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Opposition to Appeal of Wildlife Preservation Wall Variance (WPVAR25-0011)

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Background

- ▶ The Coulters received a code enforcement violation related to their Wildlife Preservation Wall
- ▶ The violation alleged the Preservation Wall was a fence or wall in excess of six feet, in violation of the Development Code
- ▶ The Coulter's submitted a variance application to bring the existing Preservation Wall into code compliance
- ▶ The variance was **unanimously** approved by the Board of Adjustment
- ▶ The Grimes, owner of a neighboring property, appealed; the Preservation Wall **is not visible from the neighboring property**

Background



- ▶ The property was previously home to one of the largest trees in the State of Nevada, a Fremont Cottonwood standing at 105 feet tall and 42 feet in circumference
- ▶ The size of the tree and the property's location within migratory bird paths meant the tree was home to substantial wildlife

Special Circumstances



- In 2017, the Coulters were forced to remove the tree after it began to split apart
- Because the tree was of exceptional size and ecological significance, its removal created a special circumstance that required mitigation
- The Coulters undertook efforts to create an arboretum and sanctuary to replace lost habitat and protect the wildlife that had lived in the tree and surrounding area

Arboretum



- The Coulters embarked on an effort to create an arboretum by planting substantial new trees
- This effort led to a significant increase in the migratory bird population visiting the area

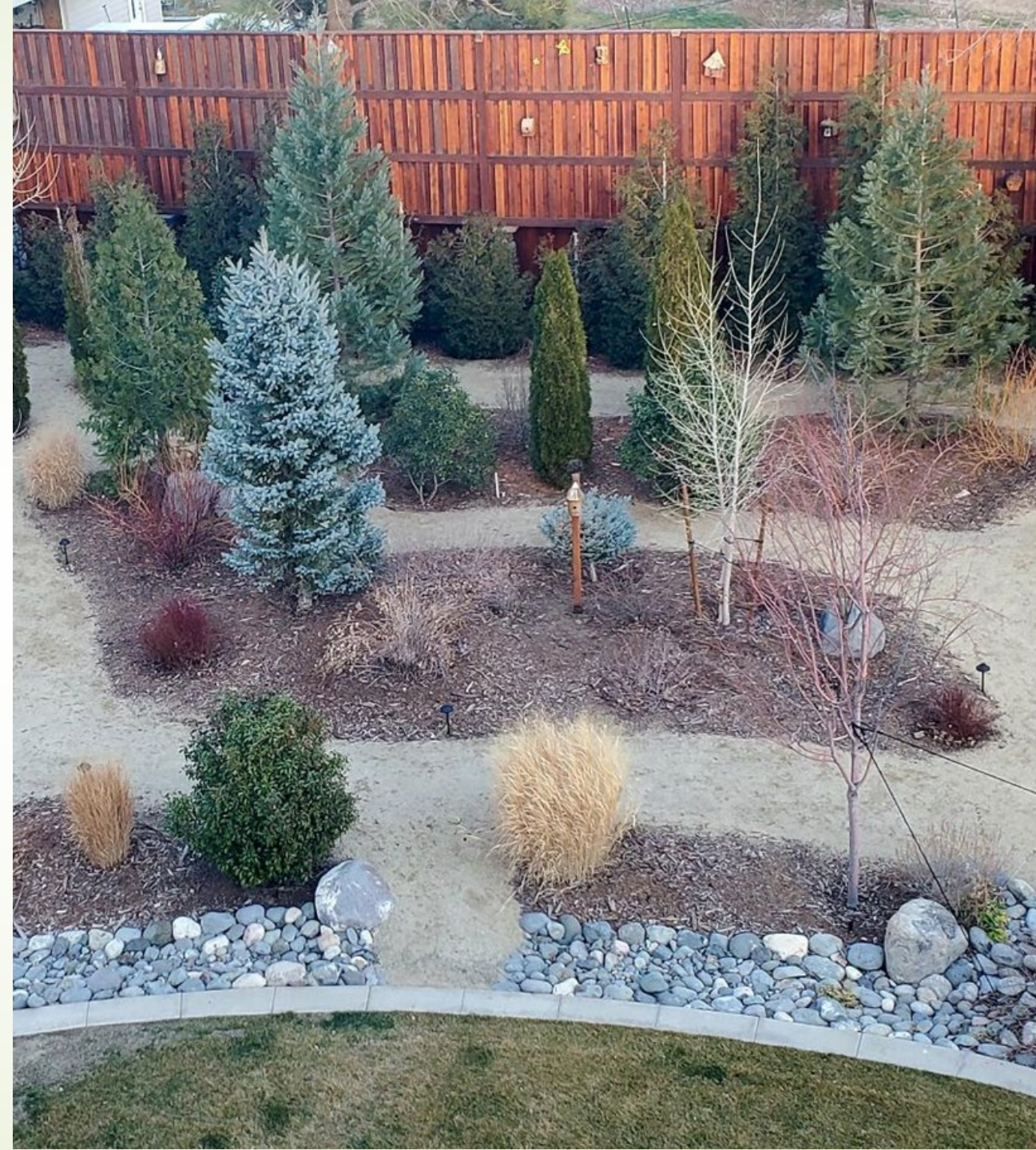
Wildlife

- ▶ The arboretum supports the nesting of:
 - ▶ Great Horn Owls
 - ▶ Red Tail Hawks
 - ▶ Falcons
 - ▶ White Crowned Finch
 - ▶ Redhead Finch
 - ▶ Woodpeckers
 - ▶ Doves
 - ▶ Pigeons
 - ▶ Quail
 - ▶ Red Wing Blackbirds
 - ▶ Nevada State Mountain Bluebird
 - ▶ Blue Jays
 - ▶ Crows
 - ▶ Warblers
 - ▶ Wrens
 - ▶ Monarch Butterflies



Wildlife Preservation Wall

- ▶ To protect and cultivate the local wildlife, the Coulters built the existing Wildlife Preservation Wall to shield the maturing arboretum from high winds and other environmental hazards and protect the migratory bird population which takes refuge in the area
- ▶ The Coulters commissioned the creation of various birdhouses mounted on the wall to provide additional shelter for migratory birds
- ▶ The height of the wall is necessary to ensure use by the birds; for example, finches prefer nest boxes placed over eight feet high to ensure safety from predators



Variance Hearing

- ▶ The **unanimously** approved variance application resolved a code enforcement violation stating the Preservation Wall was a fence or wall in excess of 6 feet
- ▶ The BOA grappled with how to properly define and regulate the Preservation Wall:
 - ▶ The Development Code does not define “wall.”
 - ▶ The Development Code defines “fence” as: [A] wall or barrier constructed of boards, masonry, wire or any other material for the purpose of **enclosing space** or **separating parcels of land**. The term “fence” does not include retaining walls, but does include fence gates and gateposts. § 110.902.15.
 - ▶ The Development Codes defines “structure” to mean: a **walled and roofed building** or manufactured home, including a gas or liquid storage tank that is primarily above ground. *Id.*
- ▶ The BOA determined the terms wall, fence, and structure as defined in the Development Code do not adequately apply to the Preservation Wall.

The code violations found on the property and the actions you must take to correct the situation are: **VIOLATION:**

WCC section 110.406.50(a) – Fences, Walls or Perimeter Planting: Residential Use Types.

The maximum height for fences, walls or perimeter planting is limited to four-and-one-half (4.5) feet in the required front yard setback except as noted by Section 110.406.30, Front Yards. **The**

maximum height for fences, walls or perimeter planting for the remainder of the

residential property is six (6) feet. Where two (2) or more of a property's frontages constitute front yards on a corner lot, one (1) of the yards shall be deemed to be the main entrance and all other yards with street frontage shall be considered modified side yards where fences, walls or perimeter planting can have a maximum height of six (6) feet as long as such fences, walls or perimeter planting are located at least ten (10) feet from the modified side yard property line.

Barbed wire or razor wire livestock fencing in front yards is allowed only on lots with a size

Variance Hearing

- **Comprehensive Record Review**

The BOA thoroughly reviewed the administrative record, including eight letters of support from neighboring property owners, one of whom is the immediately adjacent neighbor

- **No Improper Precedent**

The BOA determined that granting the variance would not set an inappropriate precedent for future variance requests

- **Deliberative Decision-Making**

The BOA vigorously debated the community benefits and the unique characteristics of the Coulter property

- **Extraordinary and Exceptional Circumstances**

The BOA reasonably found that the unique convergence of historical significance, ecological function, and site-specific conditions satisfied the statutory requirement for an extraordinary and exceptional situation warranting variance relief

Variance Hearing

- The wall has been in place for years with no incident or issue
- The Coulters received 8 letters of support from neighbors, including the adjacent property owner; each dot below signifies a neighbor who submitted a letter of support



Overview / Requested Action

► Appeal Denial Request

Applicant requests BOCC deny the appeal and affirm BOA's **unanimous** variance approval for procedural correctness

► Standing and Legal Grounds

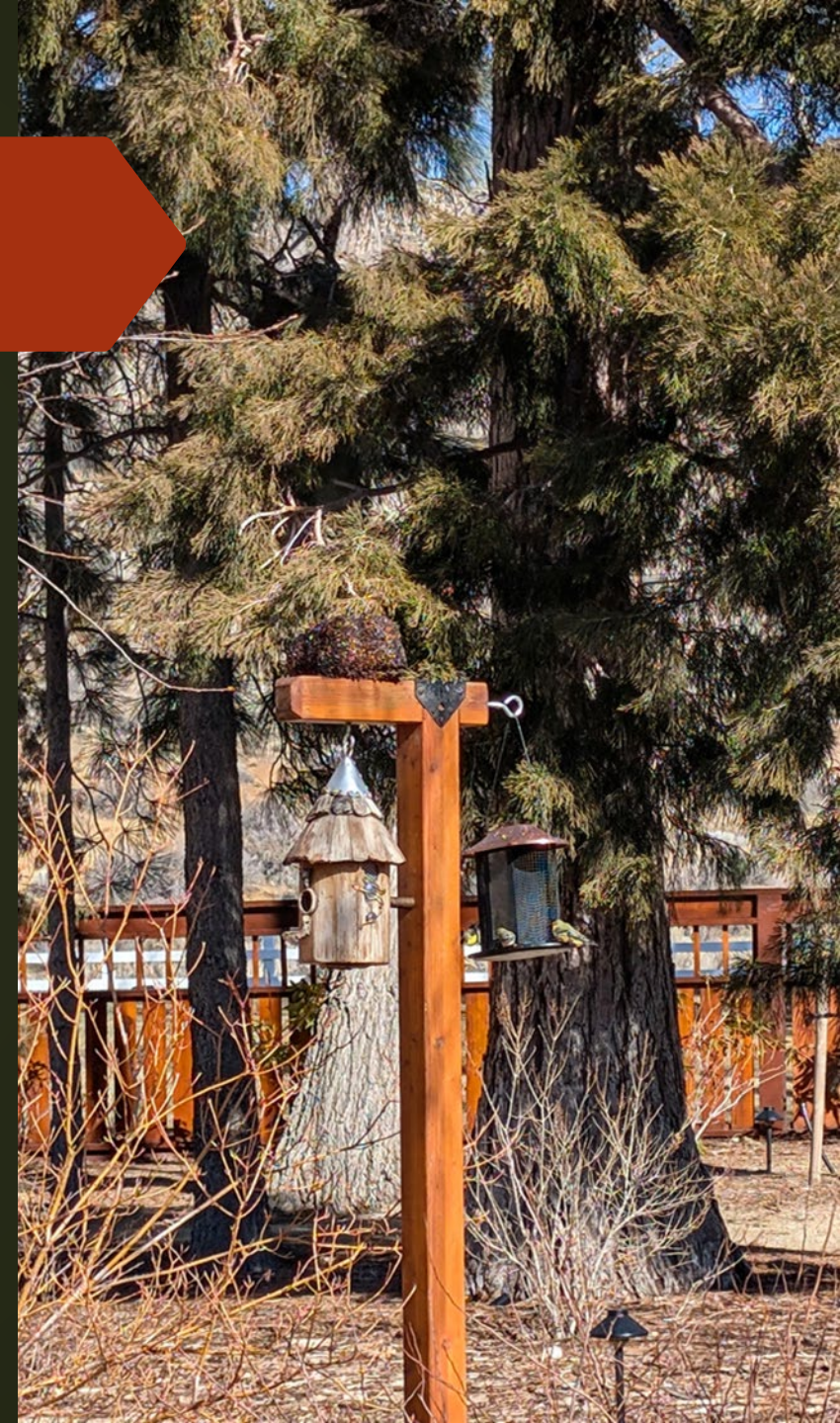
Appeal fails on standing grounds under the Development Code; BOA correctly applied relevant statutes and codes

► Substantial Evidence Support

Administrative record contains substantial evidence supporting variance, reinforcing the presumption of BOA decision validity

► Requested Board Action

BOCC is urged to uphold BOA's approval, acknowledging procedural and substantive merits of the Applicant's position





Threshold Issue: Appellant Lacks Standing

Definition of Aggrieved Person

An aggrieved person suffers a substantial grievance through injury to personal or property rights; ***not merely a party who is dissatisfied with the decision***

Appellant's Lack of Injury

Appellant alleges no injury related to the BOA decision; complaints stem from unrelated disputes

Procedural Threshold Not Met

Without standing as an aggrieved person, the appeal must be denied outright by the BOCC

Threshold Issue: Appellant Lacks Standing

Despite Appellants complaint they were required to maintain the fence-height limit of six feet, the Appellant is not precluded from filing their own variance application, but Appellant is not in a like situation of unique circumstances to require a variance.

Importantly, the Appellant is in no way burdened by the variance—the Preservation Wall is not even visible from the Appellants property.



Threshold Issue: Appellant Lacks Standing

- ▶ Included are photos taken from the point of view of the Appellant's property, facing towards the Coulter property, demonstrating the Wildlife Preservation Wall **is not visible**.





Standard of Review: Presumption of Validity

Presumption of Validity

Decisions of the Board of Adjustment are presumed to be reasonable and lawful. Development Code § 110.912.20(b)(6).

Burden of Proof on Appellant

It is the burden of the Appellant to persuade the Board of County Commissioners that a decision of the Board of Adjustment is unreasonable or unlawful. *Id.*

Guiding Legal Framework

The BOCC's review is based on land use laws focused on protecting health, safety, morals, and welfare. See NRS 278.020.

Substantial Evidence Review

The BOA's decision reflects careful application of standards and weighing of substantial evidence.



Public Welfare: Wildlife Preservation Wall Advances Community Interests

Land Use Regulation Authority

Nevada law empowers local governments to regulate land use protecting public health, safety, morals, and welfare

Community Support for Variance

Multiple property owners and neighbors supported the variance, indicating strong public backing for the project

Environmental Protection Benefits

The Wildlife Preservation Wall acts as a protective barrier for wildlife, promoting habitat conservation and stewardship

Advancing Public Welfare

Approval of the variance aligns with community values and furthers environmental goals for public welfare advancement



Variance Authority and Governing Law

Development Code Height Limits

The Development Code limits fences, walls, and plantings to six feet in height for general compliance

Board of Adjustment Authority

The BOA is empowered to grant variances under specific statutes and code sections following legal procedures

Variance Approval Criteria

Approval requires proving undue hardship, no public detriment, no special privilege, and authorized use

Decision Review Process

The BOA's variance decision follows thorough review of legal standards and evidentiary records





Special Circumstances: Extraordinary Site Conditions

Exceptional Ecological Landmark

The site was home to a 700-year-old unique tree, an ecological landmark lost in 2017

Site-Specific Restoration Efforts

Restoration included an arboretum to reestablish historic wildlife habitat and ecological balance

Wildlife Preservation Wall

The Wildlife Preservation Wall supports wildlife habitat by providing nesting and shelter opportunities

Justification for Variance Relief

These extraordinary ecological conditions justify variance relief under the development code



No Special Privilege Granted

No Special Privileges

Variance approval does not confer special privileges inconsistent with similar properties' limitations

Site-Specific Determinations

Variance decisions are based on unique site and factual contexts, ensuring fair and relevant rulings

No Copycat Entitlement

Approval does not establish entitlement for similar structures on other properties with different attributes

Fair Treatment Affirmed

No valid claim of unequal treatment or special privilege exists under the variance decision



Substantial Evidence Supports BOA Decision

Comprehensive Evidence Review

The BOA conducted a thorough review including testimonies and support letters to ensure informed decision-making

Assessment of Wall Design

The BOA evaluated the wall's design and function against Development Code requirements to verify compliance

Legal Standards and Variance Relief

Board members debated the classification of the structure and confirmed the variance relief was reasonable and lawful



Conclusion and Requested Action

Appellant's Lack of Standing

The Appellant does not qualify as an aggrieved person under the Development Code and lacks legal standing to appeal

- ▶ **Appellant has suffered no injury their personal or property rights and is merely dissatisfied with the BOA's decision**

Validity of BOA Decisions

The Board of Adjustment's decisions are presumed valid and supported by substantial evidence and proper application of regulations

Public Welfare and Stewardship

The variance supports public welfare and environmental stewardship without conferring special privileges

Requested Outcome

The applicant requests the denial of the appeal and affirmation of the BOA's approval to uphold land use process integrity