



# WASHOE COUNTY

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## STAFF REPORT

BOARD MEETING DATE: May 24, 2022

**DATE:** April 12, 2022

**TO:** Board of County Commissioners

**FROM:** Katy Stark, Planner, Planning & Building, Community Services Department, 775.328.3618, [krstark@washoecounty.gov](mailto:krstark@washoecounty.gov)

**THROUGH:** Mojra Hauenstein, Arch., Planner, Division Director, Planning & Building, Community Services Department, 775.328.3619, [mhauenstein@washoecounty.gov](mailto:mhauenstein@washoecounty.gov)

**SUBJECT:** Public Hearing: Appeal of the Washoe County Board of Adjustment's denial of Variance Case Number WPVAR22-0001 (Herz-Callahan Side Yard Setback Reduction) which sought a variance to reduce the required side yard setback on the north side of the parcel from five (5) feet to one (1) foot in order to enlarge the existing bedroom wing of the current home on the property and add a second level bedroom.

The applicant is GilanFarr Architecture, and the property owner is Susan Herz-Callahan Family Trust et al. The project is located at 1710 Lakeshore Blvd., Incline Village, NV 89451. The Assessor's Parcel Number is 130-332-12. The parcel of land is approximately 0.192 acres in size with a master plan designation and regulatory zone of East Shore, within the Tahoe Area Plan. Variances are authorized in Article 804 of the Washoe County Development Code. (Commission District 1.)

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### SUMMARY

The appellant is seeking to overturn the Washoe County Board of Adjustment's (BOA) denial, on March 3, 2022, of Variance Case Number WPVAR22-0001 (Herz-Callahan Side Yard Setback Reduction) which sought a variance to reduce the required side yard setback on the north side of the parcel from five (5) feet to one (1) foot. The BOA was unable to make the finding that there are special circumstances applicable to the property.

Washoe County Strategic Objective supported by this item: Stewardship of our community.

### PREVIOUS ACTION

On March 3, 2022, the Washoe County BOA held a duly noticed public hearing on Variance Case Number WPVAR22-0001. The BOA voted unanimously, with all members present, to deny the variance request, being unable to make the finding that there are special circumstances applicable to the property.

AGENDA ITEM # \_\_\_\_\_

## **BACKGROUND**

The applicant is appealing the decision, made by the Washoe County BOA on March 3, 2022, which denied the requested variance for reduction of the north side-yard setback. The minutes of that meeting are included as Attachment C to this report.

It is important to recognize that Nevada Revised Statutes (NRS 278.300) requires that variances be granted only under particular circumstances. The applicant has the responsibility to demonstrate that the subject property exhibits one or more of the following characteristics to demonstrate a hardship: 1) exceptional narrowness, shallowness, or shape of a specific piece of property; or 2) by reason of exceptional topographic conditions; or 3) other extraordinary and exceptional situation or condition of the piece of property. If such a finding of fact **can** first be made, then the Board must also show that the strict application of the regulation would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardships upon, the owner of the property.

The Board of Adjustment found that this parcel of land does not demonstrate such circumstances. The parcel is not exceptionally narrow, exceptionally shallow or exceptionally shaped.

Please see pages 8 through 11 of the BOA staff report (Attachment B to this report) for a thorough evaluation of all required findings of fact.

The applicant's representative has stated that the Tahoe Regional Planning Agency (TRPA) site constraints should be considered a special circumstance and a hardship. The applicant specified that TRPA classifies each parcel with a land classification based on its sensitivity and that more sensitive parcels with a classification of 3 or lower often cannot meet the findings to relocate existing coverage from a disturbed location to an undisturbed location on the site. The applicant has stated that the applicant's entire site is Class 1A, which is a special circumstance that constitutes a hardship for development. The applicant's appeal document is included as Attachment E to this report.

It should be clearly noted that compliance with the requirements of the TRPA does not create a hardship, as required by Nevada Revised Statutes or Washoe County Development Code, for a variance to be granted. The reason for this is that those codes are neither extraordinary nor exceptional, as they are applied consistently to all similar properties within the Tahoe Basin, both in Nevada and California.

Should approval be granted by the BCC, conditions of approval are provided that require appropriate plans and documentation be provide to all relevant County agencies. Compliance with all generally applicable code provisions would be also required.

## **FISCAL IMPACT**

No fiscal impact.

## **RECOMMENDATION**

It is recommended that the Board of County Commissioners review the record and take one of the following actions:

1. Affirm the Board of Adjustment's decision and deny Variance Case Number WPVAR22-0001 (Herz-Callahan Side Yard Setback Reduction); or
2. Reverse the Board of Adjustment's decision and approve Variance Case Number WPVAR22-0001 (Herz-Callahan Side Yard Setback Reduction).

### **POSSIBLE MOTION**

Should the Board agree with the action taken by the Board of Adjustment, a possible motion would be:

“Move to uphold the decision of the Board of Adjustment and deny the appeal of Variance Case Number WPVAR22-0001 (Herz-Callahan Side Yard Setback Reduction) which sought a variance to reduce the required side yard setback on the north side of the parcel from five (5) feet to one (1) foot in order to enlarge the existing bedroom wing of the current home on the property and add a second level bedroom, being unable to make all required findings of fact 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;
- (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.

Should the Board disagree with the action taken by the Board of Adjustment, a possible motion would be:

“Move to overturn the decision of the Board of Adjustment and approve, with conditions as included at Attachment D to the staff report, Variance Case Number WPVAR22-0001 (Herz-Callahan Side Yard Setback Reduction) which sought a variance to reduce the required side yard setback on the north side of the parcel from five (5) feet to one (1) foot in order to enlarge the existing bedroom wing of the current home on the property and add a second level bedroom, being able to make all required findings of fact in accordance with WCC Washoe County Development Code Section 110.804.25:

*(Please discuss each of the special circumstances applicable to the property, and each finding of fact, in making this determination.)*

- (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;
- (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.”

Attachments / Record on Appeal:

A: BOA Action Order for WPVAR22-0001

B: BOA Staff Report for WPVAR22-0001

C: Partial BOA minutes of 3/3/2022

D: Possible Conditions of Approval for WPVAR22-0001

E: Appeal Application

F: Video Recording of BOA Hearing

G: Staff Presentation to BOA

H: Applicant Presentation to BOA

I: Public Comment emails received after BOA staff report posting

J: Agency Review Comment received after BOA staff report posting

cc:

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