

STAFF REPORT

DATE: 01/04/2024



TITLE:

Unit 04, Lot 312 - 14730 Northwoods Boulevard: Appeal of the November 15, 2023, Architectural Standards Committee Decision

RECOMMENDATION:

By Motion:

The Board of Directors,

1. Denies the appeal made by the Owner of Unit 04, Lot 312; and
2. Upholds the November 15, 2023, decision of the Architectural Standards Committee with the Board of Directors clarification on building in a Recreation Easement.

BACKGROUND:

Under Tahoe Donner Covenants and Restrictions (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 November 15, 2023, Architectural Standards Committee (ASC) meeting the committee reviewed and considered approval on a proposed garage/addition project located at Unit 04, Lot 312 with an exception request for the garage eave encroachment into the side setback, and a variance request for the same eave encroachment into the Recreation Easement (RE). The committee took action as follows,

Action 3:0 (Whitten, Sonder, Clarin) The committee agreed to approve the project conditional upon payment of the deposit and to approve the exception for eaves in the side setback but to deny the variance for those eaves in the Recreational Easement, requiring updated plans for one member review before permit issuance with a recommendation that the variance be approved by the Board of Directors in the event an appeal is filed by the applicant, due to the hardship of having to build a substandard garage if the variance were denied.

The owners of Unit 04, Lot 312 are appealing the ASC’s decision to deny the variance request for encroachment of the garage eaves in the RE and are requesting the board to approve the variance request, see Exhibit E.



DISCUSSION:

The proposed project is a new attached garage to an existing single-family home constructed in 1982 without a garage. The proposed project includes a 481SF attached two-car garage, with a 1,86SF addition behind it, for a total of 667SF at ground level.

The location of the existing structure constrains the proposed construction due to its proximity to the RE, which is 10 feet wide on the south side (right side) of the subject property and spans 10 feet over the adjacent property; for a 20-foot wide RE. The available space for an attached garage without encroaching into the RE is 16 feet. The proposed garage was designed 15'7" wide from wall to wall (16'6" wide from eave to eave), with the south wall of the garage directly on the edge of the RE and the eave extending up to 18" into the RE at 8 feet above grade at its shortest point.

As submitted, the project included a variance request for the proposed eave encroachment into the RE as described above. Recreation Easements are defined and regulated in Article IX section 2 of the C&Rs as follows:

Recreational Easements. Recreational easements are shown on the Subdivision Maps. Within these easements, no structure of any kind shall be placed, erected, constructed or maintained, and no tree or vegetation shall be felled, cut, trimmed, pruned or removed, except as may reasonably be required by the Association to construct and maintain trails and park sites therein and/or for the construction and maintenance of public and private utility easements shown on the Subdivision Maps. Such easements shall at all times be open and accessible to the Members of the Association, their guests and invitees and such other persons as may from time to time be designated by the Association, for right of way and general park purposes, subject to reasonable rules and regulations established by the Association.

AS Rules specify the minimum standard for garages, driveways and parking areas. AS Rule Section III, C states,

All projects must include a garage or a future double-car garage site. A carport is permitted only with an existing garage. The paved driveway or paved parking area may not be less than 400 square feet exclusive of the garage or any access easement. Any home with a garage must have a paved area from the street to the garage. A home without a garage must have a minimum of 400 square feet of paved area aligned with a future garage site and exclusive of any access easement. (The future garage site will not be counted as part of the required 400 square feet.) Paving is to be limited to a maximum of 20' in width at the property line, except when an access hardship can be demonstrated. Two separate access points will not be allowed.

The project's original house was built in 1982. Through 1985, the AS Rules stated, "whether or not an owner intends to construct a garage at the time of the single-family residence construction, a garage site must be designated of at least 20'X20'" (400SF). Additionally, at the time, the side setbacks measured to 5 feet not to today's standard of 10 feet. The placement of the original house would have accommodated the 20'X20' rule. However, the RE of 10 feet on either side of the property



line was not shown on any archived plans including the original house plans, but is detailed in the subdivision map and descriptions, and part of the recorded deed. Assumedly, had the RE been identified on the site plans, the existing house would either have been designed differently or shifted left to ensure the 20' X20' garage site was out of the RE.

Committee Authority

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

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 for in the C&Rs, Article V, Section 1(a).

Variances

The ASC is authorized to consider approving or denying variance requests per Tahoe Donner C&Rs Article VIII, section 3,(b), and providing the procedures for granting variances outlined 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 (Article V), 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.



ASC Submittal Proceedings

As is consistent with submittal review procedures, staff provided a project overview to the committee, and verified submittal conditions were met including but not limited to neighbor notification for new construction and variance request requirements.

The ASC project submittal review was held consistent with established procedures in the C&Rs Article V and AS Rules requirements. There were no neighbor comments submitted in writing or provided by attending the meeting on either the exception or the variance.

As noted previously, the project proposed an encroachment into the RE regulated as defined and regulated in Article IX of the C&Rs. The committee's variance authority does not extend to Article IX. Therefore, the committee could not grant the variance. As such, the ASC deliberated and acted reasonably and in good faith in denying the variance, see Exhibit D.

Board Authority

The question at hand is whether the board of directors can approve the variance request. The Articles VII section 1 and IX section 1 and 2, provide the basis of association powers granted to the board of directors and the limitations. The board of directors acts as the appeal board on Architectural Standards and Covenants Committee matters, and as such is limited to the same authorities provided to them. There is no higher variance granting authority afforded to the board in any alternate governing document article other than what is stated herein in this staff report. Given this analysis, staff recommends the board,

1. Denies the appeal made by the Owner of Unit 04, Lot 312; and
2. Upholds the November 15, 2023, decision of the Architectural Standards Committee with the Board of Directors clarification on building in a Recreation Easement.

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 November 27, 2023, and sent 10 business days after the November 15, 2023, Architectural Standards Committee meeting.
- The property owner was notified of the appeal receipt and acceptance.
 - Notice of Appeal Hearing was sent via email and USPS on December 18, 2023 date for a January 9, 2024, appeal hearing.

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 Application Packet

Exhibit B: Project Location, Plans and Renderings

Exhibit C: ASC Decision Letter

Exhibit D: November 15, 2023, ASC Meeting Minutes Excerpt

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: January 9, 2024

