our garage. We can't even use our garage. I have to park at the casino, a half an hour walk away. We have no access to a garage in the winter. The people that had the place before used it as a summer residence. We do not have a garage. And when I read the report about the garage that we have, it was ridiculous. We can't use it. We can't drive down Tuscarora. I did it this winter. And I was spinning around like a top and I have an all-wheel drive and snow tires. I have a car that was designed for snow. I'm still spinning around like a top. Teresa Court is where we need to put a safe garage for my wife who loves the cabin. The truth of the matter is we shouldn't have bought this place. I admit it. But she loves it. And it's a part of her life. For us to have to move, it just doesn't make any sense, there's a remedy to this. We're not trying to build a mansion, we wanted to do something that we could really enjoy and respect our love for Lake Tahoe. That's what this is about. Sorry for my tone."

Steven Sanchez (Chambers) said, "thank you all for listening. I recently graduated from University of Wyoming. And in light of everything COVID recovery and allocation of the buckwheat funds and safety measures, I have an idea. And I would like to formally address the council within reason as it concerns safety measures on the highways as allocations to serve you."

DDA Large noted this public comment is regarding this item only. He let Mr. Sanchez know he would have a chance to make general public comment after the hearing items.

Member Stanley said I was trying to get some clarification on what had been done in the 2017 approved variance. Mr. Angus said I had intended to comment on that. That was a procedural matter. The Egets did whatever the county told them to do. The county did not tell them that they needed a special administrative permit or a waiver, and when Judge Breslau went through it for a very long time, he upheld all the findings on the variances, but on procedural grounds, he said that we had to start over because we had not gotten a special administrative permit or waiver. And this time, we asked the county and they told us we did not need it. So that was the significance of 2017. Now staff has said that things have changed, but they haven't changed in terms of the hillside development; they haven't changed in terms of the exceptional slope and the fact that this property is bounded on all three sides by roads. And as I was mentioning, the Lake Tahoe Fire Protection District agreed to a staging area where nothing can exist except that staging area, so they can park an engine or an ambulance.

Member Stanley said that in 2017, the variance essentially timed out due to a lack of form. Mr. Angus said yes; in 2017, the Board of Adjustment approved it as exceptional circumstances, and the County Commission approved it. Member Stanley understood. I was just wondering what the outcome of that was. Mr. Angus said we got timed out.

Member Julian said I want to understand how the request for variance got larger with the second request here in 2023 versus the one in 2017. And what has changed in terms of the design of the facility? I know you did not have an indoor ramp in 2017. But you have a smaller footprint for the garage, which allowed for greater setback. What changed in that design that led to this being a much tighter setback?

Mr. Angus said I would say Parkinson's and heart disease. I'll let Mr. Ford answer the architectural question. Mr. Ford said what drove us to have to go to TRPA for some special bindings under their life and safety was that our minimal garage, the one that was shown, would no longer allow for reasonable access for a van, nor would it allow for having a van that had a side entrance or rear entrance that could allow a wheelchair and not run into another car. Most people need two cars in Tahoe, especially ones that have disability issues, they need one van, and that will be in the future. And then, meeting with North Lake Tahoe fire protection, they said they don't carry people out of a residence using an elevator no matter how big the elevator is because it can fail. We have to bring somebody up from a stair system that is adequate in width to get them up with a carry unit and get them out of the home. And then the approval of the variance, the walkway that was shown from the garage to the home, there is no coverage to put that in. When those plans went the TRPA, the walkway did not show up on it. Regardless, that walkway would have been close to 16 to 17% slope for anybody to walk down from the garage to get to the home. So the Fire Department said the only way we're going to approve connecting the two structures is an ADA ramp at 8% slope. Well, given the fact that the only way to get to that ramp is to go down some stairs or an elevator, the ramp comes out of the back of the structure. It creates a subterranean structure on three sides. Then you basically come out, and based on the elevation of the entry of the home, this is the plan that would work that they would accept. That ramp basically, I call it a gallery, but that sloping walkway from the back of the lower part of the garage entry system is 8% sloped to where the home exists today. If that home would have not been dug into the mountainside we would have had a better go of it in terms of how much we would have to go into that area. So that's why it expanded. TRPA put a condition: if you transfer an additional coverage that has to stay with the home. If anybody comes in the future, they don't want to keep the house when it sells and it gets torn down and somebody wants to build a new home, which would probably be required to come in and get a variance, that coverage, about 450 square feet, will have to be put in escrow or put into a holding fund, they cannot use it, they can sell it, and they can't use it for new development. So they recognize the hardship here and saying we'll give you the right to transfer in the coverage for the bigger home, garage entry system, but if anybody in the future wants to redevelop that property, they will have to work under the correct land capability. And Board Member Julian, that property was a 1-A, 1% allowable coverage. What we went through, in addition to the two years, was getting it correctly mapped as class six and four. That's about as far off as any agency I've ever seen in terms of verification of land capability has ever been on. So we had to straighten that out first. And that took a lot of talk about what the natural slope was versus what was excavated in 1936. That was not a fun adventure but fortunately, technology has allowed us to do that. We had to deal with that first. And then they said, yes, this can be bigger for the needs of these people. We're not setting a precedent. We have all the property owners around us saying it's great. We want to see them enjoy their home for the years to come.

Member Julian said that as an Incline Village resident living up there, I'm simply concerned. I drove through the area this morning. I'm concerned about the narrow streets. I'm concerned about visibility. I am concerned that there simply isn't enough of a setback to accomplish some of the snowplow activity and driving activity. I have a question about the fence. If the setback is 1.6 feet from the side, where is the fence in all of this? Is that 1.6 inches from the side? Mr. Ford said no, the current fence is within the property setbacks. We will change that fence design when we get up near the home. We only asked for it in one area there. And that was on Wassou and Tuscarora. As it got closer up to the home, I showed a couple of columns there. But it will go to a more open design so that we don't have any visibility issues, and we will run that through engineering. The

roads, no matter where you go, and I respect your view on that, are narrow. Mr. Thompson from snow removal who is handling it, is very honest. If he had any problems with what we're proposing, he would have told me because we worked together on a lot of projects, even where I live, in terms of snow removal. And this last winter was a real challenge. But he was a good sounding board. He doesn't believe there will be any problem with his ability to remove snow. And by the way, we'll improve things a little bit. Because where the garage is being built, they piled snow on that corner. You couldn't even see around the corner. So now they won't be piling snow there and you can see around the corner. They're going to be taking it up the street. So we're going to be improving. We do have a place for the snow to go. And when it gets bad, they bring a loader in, they bring it up the street, and they hauled it out. At least, what we're putting there will make it more visible during the winter.

Member Stanley said I may have missed it. What ADA compliance issues were addressed in the application or in your response? The ADA compliance regulations or code were either presented in the application or referred to you in your response to the application. Sr. Planner Weiche said I don't know that ADA compliance is necessarily a factor when looking at the variance findings. The applicant has just indicated that the design is going to meet accessibility standards. It's just merely looking at the design, not necessarily a component of accessibility. That would be in the buildings department's realm to ensure compliance.

Member Christensen said I wish I had surveyed this thing as my colleague did this morning. But based on what I've read, I feel reasonable not to deny this application. It's very thorough. Nothing sticks out to me as being beyond this Board's purview or common sense. It's an exception.

Secretary Lloyd said you might want to elaborate on those findings, specifically the hardship finding. You may want to look at the steepness of the slope within the front yard. I think the applicant brought that up; maybe the narrowness of the lot at that location, but you will need to elaborate on that finding.

Member Stanley said when DDA Large mentioned exceptional circumstances. It strikes me that the ADA compliance issues in a situation would be exceptional. Would that be regarded legally or within the code to be the case? Secretary Lloyd said you are tasked with looking at the specific hardships based on the constraints of the property, not a physical hardship of an individual but the constraints on the property. DDA Large said the statute reads, 'the specific provisions or other extraordinary and exceptional situation or condition of the piece of property would result in a peculiar and exceptional practical difficulty to or an exceptional undue hardship upon the owner.' In terms of that, Mr. Lloyd is correct. It has to do with the extraordinary and exceptional situation or condition of the piece of property itself. Member Stanley said, as he suggested, the intense slopes on the front end of the property as an example could be one of the findings.

Member Julian said when I went out there, I took pictures, I saw the fire hydrant, I saw the closeness to the street. I have no clue how you're going to build this garage with all the stuff on that corner. If you could elaborate on that, especially the fire hydrant, which appears to be right in the middle of what you're doing. Mr. Ford said the site plan would show it, but IVGID's Tim Buxton went out and looked at their sewer system, looked at the hydrant, and the water lines. It fits the sewer and hydrant. The hydrant is not going to be a problem. It's not within our building area whatsoever to be disturbed. The sewer system is off of the property. It's in the Tuscarora right-of-way. It's about one or two feet over. So we won't be disturbing any of that. There have been times when fire hydrants have been moved. But this seems to be a very good, strategic place. John James, the fire marshal, didn't find that there would be any interference within lane lines to get to a fire truck up the street from where we have everything. In fact, last winter, we all adopted hydrants up there because of where snow removal was going. As I'm getting older, shoveling out a hydrant is not first on my list. So our neighbors kind of worked on it. But that

hydrant was buried due to some of the major storms. So they had to go and shovel it out. That won't be occurring at this point in time because where we are building things, it will keep that corner free of snow. The snow will be redirected. And that's what Rich is looking at too. I have very big concerns about hydrants and there are things you can do to raise them for better accessibility. But there was nothing suggested by the fire district that we had to do anything there at all.

Member Christensen said it seems to me that the conditions that are exceptional don't exist on the property per se. They exist on the access to the property. By trying to grant this application, it would be special circumstances that are not occurring because of the property per se. But the slope of the road and the conditions of access, as they exist now, are intractable. And I say this is an improvement if we grant the variance by putting that garage over on the other side.

DDA Large said this Board is governed by ordinance and by statute to make the findings for a variance. For instance, in this case, you have a property bounded on three sides by 20-foot setbacks. That's extraordinary and exceptional in and of itself. You have slopes. This Board could find those slopes are enough. This Board could find that combining all three of those factors is enough. The movement of the driveway from one area to another is what they are seeking. That would be an improvement because of the exceptional circumstances that the road places on the property. That's the type of thing in terms of the property itself that the NRS addresses when it talks about this. The way the NRS reads is, its narrowness, shallowness, or the shape of the specific property. It's not one thing or the other. There's going to be situations where no two pieces of property are exactly alike. What this Board is tasked with doing is, can you make that finding? Is this a situation where you can make that finding? If it is, then you could approve the variance? If it's not, then this Board can't. But that's your purview.

Member Stanley said I spoke to Senior Planner Weiche about the complexity of all the predecessor actions that took place here that, in my view, lead these people down this road.

Member Pierce said I think it's definitely extraordinary and exceptional circumstances, given the roads and everything that goes in with it. I would lean towards the side of approving the request.

Member Julian said I'm asking on the issue of precedents because what we don't need is for everyone on the streets based upon my drive-thru this morning and other times to decide they also want to build a two- or three-story garage complex with very little space between them in the road. So again, the concern is on the precedents because this is an accident waiting to happen up there regarding fire evacuation. Wassou Road was one lane. And it's just crazy to have one lane. That's my only real concern here is that we're not going down this slippery slope for everyone. What's the point of having a code? The second point is that any kind of construction here needs to be well thought out and planned, and conditioned in terms of noise and disturbance because you have no margin of error for building anything because there's no room.

Motion: Member Stanley moved 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 WPVAR23-0002 for Jeffery Eget, having been able to make all four required findings in accordance with Washoe County Development Code Section 110.804.25:

(a) 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;

- (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;
- (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;

Member Christensen seconded the motion which carried 4 – 0. Chair Thomas was absent.

The Board took a brief recess.

G. Special Use Permit Case Number WSUP23-0002 (IVGID Tank) – For hearing, discussion, and possible action to approve a special use permit for the use type public utility center per Washoe County Code (WCC) 110.220.165 and major grading per WCC 110.438 for ±8,900 cubic yards (CY) of cut, ±9,000 CY of fill, and disturbing ±100,000 SF of the site for the construction of a road and pad for a 2-million gallon effluent water storage tank. The request includes modifying standards to allow slopes greater than 3:1 (110.438.45(a)), revegetation to preserve erosion control (110.438.70), preservation of significant trees (110.412.25(c)) and reduction of landscape standards for a civil use (110.412.40(a)).

- Applicant / Property Owner: Incline Village General Improvement District (IVGID)
- Location: 1250 Sweetwater Road
- APN: 130-010-08
- Parcel Size: 87.3 acres
- Master Plan: Tunnel Creek & Ponderosa Ranch
- Regulatory Zone: 67% TA_TC & 33% PR
- Area Plan: Tahoe
- Development Code: Authorized in Article 438, Grading; and Article 810, Special Use Permits
- Commission District: 1 – Commissioner Hill
- Staff: Julee Olander, Planner
Washoe County Community Services Department
Planning and Building
- Phone: 775.328.3627
- Email: jolander@washoecounty.gov

Planner Olander gave a presentation. Hudson Klein, the Applicant representative, provided a presentation.

Member Stanley said the way I read the information was that 65 trees would be removed. And a certain number of those trees were going to be removed or did not need to be replaced because they were going to be addressed by the defensible space standards anyway. And my question is, how many trees are left over that would not normally fall to the defensible space issue with the fire department? Member Olander said I'm going to defer to the applicant; he sent you the email. He has a better sense of what trees are being removed. I think he responded to your email originally. I would prefer to have him respond to that. And follow up on the email that was sent. Member Stanley said I must have missed that email.

Member Julian asked if you were removing soil from the area? Will there be trucks leaving the area and where will they go? I'm asking about the traffic issue.

There were no requests for public comment.

Mr. Klein provided a presentation.

Member Stanley said I didn't hear an answer in your response or package about how many trees. It's 65, and fire defensible space mitigation ruling takes out a certain number of trees. Leaving how many? Mr. Klein said 65 is proposed for the project, of which ten have come out as part of the defensible space program. There are a few more in addition to the 10; however, they're not within our project area; they're around the rest of the existing treatment plant and or tank. And for structural reasons or health reasons, those are coming out. Of the 65 for the project, 55 remain to be removed as part of the tank project outside of any defensible space initiative.

Member Stanley said one of the things that sometimes seems like an issue is getting consistency on tree replacement between public entities and the private sector. Private sector is usually strongly advised to replace the trees. Public sector, not so much. An example would be Hidden Valley. I thought I read that there was a soil problem, but the remaining trees seem to be doing pretty well with that soil. So that argument didn't work for me. Would there be a willingness for a certain number of those trees to be re-planted? Mr. Klein said some of our responses in the application spoke directly to the code that indicates an inch-for-inch replacement. And across the 65 trees. It adds up to a total with an average of 10 inches, so that's 650 inches of trees. We're not in a position to plant, say a 203-inch tree. Regarding the soil conditions, I take your point that the existing trees seem well-established there. We're not opposed to replacing some amount; however, it would have to be in conjunction with the fire district and with a note that we don't want to plant trees that will then, in 30 years, be a risk to the new structure itself. That's where some of the thought processes come from because part of a defensible space program also entails maintaining the structural integrity of the various structures. So even concerning the road in that slope below the road, we wouldn't necessarily want to plant trees there, knowing that that could cause some instability further down the track. If it doesn't root well, we might have different health and safety risks in the future. So the short answer is the district would certainly work with the county to replace some trees where it makes sense. And, as I said, that would be in conjunction with the fire districts. We're happy to take any cues from the Board in that regard. Mr. Stanley said the idea would be some percentage of the 55 that were outstanding, as long as those did not, as you say, negatively impact the structures or that it did not run contrary to the defensible space ordinances of the fire department. The idea is to get some more trees re-planted as a process. So you'd be amenable to that as a condition? Mr. Klein said I'd say so. I would certainly want to involve an arborist. No one within the district quite has that expertise. But to your point, yes, we would happily work towards an amenable solution there.

Member Julian asked on grading and transport of fill, is it cut and fill in place? Or are you going to be having several vehicles? Mr. Klein said it's primarily in place, there's an overall balance, there's a little bit of additional import that comes with the need of specific engineered rock surfaces for some of the BMP treatments and road stabilization. But generally, most of what we cut out of the dam will be used to level out the road. We'll have quite a bit of fill there. And then a lot of it gets pushed into the back of the existing pond that will level out that kind of north side of the pond. Member Julian said you say that it will be visible from route 28. If you're at Tunnel Creek Cafe going around that curve, when will I see it? Mr. Klein said Ponderosa Road is right in the middle, west of Tunnel Creek; when you get across that parking lot, you'll probably start to see it. And then there is a visible portion. When you're coming from the west from the Incline Village town, right at the top of the hill, you'll likely see it under the existing sort of power line scar. As you go down the hill, it drops out, and you start to lose it to the trees in the foreground.

Member Julian said it's an overdue project for IVGID. Member Stanley said I was going to say the very same thing. But mostly, what I was going to say is, as always, when these issues come up,

they're necessary or you wouldn't be here. So that's not the issue. For me, the issue is everything about the package and the presentation. And the whole goal is to get checkmarks. My concern is a carte blanche wiping out of a certain code section or waiving it is an issue. And from what I understood from hearing you, as the representative, you would be amenable to a certain percentage of the trees of that 55 being re-planted as long as it did not directly impact or the arborist does not reject us. And if the fire marshal agreed to them. Mr. Klein said maybe not commit to a percentage. I will speak to the fire district and arborist. Member Stanley said a condition could be made around that.

Member Julian said I'm supportive of the compromise on trees. I do have to say that I have heard forestry officials comment on how unhealthy our forest is up there because we have too many trees. It is an unhealthy forest. I would urge that it is a collaboration between an arborist and North Tahoe Fire on the appropriate number of trees.

Motion: Member Stanley moved 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 with conditions Special Use Permit Case Number WSUP23-0002 for Incline Village General Improvement District (IVGID), with the conditions included as Exhibit A to this matter, and for the inclusion ore restoration of the 55 trees as approved by an arborist and the North Lake Tahoe Fire Protection District, having made all five findings in accordance with Washoe County Code Section 110.810.30:

- (a) Consistency.** That the proposed use is consistent with the action programs, policies, standards and maps of the Master Plan and the Tahoe Area Plan;
- (b) Improvements.** That adequate utilities, roadway improvements, sanitation, water supply, drainage, and other necessary facilities have been provided, the proposed improvements are properly related to existing and proposed roadways, and an adequate public facilities determination has been made in accordance with Division Seven;
- (c) Site Suitability.** That the site is physically suitable for public utility center and major grading and for the intensity of such a development;
- (d) Issuance Not Detrimental.** That issuance of the permit will not be significantly detrimental to the public health, safety or welfare; injurious to the property or improvements of adjacent properties; or detrimental to the character of the surrounding area;
- (e) 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.

Member Julian seconded the motion which carried 4 – 0. Chair Thomas was absent.

H. Special Use Permit Case Number WSUP23-0014 (Bordertown Casino Expansion) – For hearing, discussion, and possible action to approve a special use permit for expansion of an existing casino in two phases: Phase 1 involves the construction of a new 23,078 SF building; and Phase 2 involves demolishing the existing 18,284 SF building and constructing a 23,078 SF addition for a building totaling of 34,783 SF.

- Applicant: Frank Lepori Construction
- Property Owner: Bordertown Properties LLC
- Location: 19575 US Highway 395 N
- APN: 081-140-16
- Parcel Size: 12.37 acres
- Master Plan: Commercial (C)
- Regulatory Zone: Tourist Commercial (TC)

- Area Plan: Cold Springs
- Development Code: Authorized in Article 302, Allowed Uses & Article 810, Special Use Permits
- Commission District: 5 – Commissioner Herman
- Staff: Julee Olander, Planner
Washoe County Community Services Department
Planning and Building
- Phone: 775.328.3627
- Email: jolander@washoecounty.gov

Planner Olander gave a presentation. Dom Gonzales, Applicant representative was available to answer questions.

There were no requests for public comment.

Member Pierce and Member Stanley said it was a straightforward project.

Member Stanley said there were 13 people who showed up for the neighborhood meeting, which is pretty good. It looks like the applicant was present. It looks consistent with the package. I'm in support.

Motion: Member Pierce moved 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 with conditions Special Use Permit Case Number WSUP23-0014 for Bordertown Properties, LLC., with the conditions included as Exhibit A to this matter, having made all five findings in accordance with Washoe County Code Section 110.810.30:

- (a) **Consistency.** That the proposed use is consistent with the action programs, policies, standards and maps of the Master Plan and the Cold Springs Area Plan;
- (b) **Improvements.** That adequate utilities, roadway improvements, sanitation, water supply, drainage, and other necessary facilities have been provided, the proposed improvements are properly related to existing and proposed roadways, and an adequate public facilities determination has been made in accordance with Division Seven;
- (c) **Site Suitability.** That the site is physically suitable for unlimited gaming facilities and for the intensity of such a development;
- (d) **Issuance Not Detrimental.** That issuance of the permit will not be significantly detrimental to the public health, safety or welfare; injurious to the property or improvements of adjacent properties; or detrimental to the character of the surrounding area;
- (e) **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.

Member Stanley seconded the motion which carried 4 – 0. Chair Thomas was absent.

9. Chair and Board Items

A. Future Agenda Items – Secretary Lloyd summarized the neighborhood meeting and HUB website.

Member Julian asked if people could make comments on the neighborhood hub website. Secretary Lloyd said yes, and it's a good place for gathering those comments. We also offer a survey that people can take to provide their input on each project. Member Julian asked if the staff report has a special section titled 'neighborhood meetings' so we always know where to look

for it. Secretary Lloyd said yes. That has been incorporated into the template for all of the staff reports. You'll notice that not all staff reports have it included because we don't require a neighborhood meeting for all applications.

Member Stanley said I think I see that announced on Nextdoor and other social media. There are side groups that have more public input. Secretary Lloyd said yes, neighbors posted about the neighborhood meetings.

Don Christensen said it seemed almost like a wholesale revamp of the constituent's boards. Is that true?

Secretary Lloyd said the citizen advisory boards are still active. However, at this time, they no longer hear development projects. That's why the neighborhood meeting process has basically taken over that part. The CABs do meet regularly. And they will talk about all other discussion topics except the development items.

Member Julian said although I have to say in the case of Incline Village, we do talk about development projects, we have discussions, and we have the developers come and speak to the advisory Board. Because if that were not happening, many people would feel they did not have an adequate voice. But no recommendation or decision is made on it.

Member Stanley said are there any links between the neighborhood meetings and the CAB? Is there any plan to have a more formal link? Neighborhood meeting minutes could be provided to the CAB audience, which is different from the neighborhood meeting audience?

Secretary Lloyd said there are always rumblings about returning the development items to the CABs. But that would require direction from the county commissioners. Member Stanley said I was just talking about an interim step of getting that neighborhood meeting minutes to the CAB. Secretary Lloyd said, I don't know. And that's not our purview at this moment. I know the manager's office works with the CABs, but the planning department does not.

Member Julian said there is a recording of each of these meetings. How is that recording publicized to the community? Because I know in Incline, we have been interested in what was said in the August 2022 meetings, and we have struggled to find the audio recording. So where would the community go for that? Secretary Lloyd said the hub site is the responsibility of the applicant to upload those audio recordings. That's been our biggest challenge because those files are so big. And so, we have to work with our technical team to get them uploaded.

Secretary Lloyd announced today is Mr. Stanley's last meeting with the Board. It's hard to believe it's been eight years. But today's his last meeting. We want to bring Brad back next month to honor him formally with a resolution of appreciation at the beginning of the meeting.

B. Requests for Information from Staff – None.

10. Director's and Legal Counsel's Items

A. Report on Previous Board of Adjustment Items - None

B. Legal Information and Updates – DDA Large noted the Board of County Commissioners reversed this Board's decision on the Ormat SUP for geothermal. They didn't file a petition for judicial review, which shocked him. So that's going to be the final decision. Member Stanley asked implications of that. DDA Large well, honestly, I don't know what they are planning to do in the future or if they're going to plan to just abandon those geothermal wells up there or not. In other words, they've stopped for now.

11. Public Comment

Steven Sanchez (Chambers) said "thank you for allowing me the three-minute briefing at the end of everything. I'm asking for the COVID relief funds for adequate sustainability. First of all, in

preparation of any kind of earthquake or even safety matters. As I read, I believe it's 'buckwheat funds' allocation of the next four years. In addition to that, I'd like to say that I'm a recent graduate of the University of Wyoming in 2018, with a bachelor's in applied science and Organizational Leadership. I'm asking for the first three installments over the next three months. The premises that I will not only use some of the funds regarding that, and I will bring the presentation, either in person or basically online, I'm familiar with computers and am computer savvy. And so that's just a brief introduction. I'm a recent, permanent resident of Nevada from Wyoming, I plan to spend the rest of my life here. So, I feel comfortable here. I've always wanted to live in the Tahoe area. I love snowboarding in my part-time and in my leisure time. It's always been a special place in my heart, Yosemite National Forest. And in that regard, I plan to participate in adequate functions in the rodeo in the next three months. I'm asking for allocations of money, and then within a week, I'll give a presentation online. I wanted to show face as we say or show some logic. I'll come in and dress week to week. Unfortunately, right now, I don't have an email. Unfortunately, I don't have a permanent dwelling. So I'm asking for not only participation in skateboarding and adequate functions in that but if floatation device, safety reasons, marginal in cost, and return for the funds or retail. I'm aware of wholesale allocation, as you saw, it's an as flat flotation device. And it's also adequate for things like fly fishing and leisure time. Outside of particular service orientations, my service orientations locally, or even internationally, our 2018 climate reality.org presentation in Los Angeles, a three-day training.”

There was no further response to the request for public comment.

12. Adjournment

The meeting adjourned at 5:29 p.m.

Respectfully submitted by Misty Moga, Independent Contractor

Approved by Board in Session on July 6, 2023

Trevor Lloyd
Secretary of the Board of Adjustment