



## STAFF REPORT

**DATE:** November 09, 2023

### **TITLE:**

Unit 03, Lot 233 – 12357 Snowpeak Way: Appeal of the September 13, 2023 Architectural Standards Committee Decision

### **RECOMMENDATION:**

#### **By Motion:**

The Board of Directors,

1. Denies the appeal made by the Owner of Unit 03, Lot 233; and
2. Upholds the September 13, 2023 decision of the Architectural Standards Committee.

### **BACKGROUND:**

Under Tahoe Donner C&Rs, Article V section 12, and Resolution 97-5, the board of directors is the appeal board for member appeals on decisions rendered by the Architectural Standards and Covenants Committees. An owner may appeal decisions of the committee(s) if they believe “that the committee has erred in the process of reaching its decision, has not adhered to the existing rules regarding the said decision, or that there were extenuating circumstances that were not considered by the committee.” (TDA Resolution 97-5 section IV)

At the September 13, 2023 Architectural Standards Committee (ASC) meeting the committee reviewed and considered approval of a new house/garage project located at Unit 3, Lot 233. The committee conditionally approved the project but denied (a) the variance request for a driveway turnout 3 feet 8 inches from the south side property line, and (b) an exception request for a roof overhang 8 feet 11 inches from the south side property line.

The owners of Unit 03, Lot 233 are appealing the ASC’s denial of the variance and exception and are requesting that both the exception and the variance be approved by the appeal board. See Exhibit E.

### **DISCUSSION:**

#### *Committee Authority*

Through delegation of authority by the board of directors, the Architectural Standards Committee (formerly known as the ECC) is the body that reviews building permit applications for the purpose of ensuring architectural continuity, quality, and harmony within Tahoe Donner. The committee is authorized to approve or deny building permit applications as provided for in the C&Rs, and the Architectural Standards Rules, Procedures and Restrictions.

Before any owner may proceed with any alteration to their lot or an existing structure, the ASC must review and approve the plans and specifications and issue an ASC permit. (As provided in the C&Rs, Article V, Section 1(a)).





### Variations

The ASC is authorized to consider approving or denying variance requests per Tahoe Donner Covenants and Restriction Article VIII, section 3,(b), and follow the procedures for granting variances set forth in Article V, section 8 as listed below,

The Environmental Control Committee shall be entitled to allow reasonable variances in any procedures specified in this Article, the ECC Rules, the minimum construction standards specified in Article VI, or in any land use restrictions specified in Article VIII in order to overcome practical difficulties, avoid unnecessary expenses or prevent unnecessary hardship to Owner-applicants. Before a variance can be granted, however, all of the following conditions must be met:

- (a) If the requested variance will necessitate deviation from, or modification of, a property use restriction that would otherwise be applicable under this Declaration, the Committee must conduct a public hearing on the proposed variance after giving prior written notice to the Board and to any Owner of a Separate Interest located within 500 feet of the Separate Interest affected by the variance.
- (b) The Committee must make a good faith written determination that the issuance of the variance will be consistent with either of the following criteria:
  - (i) the requested variance will not constitute a material deviation or that the proposal allows the objectives be substantially achieved despite compliance; or
  - (ii) the variance relates to a requirement land use restriction or minimum construction standard otherwise applicable hereunder that is unnecessary or burdensome under the circumstances. No variance will be granted if the ECC concludes that the request, if granted, will result in a material detriment, or create an unreasonable nuisance with respect, to any portion of the Properties.

### Side Set Back Exception

The ASC is authorized to consider approving or denying an exception request for side set back encroachment per Tahoe Donner Covenants and Restriction Article VI, section 2 (c)(ii),

A side yard set back area, the minimum width of which shall be ten feet along any single inner side lot line of such Lot. The ten foot side yard set back is required in order to avoid snow shedding from the Residence onto the adjacent Lot and to prevent a row house appearance of adjoining Residences. The Committee shall be entitled to permit exceptions to this side yard setback requirement to a minimum of five feet, without compliance with the variance procedures specified in Article V, section 8, when such is deemed necessary to accommodate special circumstances that would otherwise lead to burdensome costs to the Owner. Side yard setbacks shall be measured from the eave of the Residence's roof, rather than from the foundation.



## *ASC Submittal Proceedings*

At the September 13, 2023 Architectural Standards Committee (ASC) meeting, the ASC reviewed a submittal for a new house/garage located at Unit 3/Lot 233. The project included a variance and exception request for the intrusion of the driveway and eave(s) into the right side setback. As is consistent with review procedures, staff provided a project overview to the committee, and verified submittal and neighbor notification requirements.

### Variance Request

The Committee reviewed the Fayet-Faber house/garage submittal by starting with the variance request which proposed a 6-foot 4-inch encroachment into the side set back for the driveway turnout with the corner edge of pavement lying 3 feet 8 inches off the property line (see Exhibit B).

Discussion between the committee and the owner's representative/architecture firm occurred. During this discussion, the ASC board liaison reminded the committee of the BOD guidance regarding new home builds where variances and or exceptions are requested and the criteria for approval or redesign. Following discussions on the variance and deliberation, the committee determined that the driveway turnout did not meet the hardship test for a variance under Article V, section 8 of the Tahoe Donner C&Rs and denied the variance request. The committee found that the driveway design into the side set back was unnecessary for safety and could be redesigned and re-submitted to not encroach in the set back.

### Exception Request

After reviewing and taking action on the variance request, the committee then transitioned into the review of the exception request which included an encroachment of the eave on the south side project one foot 4 inches into the 10-foot side setback (see Exhibit B). The designer offered, based on the denied variance, that they could make a design change for the eaves if the ASC would not approve.

Based on the discussion with the designer and the information at hand, the Committee made a motion and vote to deny the exception. The committee also determined that the proposed eave in the side setback did not meet the test for burdensome costs under Tahoe Donner C&Rs, Article VI, Section 2(ii).

### *Committee Action*

Following the variance and exception request, the Committee reviewed the rest of the project against the design standards and conditionally approved the project as follows:

- Action 3:0 (Clarin, Staehlin, Veni) Deny the driveway variance and to require that the turnout be pulled back to at least 10 feet from the side property line.
- Action 3:0 (Clarin, Staehlin, Veni) Deny the exception for eaves in the side setback.
- Action 3:0 (Clarin, Staehlin, Veni) The committee agreed to approve the submittal as a whole but to deny the variance for the driveway in the side setback and to deny the exception for the eave in the side setback and to require updated plans to be submitted to the Community Standards Office for review by one member of the committee before permit issuance.





The Fayet-Faber house/garage submittal was held consistent with established procedures in the Covenants and Restrictions Article V Environmental and Architectural Standards Rules, Procedures and Restrictions. The ASC deliberated and acted reasonably and in good faith at the submittal meeting in denying the exception and the variance. As such, the Committee recommends the board of directors deny the appeal and uphold the September 13, 2023 Architectural Standards Committee decision.

#### **OUTREACH:**

The following member outreach or notification was provided:

- The property owner received the committee decision letter containing the action statement within 10 business days as required.
- The Decision Letter was mailed on September 18, 2023, and sent 5 business days after the September 13, 2023 Architectural Standards Committee meeting.
- The property owner was notified of the appeal receipt and acceptance
- Notice of Appeal Hearing was sent for November 14, 2023 hearing date

#### **FISCAL IMPACT:**

N/A

#### **ALTERNATIVE:**

Pursuant to Resolution 97-5, the board has a number of alternatives:

1. The Board may reverse or modify the decision of the committee;
2. The board may choose to approve the appeal;
3. The board may make findings related to the facts or the applicability of the rules and return the matter to the committee for further consideration; and/or
4. The board may recommend specific action to be undertaken by the General Manager relative to individual case(s) or Tahoe Donner policies. Such recommendations may include an appropriate review by legal counsel.

#### **ATTACHMENTS:**

Exhibit A: Submittal Timeline

Exhibit B: Project Location, Plans and Renderings

Exhibit C: ASC Decision Letter

Exhibit D: September 13, 2023 ASC Meeting Minutes

Exhibit E: Request for Appeal

Prepared By: Kevin Finnen, Community Standards Manager

Reviewed By: Rod Whitten, Architectural Standards Committee Chair

Reviewed By: Annie Rosenfeld, Interim General Manager

Board Meeting Date: November 14, 2023

