



# Community Development

*"Dedicated to Excellence in Public Service"*

Adrian P. Freund, FAICP, Community Development Director  
Nathan Edwards, Legal Counsel



**Washoe County Board of Adjustment**  
Richard "R.J." Cieri, Chair  
Philip J. Horan, Vice Chair

Mary S. Harcinske  
Andrea Manor  
Robert F. Wideman

## WASHOE COUNTY BOARD OF ADJUSTMENT

### MINUTES

April 2, 2009

The regular meeting of the Washoe County Board of Adjustment was scheduled for Thursday, April 2, 2009 at 1:30 p.m., in the Washoe County District Commission Chambers, 1001 East Ninth Street, Reno, Nevada.

#### DETERMINATION OF QUORUM

Chair Cieri called the meeting to order at 1:35 p.m. The following members and staff were present:

Members present: Richard "R.J." Cieri, Chair  
Mary S. Harcinske  
Philip Horan  
Robert F. Wideman

Members absent: Andrea Manor

Staff present: Adrian Freund, FAICP, Director, Community Development  
Kimberly H. Robinson, Planning Manager, Community Development  
Sandra Monsalve, AICP, Senior Planner, Community Development  
Eva Krause, AICP, Planner, Community Development  
Grace Sannazzaro, Planner, Community Development  
Don Morehouse, Planner, Community Development  
Nathan Edwards, Deputy District Attorney  
Cathi Moldenhauer, Recording Secretary, Community Development

#### PLEDGE OF ALLEGIANCE

Member Harcinske led the pledge of allegiance to the flag.

#### APPROVAL OF AGENDA

In accordance with the Open Meeting Law, Member Wideman moved to approve the agenda of April 2, 2009. The motion, seconded by Member Horan, passed unanimously.

**APPROVAL OF MINUTES**

Chair Cieri requested that the paragraph indicating he clarified that the spillway was concrete be removed. Member Horan moved to approve the amended minutes of February 5, 2009. The motion was seconded by Member Harcinske and passed unanimously.

**PUBLIC COMMENT**

None

**CHAIR AND BOARD ITEMS**

- a. Report on Previous Board of Adjustment Actions

Ms. Robinson reported that decision of the Board of Adjustment regarding Bridges' appeal, Case No. AX09-001, was appealed to the Board of County Commissioners and will be heard on April 14, 2009. Additionally, an appeal of the RedRock Valley Ranch pipeline, Case No. SB08-023, will be heard by the Board of County Commissioners in May 2009.

**DIRECTOR'S ITEMS**

Ms. Robinson advised that Michael Harper, Planning Manager, will retire after 29 years of service on May 8, 2009.

A new staff report format is being prepared and will be emailed to the Board members.

Member Horan expressed his appreciation for Mr. Harper's service and support of the Board of Adjustment over the past years.

**CONSENT ITEMS**

None

**PROJECT REVIEW ITEMS**

**AGENDA ITEM 1**

PUBLIC HEARING: VARIANCE CASE NO. VA09-001 (BRAD AND CAROL POSPICHEL) – To reduce the front yard setback from 15 feet to 0 feet on an interior lot in order to facilitate the tear down of the existing residence and the construction of a new residence with an attached two-car garage. The project is located at 645 Fairview Boulevard in Incline Village near the intersection of Cristina Drive and Fairview Boulevard. The ±0.63-acre parcel is designated Medium Density Suburban (MDS) in the Tahoe Area Plan, and is situated in a portion of Section 14, T16N, R18E, MDM, Washoe County, Nevada. The property is located in the Incline Village/Crystal Bay Citizen Advisory Board boundary and Washoe County Commission District No. 1. (APN: 131-211-25)

Chair Cieri opened the public hearing.

Eva Krause reviewed the staff report dated March 19, 2009. The existing house has no garage and no driveway. That house is proposed to be demolished, and a new house will be built with a two-car garage, bringing the residence into conformance with code. At the Incline Village/Crystal Bay Citizen Board (CAB) meeting held on April 1, 2009, a neighboring property owner asked that a condition be added stating no construction vehicles or equipment be allowed to use his driveway. With that additional condition, the CAB unanimously recommended approval of the project. Conditions of approval addressed the concerns of Nevada State Lands regarding trespass by the contractors upon its property. Another condition required that an encroachment permit be obtained from Washoe County for the construction of stairs in the public right-of-way. Staff recommended approval with conditions of the project.

Member Harcinske noted the Nevada State Lands' objection was vehicles parking along the roadway causing erosion. Ms. Krause stated that was a difficult situation because there was no shoulder along the roadway, and there was no way to prohibit parking in the public right-of-way.

Chair Cieri asked where guests would park. Ms. Krause replied that guests currently parked alongside the road. Once the new residence is built, there will be a driveway in which guests can park.

Member Horan stated the construction would improve the parking situation greatly.

Dale Smith, Smith Design Group, Incline Village, representing the applicant, was available to answer questions.

Member Horan asked the size of the new residence. Mr. Smith replied that the main living space would be approximately 3,600 square feet, and a loft area would also be built.

Chair Cieri closed the public hearing.

Member Harcinske was concerned about adding a condition restricting parking on and use of another property's driveway. Member Horan was also concerned that such a condition would not be enforceable. He suggested giving the property owner a means of notifying the company/owner of the offending vehicles. Ms. Robinson suggested the applicant provide all contractors working on the project with a notice that the driveway is a private driveway.

Deputy District Attorney Edwards stated it was the property owner's prerogative to allow the driveway to be used or not, but it was not the County's responsibility to police that. He was concerned that the County would give the impression of taking on that burden if the condition were added.

Member Horan recommended deleting the condition and advise the applicant to notify all contractors of the privacy of the driveway.

Member Wideman moved to approve with Conditions 1 through 8, as recommended by staff, Variance Case No. VA09-001. Member Harcinske seconded the motion, which passed by a vote of four to one (Member Manor absent).

The motion was based on the following findings:

1. Special Circumstances. Because of the special circumstances applicable to the property, due to the exceptional topographic conditions; extraordinary and exceptional situation or condition of the property and/or location of surroundings due to the steep slope of the lot and the 20-foot-wide right-of-way that separates the property from the street, 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; and
5. Effect on Military Installation: The variance will not have a detrimental effect on the location, purpose and mission of the military installation; and
6. Reasoned Consideration. That the Board of Adjustment gave reasoned consideration to the information contained within the staff report and information received during the meeting.

## **AGENDA ITEM 2**

**PUBLIC HEARING: SPECIAL USE PERMIT CASE NO. SB09-002 (TAHOE ESTATES, LLC) –**  
To construct a new 1,200-square-foot detached accessory dwelling unit. The accessory dwelling unit will accompany the tear down and rebuild of a new single family residence. The project is located at 1019 Lakeshore Boulevard, between Tahoe Boulevard (SR 28) and Country Club Drive in Incline Village. The ±2.02-acre parcel is designated High Density Suburban (HDS) in the Tahoe Area Plan, and is situated in a portion of Section 22, T16N, R18E, MDM, Washoe County, Nevada. The property is located in the Incline Village/Crystal Bay Citizen Advisory Board boundary and Washoe County Commission District No. 1. (APN 130-230-05)  
Staff Representative: Don Morehouse, Planner 775.328.3632

Chair Cieri opened the public hearing.

Don Morehouse reviewed the staff report dated March 18, 2009. At the Incline Village/Crystal Bay Citizen Board (CAB) meeting held on April 1, 2009, the CAB, by a vote of six to one, recommended approval of the project. A neighboring individual who was unable to attend the CAB meeting stated via email he reviewed the drawings and was in favor of the changes to be made to the property. Staff recommended approval with conditions of the project.

Rob Olson, Olson-Olson Architects, representing the applicant, was available to answer questions.

Chair Cieri closed the public hearing.

Member Horan moved to approve with conditions Special Use Permit Case No. SB09-002. The motion was seconded by Member Harcinske and passed by a vote of four to zero (Member Manor absent).

The motion was based on the following findings:

1. Consistency. The proposed use is consistent with the action programs, policies, standards and maps of the Comprehensive Plan and the applicable area plan;
2. Improvements. 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;
3. Site Suitability. That the site is physically suitable for the detached accessory dwelling unit and the low intensity use;
4. Issuance Not Detrimental. 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; detrimental to the character of the surrounding area; or unduly detrimental to surrounding properties, land uses and the environment in general;
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; and
6. Reasoned Consideration. The Board of Adjustment gave reasoned consideration to the information contained within the staff report and information received during the meeting.

### **AGENDA ITEM 3**

PUBLIC HEARING: SPECIAL USE PERMIT CASE NO. SB09-001 (MARTIN AND KIMBLE McCLELLAN) – To operate a bed and breakfast inn as authorized in Article 810 of the Washoe County Development Code. The project is located at 15030 North Timberline Drive, Reno, approximately eight-tenths of a mile north of the Mt. Rose Highway (State Route 431). The ± 1.5-acre parcel is designated Low Density Suburban (LDS) in the Forest Area Plan, and is situated in a portion of Section 34, T18, R19, MDM, Washoe County, Nevada. The property is located in the Southwest Truckee Meadows Citizen Advisory Board boundary and Washoe County Commission District No. 2. (APN 049-871-10)

Chair Cieri opened the public hearing.

Grace Sannazzaro reviewed the staff report dated March 20, 2009. The existing residence is approximately 10,000 square feet and has five guest rooms. The applicants live in the house.

She noted that the Sierra Fire Protection District provided Condition No. 27 which required a sprinkler system and fire alarm. Upon further consideration, the District requested removal of the condition as the requirements are contained in the Fire Code.

This application was heard at the Southwest Truckee Meadows Citizen Advisory Board on March 19, 2009. Two members were in favor and two against recommending approval.

Letters received in opposition to the project cited traffic, noise and lighting as major concerns.

Staff provided an addendum to the staff report dated March 30, 2009, containing additional findings specific to bed and breakfast inns, and recommended approval of the project with conditions.

Chair Cieri asked the difference between a bed and breakfast and a motel. Ms. Sannazzaro explained that a bed and breakfast must be within a single-family dwelling, is limited to not more than five guest rooms, and cannot have cooking facilities within the guest rooms. A motel must have direct access to each guest room and has no limit of the number of guest rooms.

Chair Cieri asked if the special use permit for a bed and breakfast could have been applied for at the time the house was built. Ms. Sannazzaro stated that one of the findings requires that the residence must be constructed prior to application for a special use permit.

The subject of lighting was discussed. The applicant will have to downshield all lighting.

Member Horan requested an explanation of the term peak hour trips. Ms. Sannazzaro replied that peak hour trips are Monday through Friday during the morning and evening peak traffic hours, such as 7-9 AM and 5-7 PM, which is different in different locales.

Member Harcinske asked about signage. Ms. Sannazzaro stated there was no signage proposed. A condition was provided requiring review by the Community Development Department of any signage.

In reply to Member Harcinske, Ms. Sannazzaro stated the house did not have a sprinkler system.

Martin McClellan, the applicant, stated this was his home, and he and his family planned to maintain it at the highest level. He expressed his intent to create no negative impact on the neighborhood. He requested a waiver of the requirement to downshield all outside lighting, as this is not a commercial property. All lights would be turned off between 9 and 10 PM. He also requested a waiver of the requirement for fire sprinklers. None was required at the time the building permit was issued, and he did ask if not having one would preclude him from having a bed and breakfast. Each room has its own means of egress to the outside. He indicated that the facility would be non-smoking.

Considerable discussion ensued regarding the lighting. Mr. McClellan explained that some of the lights were on a timing system, and many others were on motion sensors.

Dr. Mary Lehran, a neighboring property owner, expressed concern about the impacts of the bed and breakfast. She mentioned increased traffic and the possibility of fire caused by guests tossing out cigarettes. Light pollution can be easily mitigated by the purchase of "dark sky compliant" fixtures. Even light from the interior of the house has disturbed one of her neighbors. A deer migration route will be interrupted by the additional traffic.

Chair Cieri closed the public hearing.

Member Horan stated that the lighting issue must be addressed to comply with the requirements of the code.

Member Harcinske stated she was unable to find that this use was consistent with what the area plan considered neighborhood commercial.

Member Horan moved to approve with conditions Special Use Permit Case No. SB09-001, including the deletion of Condition No. 27 provided in the staff report. The motion was seconded by Member Wideman and passed by a vote of three to one (Member Manor absent, Member Harcinske opposed).

The motion was based on the following findings:

1. Consistency. That the proposed use is consistent with the action programs, policies, standards and maps of the Comprehensive Plan and the Forest Area Plan;
2. 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;
3. Site Suitability. That the site is physically suitable for a bed and breakfast inn and for the intensity of such a development;
4. 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;
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; and

Section 110.320.20 Findings.

- (a.) Traffic. The residential character of the neighborhood will not be changed due to increased traffic in the neighborhood caused by the use.
- (b.) Commercial Nature. The residential character of the neighborhood will not be changed due to the commercial nature of the use.
- (c.) Dwelling Exists. The single-family dwelling has been constructed.
- (d.) Private Controls. The proposed use does not violate the provisions of any applicable covenants, conditions and restrictions governing the property. The burden shall be upon the applicant to provide appropriate documentation to support this finding.

- (e.) Noise Levels. The proposed use will maintain acceptable residential noise standards as specified in Article 414, Noise and Lighting Standards.
  - (f.) Hours of Operation. The hours of operation are consistent with the residential character of the neighborhood.
6. Reasoned Consideration. That the Board of Adjustment gave reasoned consideration to the information contained within the staff report and information received during the meeting.

#### **AGENDA ITEM 4**

PUBLIC HEARING: VARIANCE CASE NO. VA09-002 (TOM HALL) – To increase the maximum retaining wall heights along a residential driveway from 6 feet to 8 feet. The project is located at 6000 Old Ranch Road, several thousand feet west of Franktown Road. The ±37-acre parcel is designated General Rural (GR) in the South Valleys Area Plan, and is situated in a portion of Section 9, T16N, R19E, MDM, Washoe County, Nevada. The property is located in the West Washoe Valley Citizen Advisory Board boundary and Washoe County Commission District No. 2. (APN: 172-020-01)

Chair Cieri opened the public hearing.

On behalf of Sandra Monsalve, Grace Sannazzaro reviewed the staff report dated March 23, 2008. Staff recommended approval with condition of the variance.

Tom Hall, 6000 Old Ranch Road, the applicant, was available to answer questions.

Chair Cieri closed the public hearing.

Member Horan moved to approve with conditions Variance Case No. VA09-002. The motion was seconded by Member Harcinske and passed by a vote of four to zero (Member Manor absent).

The motion was based on the following findings:

1. Special Circumstances. Because of the special circumstances applicable to the property due to exceptional topographic conditions with the steep slopes on both sides of the private access road, thus requiring a retaining wall, 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 Military Installation: The variance will not have a detrimental effect on the location, purpose and mission of the military installation; and
6. Reasoned Consideration. That the Board of Adjustment gave reasoned consideration to the information contained within the staff report and information received during the meeting.

#### **AGENDA ITEM 5**

APPEAL CASE NO. AX09-002 (HOUSTON CRISP) - To appeal the decision of the Director of Building & Safety pursuant to NRS 278.310 to include in Building Permit No. 08-2390 the requirement of the Sierra Fire Protection District to install a sprinkler system in a one-story single-family residence. The project is located at 205 Will Sauer Road. The ±5.021-acre parcel designated General Rural (GR) in the South Valleys Planning Area and is situated in Section 4, T16N, R19E, MDM, Washoe County, Nevada. The property is located in the West Washoe Valley Citizen Advisory Board boundary and Washoe County Commission District No. 2. (APN 055-010-50)

Staff Representatives: Fire Chief Michael Greene, Sierra Fire Protection District, 775.849.1108, and Don Jeppson, Director, Building & Safety Department, 775.328.2030

Chair Cieri opened the public hearing.

Chief Michael Greene, Sierra Fire Protection District, reviewed the staff report dated March 25, 2009. He recommended denial of the appeal.

Member Wideman asked if Mr. Crisp was provided with other alternatives to sprinklers. Chief Greene advised that one of Mr. Crisp's concerns was cost, so local contractors were contacted in an effort to bring the cost down. Alternative methods and means were explored.

Chair Cieri asked if a homeowner could acquire the sprinkler system components and perform the installation himself. Chief Greene replied that legislative changes could be made to allow homeowners to install their own systems; however, that is not currently allowed. Prices for professional installation are much higher in this area than the national average.

Houston Crisp, the appellant, stated a building permit was issued for a single-family residence on October 16, 2008, which included the requirement to install fire sprinklers. No rural residence well is capable of providing the required fire flow of 1,000-1,700 gallons per minute. The requirement for a sprinkler system was in the International Fire Code since 2003, but it was never enforced. The recent change in policy enforcing this code took place without prior notice. He referred to the decision of this Board to approve the appeal of Bridges Construction because the code had been inconsistently enforced.

Mr. Crisp noted that sprinkler systems add complexity to the construction of a residence. Insulation cannot be blown in; only more expensive batt insulation can be used. A separate electrical circuit for the sprinkler system is required. The uninsulated shell of the house must be heated to aid in drying the glue on the pipes. The sprinkler system must be protected from freezing. Sprinklers impose their own risks. An activated sprinkler without a fire can cause about \$25,000 worth of damage.

Mr. Crisp stated the real fire risk in Nevada is forest or wild fires, not residential fires. A sprinkler system will not protect a home from those fires.

He agreed with the Board's direction in the Bridges appeal that the Fire Department work with the building industry in putting forth the information that sprinkler systems would be required in all rural single-family residences at a specific date in the future. He asked that the requirement not be imposed retroactively and that the Board come to the same conclusions in this appeal as it did in the Bridges appeal.

Kurt Latipow, Washoe County Fire Services Coordinator, clarified that the State Fire Marshal's office uses the International Fire Code as its base line of model code as does the County in its promulgation of Ordinance 60. In this case, the State's code has been more restrictive than the County's ordinance. The County is the lead agency for all the area's fire departments in updating the outdated Ordinance 60.

Jess Traver, Builders Association of Northern Nevada, stated his organization was participating with the Fire Department in getting information to builders, homeowners, designers and consultants regarding new requirements of the County. He encouraged this type of communication through the Development Services Advisory Committee.

Chair Cieri asked why these systems must be installed by contractors. Mr. Traver replied that state law required the systems be designed and installed by licensed entities.

Chair Cieri closed the public hearing.

Member Wideman commented that he did not believe it was proper for this Board to substitute its judgment regarding the appropriateness, value or worth of sprinkler systems for that of the Fire Marshall's office. He noted that the appeal case of Bridges Construction was different from this case in that Mr. Bridges was building two houses within several hundred feet of one another. Sprinklers were required on one house but not the other. The Fire Department did not present a convincing case in the Bridges appeal. Member Wideman complimented the Fire Department for making a much better presentation in this case, with a much more cogent description of the legal authority and its practices and enforcement. He also commended the Fire Department for its efforts to bring the building community into this process.

Deputy District Attorney Edwards advised that NRS 278.270 empowers the Board of County Commissioners to create a Board of Adjustment by ordinance. The ordinance creating this Board of Adjustment is Washoe County Code Chapter 110.912.10. Subsection (f) gives the Board the power to carry out all the powers in NRS 278.290 through 278.310. NRS 278.310 gives anyone aggrieved by the decision of any administrative officer or agency based upon or made in the course of the administration or enforcement of the provisions of any regulation relating to the location or soundness of structures the power to appeal to the Board of Adjustment. Appeals are typically judged under a substantial evidence standard. An example of authority for that would be found in NRS Chapter 233B, which applies to state agency adjudications. Substantial evidence is generally understood to mean evidence which a reasonable mind might accept as adequate to support a conclusion. The job of this Board is to consider the evidence in the record created here today and to decide whether this requirement being challenged is supported by substantial evidence.

Member Harcinske acknowledged the financial implications of the regulation and expressed her opinion that the regulation should be enforced.

Chair Cieri stated he felt the Fire Department had taken steps to assure the regulation was enforced consistently, and he would vote to deny the appeal.

Member Wideman moved to deny Appeal Case No AX09-002. The motion was seconded by Member Harcinske and passed by a vote of four to zero (Member Manor absent).

[Ms. Robinson recited the process to appeal this decision.]

**OTHER ITEMS**

None

**ADJOURNMENT**

There being no further business to come before the Board of Adjustment, the meeting adjourned at 4:00 p.m.

Respectfully submitted,

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Cathi Moldenhauer, Recording Secretary

Approved by Board in session on June 4, 2009

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Adrian P. Freund, FAICP, Director  
Secretary to the Board of Adjustment