



April 20, 2026

Board of County Commissioners  
1001 E. Ninth Street  
Reno, NV 89512

Womble Bond Dickinson (US) LLP

One East Liberty Street  
Suite 300  
Reno, NV 89501-2128

**RE: In the Matter of Variance Case Number  
WPVAR25-0011**

Garrett D. Gordon  
Partner  
Admitted in Nevada  
Direct Dial: [REDACTED]  
Direct Fax: [REDACTED]  
E-mail: [REDACTED]

Dear Commissioners:

On behalf of RED DOG TRUST, represented by trustees Curtis and Judy Coulter, the Applicant (“Applicant”) in Case Number WPVAR25-0011 for the 515 Rhodes Wall Height Variance (“Variance”), we hereby oppose James Grimes’ (“Appellant”) Application of Appeal (“Appeal”) to the Board of County Commissioners (“BOCC”). Applicant respectfully requests the BOCC affirm the Board of Adjusters’ (“BOA”) unanimous decision to approve the Variance.

## **I. INTRODUCTION**

The Appeal fails as a matter of both procedure and substance. As a threshold issue, Appellant lacks standing to appeal the BOA’s decision because he has not demonstrated that he is an “aggrieved person” under the Development Code, offering no evidence of any concrete or particularized injury arising from the BOA’s approval of the Variance.

Even if standing exists, which Applicant does not concede, the Appeal presents no legal or factual basis to disturb the BOA’s unanimous approval of the Variance. The record reflects that the BOA carefully applied the governing standards under NRS 278.300 and the Washoe County Development Code (“Development Code”), reasonably concluding that the subject property presents unique and extraordinary circumstances justifying relief and that no special privilege would result. The BOA made its decision after reviewing the merits of the Variance and weighing the substantial evidence presented before it. Appellant’s arguments, which are grounded in unrelated grievances and generalized dissatisfaction, fall well short of overcoming the strong presumption of validity afforded to the BOA and should be rejected entirely.

## **II. APPELLANT IS NOT AN “AGGRIEVED PERSON” AS DEFINED BY THE DEVELOPMENT CODE**

Appellant does not have standing to appeal the BOA’s decision because Appellant does not qualify as an “aggrieved person” under the Development Code. *See* Development Code §§ 110.912.20, 110.910.02. Under Section 110.912.20, a person aggrieved by a decision of the BOA is permitted to appeal the decision to the BOCC. The Development Code defines an “aggrieved person” as:



a person or entity who has *suffered a substantial grievance (not merely a party who is dissatisfied with a decision)* in the form of either:

- (a) The denial of or substantial injury to a personal or property right,  
or
- (b) The imposition of an illegal, unjust or inequitable burden or obligation by an enforcement official, the Board of Adjustment or an administrative hearing officer.

Development Code § 110.910.02 (emphasis added).

Appellant has not provided any evidence to establish that he has suffered a substantial grievance beyond mere displeasure in the BOA's decision. *See generally* Appeal. Appellant fails to allege that the BOA's decision has resulted in any unlawful, unjust, or inequitable burden imposed by the BOA. Rather, it is quite evident from the record that Appellant's dissatisfaction stems from his personal issues with the permitting process and unrelated disputes with the Applicant. *Id.* Mere disagreement with the BOA's approval of the Variance, without more, does not provide a basis to appeal the BOA's decision, nor does it provide a basis to overturn the BOA's decision. *See* Development Code § 110.910.02.

Appellant relies on unrelated disputes, including allegations of prior complaints Applicant submitted to the County concerning Appellant's own property. *See* Appeal at Exhibit 1. Such matters do not constitute the type of concrete, particularized injury to personal or property rights required to be considered an "aggrieved person." The BOA's approval of the Variance has no impact on Appellant's personal or real property rights, and Appellant does not allege it does. Moreover, Applicant believes the Wildlife Preservation Wall is not visible from Appellant's property. As such, Appellant points to no concrete grievance related to the Variance. The substantial public backing for the Wildlife Preservation Wall demonstrates the lack of merit in Appellant's protest. Accordingly, the Applicant respectfully requests that the appeal be denied.

### **III. THE BOA'S DECISION PROMOTES THE HEALTH, SAFETY, MORALS, AND GENERAL WELFARE OF THE COMMUNITY**

On appeal, decisions of the BOA are presumed to be reasonable and lawful, and Appellant bears the burden to persuade the BOCC otherwise. *See* Development Code § 110.912.20(b)(6). When assessing a BOA decision, the BOCC adheres to the statutory purpose of land use regulation as outlined in NRS 278.020. *Id.* In alignment with this objective, Nevada law explicitly empowers local governing bodies to oversee and control land improvements, as well as the placement and structural soundness of such developments, to advance the health, safety, morals, and overall welfare of the community. *See* NRS 278.020.

There is no question that the BOA's approval of the Variance promotes the health, safety, morals, and general welfare of the local community. Thirty-three (33) property owners were notified of the Variance request and the Planning Commission received eight (8) public comments in support. *See* Jolene



Bertetto at 12:13.<sup>1</sup> Applicant further testified that the Wildlife Preservation Wall was designed to function as a protective barrier intended to shelter vulnerable wildlife from predators. *See* Curtis Coulter at 32:00-33:44. The BOA’s approval of the Wildlife Preservation Wall supports local wildlife habitat and reflects the community’s environmental goals. Conversely, denial of the Variance, despite the substantial public support, would disincentivize property owners from undertaking similar restorative and conservational efforts. Accordingly, the BOA’s approval of the Variance is well supported by the record and affirmatively promotes the health, safety, morals, and general welfare of the community by preserving wildlife habitats, encouraging responsible environmental stewardship, and advancing publicly supported land use objectives.

#### **IV. THE BOA PROPERLY APPLIED THE DEVELOPMENT CODE AND NRS 278.300**

The Development Code limits the height of fences, walls, and perimeter plantings to six (6) feet. *See* Development Code 110.406.50(a).<sup>2</sup> However, the BOA is expressly authorized to grant variances from this standard pursuant to NRS 278.300 and the Development Code. To obtain such relief, an applicant is required to show that strict application of the Code would result in an undue hardship arising from a special circumstance unique to the property, including: (1) exceptional narrowness, shallowness, or shape of a specific piece of property; or (2) exceptional topographic conditions; or (3) other extraordinary and exceptional situation or condition of the piece of property. *See* Development Code §110.804.25(a).

In addition, the BOA must determine that the variance will not be detrimental to the public, will not confer a special privilege inconsistent with limitations on similarly situated properties, and that the proposed use remains otherwise authorized.<sup>3</sup> *See* Development Code § 110.804.25(b)-(d). Here, concerns regarding the existence of qualifying special circumstances and the potential for special privileges were thoroughly vetted, resolved, and dismissed. The BOA determined, based on the evidentiary record, the Applicant met all required findings and unanimously supported approval of the Variance.

a. The BOA properly found that special circumstances exist to grant the Variance.

The BOA expressly considered and applied the standards set forth in Section 110.804.25 and determined that the subject property presents extraordinary and exceptional circumstances not shared by similarly situated properties. *See* Peter Ghishan at 56:45 (“Here, I do find an exceptional situation, so I can meet finding (a)”). Substantial evidence supports that determination. The BOA reasonably found that the unique convergence of historical significance, ecological function, and site-specific conditions

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<sup>1</sup> All time stamps reference the February 5, 2026, BOA meeting at the following: [https://www.youtube.com/watch?v=F-IT\\_PcnF8](https://www.youtube.com/watch?v=F-IT_PcnF8).

<sup>2</sup> There is no definition in the Development Code for “wall.” *See* Garrett Gordon at 13:54.

<sup>3</sup> (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; and (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. Development Code §110.804.25.



satisfied the statutory requirement of an “extraordinary and exceptional situation” warranting variance relief. *See* Peter Ghishan at 56:45.

The administrative record underscores the singular nature of Applicant’s property. It was the former site of one of the oldest trees in Nevada—estimated to be over 700 years old—which served as a prominent ecological landmark and supported a significant migratory bird habitat. Garrett Gordon at 14:40-15:00. Following the loss of the tree in 2017, the property was left with a unique environmental void not present on comparable parcels. In response, Applicant implemented targeted, site-specific measures to restore ecological function, including the construction of an arboretum designed to reestablish nesting opportunities and habitat for the wildlife species historically supported by the tree. These undisputed facts provide a rational and legally sufficient basis for the BOA’s finding of special circumstances.<sup>4</sup> *Id.*

b. The BOA properly found that granting the Variance does not confer a special privilege

In evaluating a variance request, the BOA is required to assess the evidence on a case-by-case basis to determine whether the requested relief is justified by the specific circumstances of the subject property. *See* Trevor Lloyd at 54:23-55:24. Consistent with that mandate, the BOA reasonably concluded that approval of the Variance would not confer a special privilege inconsistent with limitations applicable to other properties in the vicinity.

Appellant’s arguments to the contrary rest on an inapt comparison to his own experience obtaining a permit for a conventional fence.<sup>5</sup> *See* James Grimes at 46:00. That comparison is legally deficient. Variance determinations are inherently fact-specific and hinge on whether the properties at issue are similarly situated in all material respects—a threshold Appellant cannot meet. The record reflects that the BOA squarely addressed this issue, finding that the subject property is defined by a singular, centuries-old ecological feature that is neither typical nor replicable on neighboring parcels. In light of that unique condition, there are no materially comparable properties against which to measure the requested relief, thereby foreclosing any viable claim of unequal treatment or so-called “copycat” entitlement. *See* Kathie Julian at 57:59-58:36.

Moreover, the BOA properly contextualized the Wildlife Preservation Wall within the broader landscape of the surrounding area. As Board Member Peter Ghishan noted, other comparable properties in the vicinity incorporate a wide range of unconventional features and structures for purposes of preserving wildlife, further underscoring that approval of the Variance does not bestow a special privilege.

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<sup>4</sup> Applicant’s legal counsel gave a presentation to the BOA, that included a detailed list of the wildlife which the arboretum supports the nesting of, including: Great Horn Owls, Red Tail Hawks, Falcons, White Crowned Finch, Redhead Finch, Woodpeckers, Doves, Pigeons, Quail, Red Wing Blackbirds, Nevada State Mountain Bluebirds, Blue Jays, Crows, Warblers, Wrens, and Monarch Butterflies. *See* Garrett Gordon at 18:47.

<sup>5</sup> Importantly, the Wildlife Preservation Wall does not fall into the conventional definition of “fence” as defined within the Development Code—the Preservation Wall is a unique structure that was built to mitigate the loss of a historical and unique ecological feature. *See* Development Code § 110.902.15; Rob Pearce at 43:16; Kathie Julian at 48:57, 51:53. A similar ecological feature does not exist on neighboring properties. While the Appellant is at liberty to submit their own variance applications as applicable, they are not similarly situated to the Appellants.



See Peter Ghishan at 57:15 (“I don’t think this would be a grant of a special privilege because people in this area raise all sorts of wild things in all sorts of wild structures”).

## V. THE BOA’S DECISION WAS BASED ON SUBSTANTIAL EVIDENCE

The administrative record demonstrates that the BOA conducted a thorough, evidence-based review before approving the Variance. In reaching its decision, the BOA considered:

- Applicant’s personal testimony regarding the unique historical and environmental characteristics of the tree and Applicant’s property (*see* Curtis Coulter at 28:00-36:16);
- A neighbor’s testimony in support of the Variance (*see* Rick Blake at 43:38-45:37);
- Eight (8) letters from local residents in support of the Variance, including one from the neighbor adjacent to the Wildlife Preservation Wall (*see* Jolene Bertetto at 12:13); and
- The design, purpose, and function of the Wildlife Preservation Wall (*see* Variance at 5-8).

The record shows that the BOA followed Development Code requirements by considering the Variance application individually and basing its decision on clear evidence of special circumstances, including the loss of a historic tree and the need to mitigate environmental impact and support existing wildlife. The BOA did precisely what the Development Code requires: it evaluated the Variance application on its individual merits and based its decision on substantial evidence demonstrating the existence of unique, site-specific circumstances arising from the loss of a historic tree. The BOA’s deliberations further confirm the reasonableness of its decision. Several members noted their firsthand familiarity with the structure and its context and specifically commented on its unique characteristics.<sup>6</sup> *See* Peter Ghishan at 56:20; Pat Caldwell at 30:13. Board Members also questioned whether the Wildlife Preservation Wall even falls within the conventional definition of a “fence” under the Development Code, reinforcing the conclusion that the strict application of the height limitation would be ill-suited to the circumstances presented. *See* Rob Pearce at 43:16; Kathie Julian at 48:57, 51:53. Collectively, this evidence provides more than a sufficient basis to sustain the BOA’s approval.

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<sup>6</sup> Board Member Peter Ghishan even mentioned that he has passed Applicant’s property “a countless a number of times over the past 5 years and . . . never even noticed [the Wildlife Preservation Wall].” Peter Ghishan at 56:05-56:11.



## VI. CONCLUSION

Based on the foregoing, Appellant's arguments provide no basis for reversal. Appellant lacks standing as he has not demonstrated any legally cognizable injury sufficient to qualify as an "aggrieved person," and in any event, he has not met his burden to overcome the presumption of validity afforded by the BOA's decision. The administrative record reflects that the BOA properly applied the Development Code, issued relief on substantial evidence, and reasonably concluded that unique and extraordinary circumstances justify the Variance, which neither confers a special privilege nor undermines the public welfare. Accordingly, the BOCC should deny the Appeal and affirm the BOA's approval of the Variance.

Sincerely,

*Garrett Gordon*

Garrett D. Gordon

**Womble Bond Dickinson (US) LLP**