



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
Robert F. Wideman

WASHOE COUNTY BOARD OF ADJUSTMENT

MINUTES

June 4, 2009

The regular meeting of the Washoe County Board of Adjustment was scheduled for Thursday, June 4, 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 1:33 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: None

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
Dawn Spinola, Recording Secretary, Community Development

PLEDGE OF ALLEGIANCE

Member Wideman led the pledge of allegiance to the flag.

APPROVAL OF AGENDA

In accordance with the Open Meeting Law, Member Harcinske moved to approve the agenda of June 4, 2009. The motion, seconded by Member Horan, passed unanimously.

APPROVAL OF MINUTES

Member Harcinske moved to approve the minutes of March 4, 2009, and April 2, 2009. The motion was seconded by Member Wideman and passed unanimously.

PUBLIC COMMENT

None

CHAIR AND BOARD ITEMS

- a. Report on Previous Board of Adjustment Actions

Ms. Robinson reported that the decision of the Board of Adjustment in the appeal case filed by Steven Bridges regarding the requirement for sprinklers was upheld by the Board of County Commissioners on April 14, 2009. An appeal of the special use permit denied by the Board of Adjustment to install a pipeline in the Red Rock area to transfer water into the Lemmon Valley was also upheld by the Board of County Commissioners on May 12, 2009.

DIRECTOR'S ITEMS

Ms. Robinson noted that Members Cieri and Harcinske's terms on the Board of Adjustment will end on June 30, 2009, and it is anticipated they will both be reappointed by the Board of County Commissioners. She also noted that an election of officers will be held at the August meeting.

CONSENT ITEMS

- A. CONSIDER AND ADOPT A RESOLUTION COMMENDING CATHERINE MOLDENHAUER FOR HER SERVICE TO WASHOE COUNTY

Chair Cieri read the resolution into the record. Director Freund introduced Dawn Spinola and Sara DeLozier, who will replace Ms. Moldenhauer as recording secretary.

Member Harcinske moved to adopt the resolution. The motion was seconded by Member Horan and passed unanimously.

PROJECT REVIEW ITEMS**AGENDA ITEM 1**

PUBLIC HEARING: VARIANCE CASE NO. VA09-003 (JOHN V. MASSEY) – To modify Variance Case No. V12-38-95, which reduced the front yard setback from 20 feet to 0 feet for the construction of a detached garage. The proposed modification will permit the construction of a single-family residence attached to the existing garage. The project is located at 305 Wassou Road in Crystal Bay near the intersection of Wassou Road and Beowawie Road. The ±0.137-acre parcel is designated High Density Suburban (HDS) in the Tahoe Area Plan, and is situated in a portion of Section 19, T16N, R18E, MDM, Washoe County, Nevada. The property is located in the Incline Village/Crystal Bay Citizen Advisory Board boundaries and Washoe County Commission District No. 1. (APN 123-154-01)

Chair Cieri opened the public hearing.

On behalf of Don Morehouse, Eva Krause reviewed the staff report dated May 21, 2009. A major concern of the Nevada Division of State Lands was that its adjacent property would be trespassed upon during construction of the new residence. That possibility would exist whether this variance was granted or not, as the property owner has the right to build upon his property within the prescribed setbacks. A condition was provided to notify the property owner of this precaution. Another condition required execution of a hold-harmless agreement. The applicant advised that a hold-harmless agreement exists, and staff will determine if that agreement is sufficient for purposes of this variance. No concerns were expressed by the Incline Village/ Crystal Bay Citizen Advisory Board at its meeting of May 6, 2009. Staff recommended approval with conditions of the variance.

Member Horan asked how the condition regarding parking on the Nevada Division of State Lands could be enforced. Ms. Krause advised that the applicant would provide the name of the contractor, and the contractor would be requested to provide a parking plan for the project. Upon receipt of complaints from neighbors, the contractor would be contacted.

John Massey, 305 Wassou Road, Crystal Bay, the applicant, stated that the new house would be essentially the same size as the house that burned. The entrance to the garage was built on Tuscarora Road, and stone steps provided access to the original house. The house was two flights of steps up from Wassou Road and two flights down from Tuscarora Road. Two parking places exist on Wassou Road, which are owned by the Nevada Division of State Lands.

Chair Cieri closed the public hearing.

Deputy District Attorney Edwards clarified that Conditions 6 and 7, regarding trespassing and/or use or disturbance of the National Forest and Nevada State Lands property, did not impose upon the County obligation to guarantee that those actions would not occur. In the event of violation of these conditions, the variance could be revoked. The conditions do not give the County the duty to protect the legal rights of the National Forest or Nevada State Lands with respect to their properties.

Member Horan moved to approve with Conditions Variance Case No. VA09-003, amending Condition 6 to replace "Forest Service" with "Nevada Division of State Lands" and Condition 7 to replace "Department of Community Development" with "Nevada Division of State Lands personnel." Member Harcinske seconded the motion, which passed unanimously.

The motion was based on the following findings:

1. Special Circumstances. Variance Case No. V12-38-95 established the special circumstances applicable to the property, as being the exceptional topographic conditions with the front slope of the property being between 53% to 60%; in addition the exceptional situation created when the house burned down without destroying the existing garage creates an opportunity to build a new residence attached to the garage without having to modify any existing structures or increase the need to increase the size of the variance; the strict application of the regulation would result in an 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. The modification does not increase the size of the structure in the setback, therefore does not increase the impact of the variance;
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 a military installation.
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 2A AND 2B

- A. PUBLIC HEARING: SPECIAL USE PERMIT CASE NO. SB09-005 (LA POSADA BAR & GRILL) – To construct a ±3,300-square-foot bar and grill with 24-hour operation as authorized in Table C-3 of the Spanish Springs Area Plan, and Article 810 of the Washoe County Development Code.

AND

- B. PUBLIC HEARING: VARIANCE CASE NO VA09-004 (LA POSADA BAR & GRILL) - To vary the following standards: Section 110.216.15(b), (e), (f) and (h); and Section 110.216.20(f) within Article 216, Spanish Springs Area Plan Modifiers, as authorized in Article 804 of the Washoe County Development Code.

The project site is located at 8995 La Posada Drive, at the northeast corner of La Posada Drive and Pyramid Highway (SR-445). The ±1.21-acre parcel is designated General Commercial (GC) in the Spanish Springs Area Plan and is situated in a portion of Section 35, T21N, R20E, MDM, Washoe County, Nevada. The property is located in the Spanish Springs Citizen Advisory Board boundaries and Washoe County Commission District No. 4. (APN 534-092-04)

Chair Cieri opened the public hearing.

Sandra Monsalve reviewed the staff report dated May 22, 2009. Staff recommended approval with conditions of this special use permit and variance.

Member Horan asked if the Terrible's service station was operating under a variance. Ms. Monsalve replied it was not, because it had been operating as a service station and convenience store at that location for over 30 years.

Member Horan noted that the gas station and convenience store was operating on the parcel for 30 years and was still operating as such. Ms. Monsalve stated that a new structure was proposed to be built. Member Horan reiterated that the parcel was still being used for the same purposes, and he could not make a finding of hardship.

Member Harcinske agreed, noting that the hardship was self imposed by attempting to add another type of business. The applicant built a new building for the convenience store and chose not to demolish the old building. It appeared to her the applicant was overbuilding the lot.

Ms. Monsalve explained that Article 216 of the Spanish Springs Area Plan Modifiers required larger setbacks for large commercial centers, which required the applicant to apply for a variance. If the property did not fall under that category, only a 10-foot setback all around the property would be required. The Modifiers require larger setbacks on parcels greater than five acres in size. It does not appear, through interpretation of the Code, that these setbacks were intended for smaller parcels such as this.

Chair Cieri referred to the traffic study, which estimated the restaurant/bar would generate 31 peak hour trips. Ms. Monsalve clarified this was a preliminary traffic study, and a full study could be required at the time of final plan submittal. Chair Cieri asked about the consequences if the traffic study showed increased numbers. Ms. Monsalve replied the applicant would have to put in improvements to accommodate the traffic.

Mike Railey, Rubicon Design Group, 835 Maestro Drive, representing the applicant, Dennis Banks Construction, clarified that the reason the variance was needed was because the construction was proposed on a single parcel. If the bar and grill was parceled off, no variance would be needed. Although the parcel can accommodate multiple uses and meet parking requirements and setbacks for General Commercial use, no special use permit would be required if the lot was parceled off. It was originally proposed to be built as one cohesive project; however, the tenant, Terrible's, was unable to fulfill its financial obligations to complete the project. The approved plans for the project proceeded, and the new service station and convenience store were built. However, when Terrible's went bankrupt, the old building was left standing, effectively blocking a set of pumps and several completed parking places.

Mr. Railey stated that this parcel was unique, in that it is the only General Commercial parcel in Spanish Springs that is smaller than five acres. That is what creates the hardship on this project.

He noted that access to the Terrible's service station is currently very difficult. Demolition of the old building and construction of the new bar and grill would greatly improve access and provide for smooth circulation on the parcel. Drainage improvements that were not completed during construction of Terrible's would be finished, and drainage would no longer be an issue.

Mr. Railey stated the applicant concurred with all the conditions of approval proposed in the staff report with the exception of the limitation of business hours. The applicant requested the bar and grill be operated on a 24-hour basis.

In response to Chair Cieri, Mr. Railey stated that the restaurant would generate 391 average daily trips, with 31 trips during the peak hours, which are 6 AM to 8 AM and 4 PM to 6 PM. Peak hours for restaurants do not typically compete with rush hour traffic. An overall traffic

study was performed prior to construction of the Terrible's project, and the Regional Transportation Commission used that study in the construction of recently completed improvements to that intersection.

Member Harcinske asked when the Terrible's project was submitted. Mr. Railey replied it was originally submitted in 2007. No variances were required for the project because Terrible's planned to divide the lot into two parcels. The current owner is not in a financial position to be able to divide the parcel.

Chair Cieri asked why the condition limiting the hours of operation was proposed. Ms. Monsalve replied that community comments prompted that condition. At the time that condition was written, she was not aware that most of the surrounding businesses, including bars and restaurants, were operating on a 24-hour basis.

Charles Perrotta, 600 Caddie Court, Incline Village, partial owner of the Spanish Springs Shopping Center, also known as the Save Mart Center, expressed concern over the amount of parking and the drainage on the project. He requested that a barrier be placed between the subject parcel and his property as customers were destroying his landscaping to access the convenience store.

Chair Cieri closed the public hearing.

In response to Member Horan, Ms. Monsalve stated the applicant proposed parking in excess of that required by code.

Member Harcinske asked what could be done to mitigate the destruction to the neighboring shopping center's landscaping. Ms. Monsalve suggested a small retaining wall could be built. Mr. Railey stated the applicant would not object to constructing a fence or landscaping that would discourage crossing into the other parking lot. A wall could create a safety issue with people trying to scale that wall. Chair Cieri noted the project would be heard by the Design Review Committee.

In reply to a question raised by Chair Cieri regarding a limitation on the hours of operation, Deputy District Attorney Edwards stated the Board of Adjustment is empowered to impose conditions on the granting of a special use permit. The conditions must be reasonable and not arbitrary or capricious.

Director Freund noted that the hours of operation were imposed on other establishments in the past based on concerns raised by the Sheriff's Department.

Member Harcinske asked about the drainage issues on the property. Ms. Monsalve stated that the Engineering Division would assure those issues were resolved.

Deputy District Attorney Edwards observed that the requirement for a special use permit in this case was a matter of interpretation. He asked that Director Freund make an interpretation as to whether, as purported by staff, the project is a commercial center because of the operation of the gas station and convenience store in addition to the restaurant and bar; or, the only issue is the construction of restaurant and bar, which is considered to be an eating establishment only, and would be an allowed use in General Commercial requiring no special use permit. He noted that the Development Code empowers the Director of the Department of

Community Development to render interpretations of the code. He also asked for an interpretation of Article 216 of the Spanish Springs Area Plan Modifiers, which imposes a restriction on minimum parcel size for a commercial center.

Director Freund described the history of the land use designations in the Spanish Springs area, which resulted in this parcel being designated General Commercial. This designation has been long standing, although it may not meet all the wording of the Spanish Springs Area Plan. The Spanish Springs Area Plan Modifiers allow only eating and drinking establishments and prohibit bars or taverns absent food service. Although there is a restriction requiring a minimum of five acres for a commercial center, Director Freund stated his opinion that it would not be appropriate to treat this property differently.

Chair Cieri recommended a condition be added requiring a barrier between the Save Mart Shopping Center parking lot and the subject property.

Member Harcinske suggested an additional condition that, upon receipt of more than three complaints from the Sheriff's Department, the special use be brought back to this Board for review.

Member Wideman expressed his opinion that restricting the hours of operation would be unfair to the applicant. He was not able to identify or articulate a difference between this project and the neighboring establishments. Member Horan supported that opinion.

Member Harcinske was concerned about the community's comments regarding those hours. She recommended the hours could become unlimited after coming back to the Board after a certain period of time.

Member Horan noted that no members of the community or of the Citizen Advisory Board were present to address their concerns regarding the hours of operation. He was in favor of eliminating Condition 5. Member Wideman concurred.

Chair Cieri suggested a recess be called to allow staff to craft the proposed conditions.

[A recess was called at 3:02 p.m. The meeting reconvened at 3:10 p.m.]

Chair Cieri called the meeting to order.

Ms. Monsalve stated that Condition 5 would be deleted. Two new conditions would be added, as follows: "Condition 27. The applicant shall erect a barrier between the subject site and the Save Mart Center where the properties adjoin. The type and design of the barrier shall be approved by the Design Review Committee. The Department of Community Development shall determine compliance with this condition." "Condition 28. If more than three complaints are received by the Washoe County Sheriff's Office, the applicant must return before the Board of Adjustment for review of conditions and possible revocation of the Special Use Permit. The Department of Community Development shall determine compliance with this condition."

Member Harcinske moved to approve with conditions Special Use Permit Case No. SB09-005, deleting Condition 5 and adding new Conditions 27 and 28 as quoted above. She stated that the basis for making the findings on both the Special User Permit and the Variance was that the property qualifies as a commercial center and has brought forth historical zoning

that does not meet the requirements contained in the current Spanish Springs Area Plan. Therefore, developing a commercial center on this site under the strict application of current plan would constitute a hardship. The motion was seconded by Member Horan and passed unanimously.

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 Spanish Springs 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 the a small Neighborhood Commercial facility to serve the local residents;
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
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.

Member Harcinske moved to approve with conditions Variance Case No. VA09-004. The same rationale for making the findings apply. Member Horan seconded the motion, which passed unanimously.

The motion was based on the following findings:

1. Special Circumstances. Because of the special circumstances applicable to the property, including either the:
 - (1) Exceptional narrowness, shallowness or shape of the specific piece of property; or
 - (2) By reason of exceptional topographic conditions, or
 - (3) Other extraordinary and exceptional situation or condition of the property and/or location of surroundings,

the strict application of the regulation results in exceptional and undue hardships upon the owner of the property;

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.

Ms. Robinson recited the process to appeal these decisions.

AGENDA ITEM 3A AND 3B

- A. PUBLIC HEARING: SPECIAL USE PERMIT CASE NO. SB09-006 (VICTORY CITY CHURCH, INC.) – To develop a 13,000-square-foot church facility (Religious Assembly Use Type) as authorized in Table 110.302.05.2 and Article 810 of the Washoe County Development Code.

AND

- B. PUBLIC HEARING: SPECIAL USE PERMIT CASE NO. SB09-007 (VICTORY CITY CHURCH, INC.) – To consider grading of material in excess of 1,000 cubic yards and grading within a designated Special Flood Hazard Area as required by Article 438 and Article 810 of the Washoe County Development Code.

The project is located on the south side of Pembroke Drive, approximately four-tenths of a mile east of its intersection with South McCarran Boulevard. The ±14.75-acre parcel is designated General Rural (GR) in the Southeast Area Plan, and is situated in a portion of Section 21, T19N, R20E, MDM, Washoe County, Nevada. The property is located in the Southeast Truckee Meadows Citizen Advisory Board boundaries and Washoe County Commission District No. 2. (APN 021-140-04)

Chair Cieri opened the public hearing.

Grace Sannazzaro reviewed the staff report dated May 21, 2009. Staff recommended approval with conditions of this project.

Chair Cieri expressed concern about the additional traffic on Pembroke Drive on Sundays. Ms. Sannazzaro stated that the Engineering Division provided a condition requiring the applicant to perform a traffic study addressing access and circulation, and the applicant will have to make any improvements required prior to issuance of a building permit.

David Lane, Noah Construction, Inc., 333 East Six Forks Road, Suite 200, Raleigh, North Carolina, the applicant, stated that an agreement has been reached to transport the excess fill to a subdivision in southern Reno. Structural fill will be required under the building pad.

Chair Cieri closed the public hearing.

Member Wideman moved to approve with conditions Special Use Permit Case No. SB09-006. The motion was seconded by Member Harcinske and passed unanimously.

The motion was based on the following findings:

1. Consistency. That the religious assembly use is consistent with the action programs, policies, standards and maps of the Washoe County Comprehensive Plan and the Southeast Truckee Meadows 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 church and for the intensity of the 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
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.

Member Wideman moved to approve with conditions Special Use Permit Case No. SB09-007. The motion was seconded by Member Harcinske and passed unanimously.

The motion was based on the following findings:

1. Consistency. That the religious assembly use is consistent with the action programs, policies, standards and maps of the Washoe County Comprehensive Plan and the Southeast Truckee Meadows 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 church and for the intensity of the 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
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.

OTHER ITEMS

None

ADJOURNMENT

There being no further business to come before the Board of Adjustment, the meeting adjourned at 3:33 p.m.

Respectfully submitted,

Dawn Spinola, Recording Secretary

Approved by Board in session on July 7, 2009

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