



COUNTY OF PLACER
Community Development Resource Agency

John Marin, Agency Director

PLANNING

Michael J. Johnson, AICP
Planning Director

TO: Board of Supervisors

FROM: Michael J. Johnson, Planning Director

DATE: April 17, 2007

SUBJECT: THIRD PARTY APPEAL OF A PLANNING COMMISSION APPROVAL OF A VARIANCE (PVAA 20060640) - DIETRICH FENCE HEIGHT AND GRAPE ARBORS

ACTION REQUESTED

The Board is being asked to consider a third-party appeal from Kelly Anderson of the Planning Commission's approval of a Variance for the Dietrich fence and grape arbors on the property located near the border of the City of Roseville. It is staff's recommendation that the Board uphold the decision of the Planning Commission and deny the appeal.

BACKGROUND

The property in question is a 14,000 square foot (one-third acre), relatively level parcel, with a single-family residence located at 3525 Old Auburn Road in the Roseville area (Assessor's Parcel Number 468-060-033). The surrounding area is characterized by smaller urban lots to the west (the "Huntington Oaks" subdivision within the city limits of the City of Roseville), larger suburban lots to the south across Old Auburn Road, and a variety of more rural lots to the north and east, ranging in size from 14,000 square feet to more than nine acres in area.

On September 21, 2006, the Zoning Administrator considered a five-part Variance request by Stephan and Kari Dietrich to allow for a series of modifications to the subject property on Old Auburn Road. After listening to all of the testimony and reviewing the written correspondence, the Zoning Administrator issued a written determination approving the following Variance requests:

- 1) A Variance to the front setback requirement to allow the construction of a new front entry for the existing residence at 90 feet, 6 inches from centerline (i.e., an 18-inch encroachment into the front yard setback);
- 2) A Variance to the front setback requirement to allow the construction of a garage at 62 feet, 2 inches from the centerline of Old Auburn Road (i.e., an approximately 30-foot encroachment into the front yard setback); and
- 3) A Variance to the minimum lot size requirement of one-half acre to allow for the keeping of poultry.

The Zoning Administrator denied the requests for:

- A Variance to the maximum fence height requirement of six feet for the sides and rear of the property and three feet maximum height within the front setback to allow a fence 7 feet, 6 inches in height above natural grade to allow the entire fence to match the existing portions of the fence already built to that height; and
- A Variance to the standard side and rear structural setback requirements of 20 feet (side) and 10 feet (rear) to allow two existing grape arbors to remain at 10 inches from the north (rear) property line and six inches from the east (side) property line.

Kelly Anderson, the neighbor to the east of the applicants, filed a third-party appeal of the three Variance requests which had been approved by the Zoning Administrator. That appeal was considered by the Planning Commission at its November 16, 2006 meeting. As part of the hearing, the issues of the grape arbors and fence were also discussed. The Planning Commission expressed its desire to approve the Variance requests for the fence and the grape arbors. However, because these two other issues were not properly noticed, no final action could be taken on the fence and the grape arbors, and the decision was made to place those two issues on a future agenda.

After receiving public testimony, the Planning Commission took action to deny the three third-party appeal issues. No appeal was filed on the Planning Commission approval of the Variance for the house setback, the garage setback, and the keeping of chickens. No further action is required on those three elements.

Consideration of the Variance for the fence and the grape arbors was heard by the Planning Commission at its February 8, 2007 meeting. Mr. Anderson did not appear in order to give testimony, nor did he submit anything in writing for the hearing. After listening to the information presented by staff and the Dietrichs, the Planning Commission unanimously adopted a motion to approve the Variance to allow both grape arbors to remain and to allow the existing north and east fence heights of seven feet, six inches to remain, and the west fence height to remain at six feet, and required that the extension of the east fence to the end of the approved garage addition be limited to a height of six feet and then curve downward to a height of 43 inches at the end, to be located at the utility pole or the end of the existing picket fence, whichever is closest to the residence.

APPEAL

On February 16, 2007, Mr. Anderson filed an appeal of the Planning Commission's decision regarding the grape arbors and the fence height, although Mr. Anderson neither submitted comments in writing nor appeared at the February 8, 2007 hearing. While there exists some question as to whether or not Mr. Anderson has standing to bring this appeal, the decision was made to allow Mr. Anderson to appear in front of the Board of Supervisors. The Board may wish to deliberate on whether or not Mr. Anderson has standing. In preparation for a substantive discussion of the appeal on the merits, staff has provided a response to each issue raised by the appellant.

Complaint regarding Planning Commission deliberations on November 16, 2006

At the November 16, 2006 Planning Commission hearing, the appellant contends it was the direction of County Counsel to allow the hearing to be conducted de novo, which allowed the Planning Commission to hear information about the grape arbors and fence issues, along with the three items being appealed. Mr. Anderson indicates in his appeal that the Planning Commission should have initiated a discussion limited to only those issues that were the "specific subject of the Appeal".

Staff Response:

To begin, if Mr. Anderson has issues with the hearing that took place on November 16, 2006, he should have filed an appeal of that decision, which he did not. Nevertheless, staff considered his issues and has found that his complaints regarding that hearing are without merit.

During Planning Commission consideration of the appeal at its November 16, 2006 meeting, County Counsel did state that the hearing was "de Novo," which meant that the Planning Commission can consider each item without giving weight to the lower decision making body's reasoning or conclusions. The Planning Commission also discussed the distinct issue of whether or not the five different elements of the initial application were substantially related, and concluded they they were in fact interlinked, and that it was appropriate to consider all aspects of the initial application [as allowed for under County Code Section 17.60.110 (D)(4)(ii)]. The notice for the hearing, however, did not describe the grape arbors or fencing issue, so County Counsel advised that those items be heard as a subsequent hearing.

While Mr. Anderson does not agree with the conclusion made by the Planning Commission regarding the nature of the appeal, the interpretation of the appeal did not impact the outcome of the hearing because the grape arbor and fencing issues were not decided upon at that hearing. Again, he should have filed an appeal within ten day appeal period that followed. Mr. Anderson did not appeal that action.

Dietrich's Appeal Application

Mr. Anderson is appealing the Commission's decision to accept the Dietrich's appeal for the grape arbors and the fence height after the 10-day time period following the original Zoning Administrator's hearing.

Staff Response:

As noted in the previous response, the Planning Commission concluded it was in fact appropriate to consider all five elements of the appeal, even though Mr. Anderson had only identified three elements of the project as the basis for his appeal. Because of the noticing issue, however, the other two items had returned to the commission. Based on this turn of events, the Dietrichs were asked to file a formal application to memorialize the direction provided by the Planning Commission.

Waiver of Filing Fee

Mr. Anderson objects to the decision of the Planning Director to waive the Dietrich's Appeal filing fee.

Staff Response:

This was an administrative decision that was not a part of this appeal of the Planning Commission's February 8, 2007 decision. The response to this is the same as discussed above; based on the Planning Commission's determination that the five items on appeal were substantially related, the appeal fee was waived.

Fence Height

Mr. Anderson is appealing the decision of the Planning Commission to allow the existing north and east fence heights of seven feet, six inches to remain, and the west fence height to remain at six feet, and to allow the extension of the east fence to the end of the approved garage addition at a height of six feet and then curve downward to a height of 43 inches at the end, to be located at the utility pole or the end of the existing picket fence, whichever is closest to the residence. The appellant does not cite specific reasons for his appeal.

Staff Response:

The Planning Commission determined that there was justification to allow a Variance to the standard fence height, in that the Variance allows the existing fence to remain and then to transition downward to ultimately match the fence height of the neighboring fence.

Grape Arbors

Mr. Anderson is appealing the Commission's decision to allow two grape arbors to remain within the side and rear setbacks at a height greater than permitted by the Zoning Ordinance.

Staff Response:

The Planning Commission determined that the grape arbors are an appropriate use in the Residential/Agricultural zoning district where the subject property exists. The arbors are open on all sides with no roof and therefore do not impose an undue burden on the adjoining residences.

CONCLUSION

As discussed above, staff has concluded that there are no merits to the issues raised by the appellant. The Planning Commission considered these same issues and voted unanimously to deny Mr. Anderson's appeal and approve the Variance for the fence height and grape arbors. No new information is provided in the appeal that would necessitate reversing the Planning Commission's action.

RECOMMENDATION

Staff recommends that the Board of Supervisors deny the appeal, thereby approving the Variance, based upon to the following Findings.

FINDINGS:

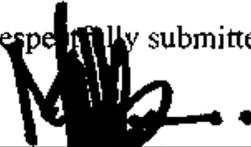
CEQA FINDINGS:

1. The project is Categorical Exempt from environmental review pursuant to provisions of Section 15305 of the California Environmental Quality Act Guidelines and Section 18.36.070 of the Placer County Environmental Review Ordinance (Class 5, Minor alterations in land use limitations).

VARIANCE FINDINGS:

1. There are special circumstances applicable to this project, specifically the lot size and shape, configuration of the existing residence and proximity to a busy road. Because of such circumstances, the strict application of the Zoning Ordinance has been found to deprive the subject property of privileges enjoyed by other properties in the vicinity and under identical zone classifications.
2. The Variance authorized does not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and in the same zone district, as there are several fences in the vicinity of the subject parcel which have been constructed at a height of over three feet within the front setback.
3. The Variance does not authorize a use that is not otherwise allowed in the zoning. Fences and grape arbors are allowed in this zone district, and those proposed are not a significant deviation from what is allowed.
4. The granting of the Variance does not, under the circumstances and conditions, applied in the particular case, adversely affect public health or safety, is not materially detrimental to the public welfare, nor injurious to nearby property or improvements. The grape arbors have no walls or roofs and are not considered injurious to neighbors, and the extension of the fence to the end of the approved garage will help create additional visual screening of the garage.
5. The Variance is consistent with the residential land use policies of the Placer County General Plan.

Respectfully submitted,



MICHAEL J. JOHNSON, AICP
Planning Director

EXHIBITS:

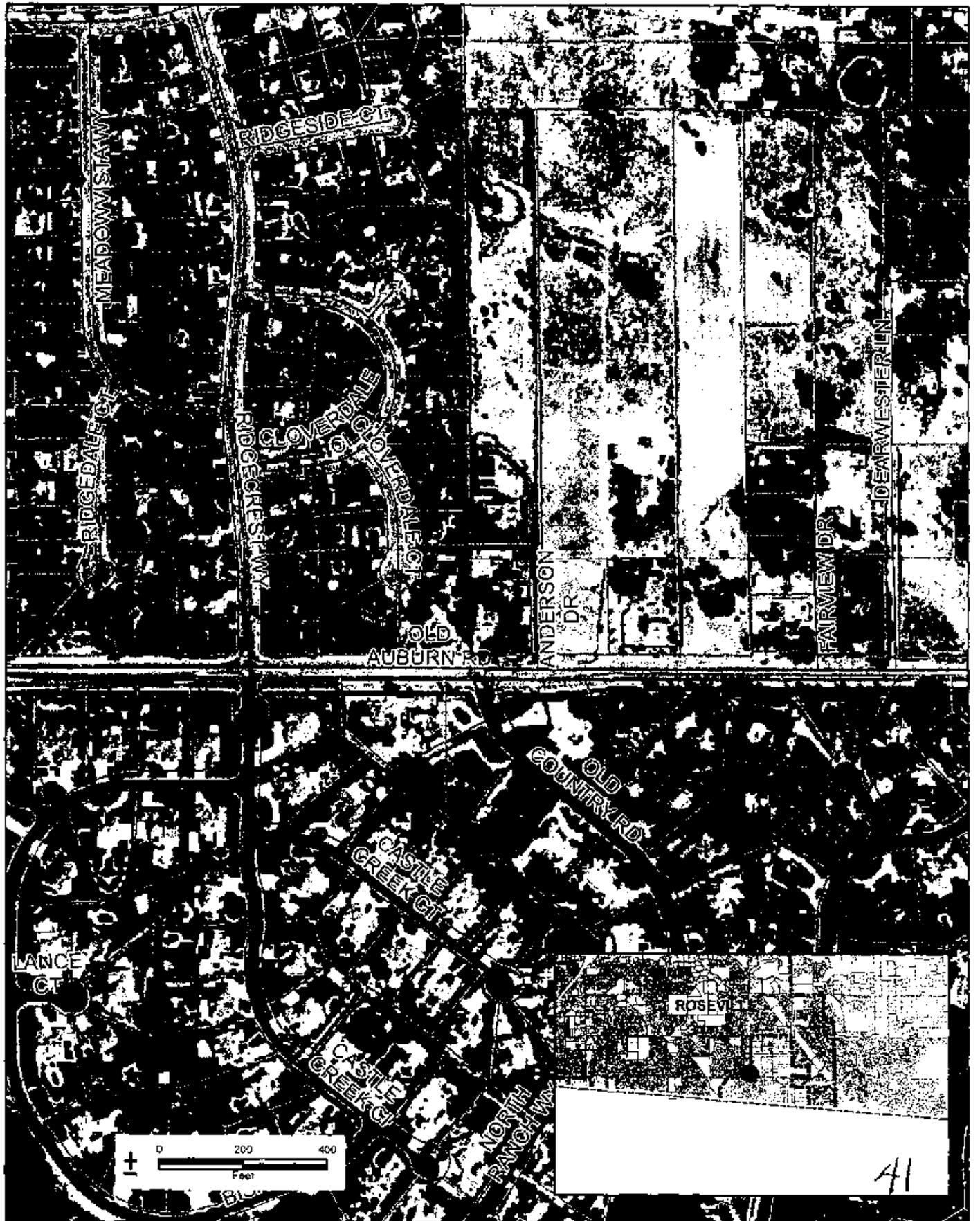
- Exhibit 1 - Vicinity Map
- Exhibit 2 - Site Plan
- Exhibit 3 - Conditions of Approval
- Exhibit 4 - Kelly Anderson Appeal

cc: Kelly Anderson - Appellant
Stephan and Kari Dietrich - Applicant

Copies to be sent by Planning:
Sharon Boswell - Engineering and Surveying Department
Laura Mattson - Environmental Health Services
Christa Darlington - County Counsel
Michael Johnson - Planning Director
Subject/chrono files

Dietrich Home - APN: 468-060-033

November 7, 2006





GENERAL NOTES

- ALL WORK SHALL COMPLY WITH THE REQUIREMENTS OF THE 2001 CALIFORNIA BUILDING CODE, 2001 CALIFORNIA PLUMBING CODE, THE 2001 CALIFORNIA FIRE CODE, THE 2001 CALIFORNIA ENERGY CODE (TIT. 24), THE 2001 CALIFORNIA MECHANICAL CODE, THE 2001 CALIFORNIA ELECTRICAL CODE, THE 2001 UNIFORM HOUSING CODE, AND ANY OTHER LOCAL CODES, RULES, OR REGULATIONS.
- THE CONTRACTOR OR OWNER SHALL BE RESPONSIBLE FOR COORDINATING THE WORK OF ALL TRADES AND SHALL VERIFY ALL EXISTING CONDITIONS BEFORE ORDERING MATERIAL OR INITIATING CONSTRUCTION.
- PROVIDE OVERHEAD CABLES, & SUBMITTER TO THE SAME RESPECTIVE OVERHEAD STANDARDS.
- PROVIDE A MINIMUM OF NINE FEET AND 15" VERTICAL CLEARANCE ALONG ITS ENTIRE LENGTH.

STITCHES: 1/8" PLAN
 GRAVEL: 2" 60% GRADING REQUIRED FOR GRAVE FILL. SOL TO BE TAKEN OFF SITE
 APPROX. ELEVATION: 2000 FT



STEPHAN & KARI DIETRICH
 3525 OLD ALBURN ROAD
 ROSEVILLE, CA 95661



APN 468-060-033
 .32 ACRES

EXISTING (E) RESIDENCE
 FF ELEV - + 201'
 1875 SQ FT LIVING EXISTING
 271 SQ FT COVERED PORCH EXISTING
 461 SQ FT GARAGE EXISTING

(N) GARAGE CONVERSION
 FF ELEV - + 201'
 461 SQ FT LIVING ADDITION

(N) COVERED PORCH
 50 SQ FT COVERED PORCH

NEW (N) ADDITION
 FF ELEV - + 201'
 506 SQ FT LIVING ADDITION
 2842 SQ FT LIVING TOTAL

(N) GARAGE ADDITION
 FF ELEV - + 200'
 782 SQ FT GARAGE

SITE PLAN

0' 10' 20' 30' 40'

"A"
[Signature]
 Zoning Administrator

10/26/06

OLD ALBURN ROAD

- (E) SPRINKLER VALVE
- (N) POWER PANEL
- (E) SEWER
- (N) ABOVE GROUND POWER
- (E) WATER METER
- (E) ABOVE GROUND POWER



**CONDITIONS OF APPROVAL -VARIANCE APPEAL -
"DIETRICH" (PVAA 2006 0640)**

THE FOLLOWING CONDITIONS SHALL BE SATISFIED BY THE APPLICANT, OR AN AUTHORIZED AGENT. THE SATISFACTORY COMPLETION OF THESE REQUIREMENTS SHALL BE DETERMINED BY THE DEVELOPMENT REVIEW COMMITTEE (DRC), COUNTY SURVEYOR, AND/OR THE PLANNING COMMISSION.

1. The Variance is approved to allow for:
 - a. The existing north and east fence heights of seven feet, six inches to remain, and the west fence height to remain at six feet, and requires that the extension of the east fence to the end of the approved garage addition be limited to a height of six feet and then curve downward to a height of 43 inches at the end to be located at the utility pole or the end of the existing picket fence, whichever is closest to the residence.
 - b. This Variance also allows for two existing grape arbors to remain, one 8 inches away from the east property line and the other 10 inches away from the rear property line.
2. A building permit shall be obtained from the Placer County Building Department for all structures on the property which require a building permit.
3. This Variance (PVAA 2006 0640) shall expire on February 8, 2009 unless previously exercised.

FEBRUARY, 2007

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O:\PLUS\PLN\COND\FINAL\PVAA20060640 DIETRICH

EXHIBIT 3

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PLACER COUNTY PLANNING DEPARTMENT

Reserved for Date Stamp

AUBURN OFFICE

11414 B Avenue
Auburn, CA 95603
530-886-3000/FAX 530-886-3080

TAHOE OFFICE

565 W. Lake Blvd./P. O. Box 1909
Tahoe City CA 96145
530-581-6280/FAX 530-581-6282

Web page: www.placer.ca.gov/planning

E-Mail: planning@placer.ca.gov

RECEIVED

FEB 15 2007

CDRA

STAFF REPORT

Due 3/7/07
PLANNING APPEALS

The specific regulations regarding appeal procedures may be found in the Placer County Code, Chapters 16 (Subdivision), 17 (Planning and Zoning), and 18 (Environmental Review Ordinance).

OFFICE USE ONLY

Last Day to Appeal _____ (5 pm)	Appeal Fee \$ <u>465.00</u>
Letter _____	Date Appeal Filed <u>2/16/07</u>
Oral Testimony _____	Receipt # <u>07-36229</u>
Zoning _____	Received by <u>ED B</u>
Maps: 7-full size and 1 reduced for Planning Commission items	Geographic Area <u>WEST</u>

TO BE COMPLETED BY THE APPLICANT

1. Project name Dietrich APN 468-060-033 (PVAAT 20060640)

2. Appellant(s) Kelly Anderson (916) 532-1470

Address 9611 Anderson Dr. Roseville, CA 95661

Telephone Number _____ Fax Number _____

City _____ State _____ Zip Code _____

3. Assessor's Parcel Number(s): 468-060-034-000

4. Application being appealed (check all those that apply):

<input type="checkbox"/> Administrative Approval (AA- _____)	<input type="checkbox"/> Tentative Map (SU B- _____)
<input type="checkbox"/> Use Permit (CUP/MUP- _____)	<input checked="" type="checkbox"/> Variance (VAA- _____)
<input type="checkbox"/> Parcel Map (P- _____)	<input type="checkbox"/> Design Review (DSA- _____)
<input type="checkbox"/> General Plan Amendment (GPA- _____)	<input type="checkbox"/> Rezoning (REA- _____)
<input type="checkbox"/> Specific Plan (SPA- _____)	<input type="checkbox"/> Rafting Permit (RPA- _____)
<input type="checkbox"/> Planning Director Interpretation _____ (date)	<input type="checkbox"/> Env. Review (EIAQ- _____)
<input type="checkbox"/> Minor Boundary Line Adj. (MBR- _____)	<input checked="" type="checkbox"/> Other: <u>variance (see above)</u>

5. Whose decision is being appealed: PLANNING COMMISSIONS FEB 8

6. Appeal to be heard by: Board of Supervisors

7. Reason for appeal (attach additional sheet if necessary and be specific):
See attached summary

(If you are appealing a project condition only, please state the condition number)

Note: Applicants may be required to submit additional project plans/maps.

Signature of Appellant(s) Kelly Anderson

44 MS.
DRAWN BY LISA CORNHAN
E&S - PHIL FRANZ / SHARON BOSWELL
E&S - DANA WYNNINGER
JAN 15 10:45 AM 2007

Attachment to Planning Appeal
Filed by Kelly Anderson
on
February 16, 2007

1. Appealing the Commission's decision to hear my Appeal de novo. As stated by Krista Darlington, Placer County Counsel, "Yes, the hearing is de novo." (See page 6 November 16, 2006 transcripts of Appeal) **The appellate body shall initiate a discussion limited to only those issues that are the specific subject of the Appeal.** The Appeal I filed specifically appealed the garage/front setback which was one issue of the Dietrich's five part Variance Request. Only one condition of approval was appealed. Only that condition and issues directly related to the subject of that condition will be as part of the discussion by the appellate body (Planning Commission). The permit for the project was not appealed.

The appeal body may affirm, affirm in part, or reverse the action, decision or determination that is the subject of the Appeal only if such other issues or concerns are substantially related to the subject of the Appeal which the arbors/fence are not.

See PLACER COUNTY ZONING ORDINANCE, Edition #9, Planning and Zoning, 17.60.110 Appeals, D, 4, Actions and Findings.

2. Appealing the Commission's decision to accept the Dietrich's application for Appeal on the fence/arbors after the 10 calendar day time period which is allowed to file an Appeal. October 23, 2006 was the last day to file such an Appeal. *An Appeal filed more than 10 days after the decision shall not be accepted by the Planning Department.* (Shall is always mandatory never discretionary.) See Placer County Zoning Ordinance.

3 Appealing the decision of the Planning Director to waive the Dietrich's Appeal filing fee, interpreting their Appeal as "an extension of my Appeal". *The Appeal shall be accompanied by the filing fee...* See Placer County Zoning Ordinance. Where a hardship was created by the applicant's own acts, he is not entitled to relief. Illegal work begun prior to the Variance Request is not a hardship.

4 Appealing the Commission's decision to allow a perimeter fence 7' 6" in height above the natural grade to exist above the maximum height of 6' for the east side and extend into the Old Auburn Road front set back to a height greater than Placer County Zoning Ordinance allows.

5 Appealing the Commission's decision to allow the rear fence to remain or be constructed at a height of 7' 6" above the natural grade or continuing at a height greater than permitted by the Placer County Zoning Ordinance.

6 Appealing the Commission's decision to allow a variance to the standard side and rear structures (arbors) set back requirements of 20' side and 10' rear property line and/or structures to remain at a height greater than permitted by the Placer County Zoning Ordinance.