

**COUNTY OF CALAVERAS, STATE OF CALIFORNIA
PLANNING COMMISSION**

RESOLUTION NO. 2021-025

>>A RESOLUTION GRANTING 2021-058, APPEAL OF THE PLANNING DIRECTOR'S DENIAL OF 2021-044 SETBACK VARIANCE FOR JONATHAN CLOWARD

WHEREAS, the Planning Department of the County of Calaveras received variance application 2021-044 VAR from Jonathan Cloward on August 20, 2021, in which he requested a five foot variance from the Calaveras County Code 17.04.015 front setback requirements of his property's zone; and

WHEREAS, the Planning Department of the County of Calaveras denied application 2021-044 VAR on October 20, 2021; and

WHEREAS, the Planning Department of the County of Calaveras received an appeal from Jonathan Cloward on November 1, of the Planning Department's denial of his variance application; and

WHEREAS, the proposed project is located on real property in the unincorporated portion of the County of Calaveras, more particularly described as APN: 061-055-002, SW ¼ of the NW ¼ of Sec. 25, T01N, R12E, MDM and located at 39 Sanguinetti Court in Copperopolis; and

WHEREAS, during a duly noticed public hearing on December 9, 2021 the Planning Commission considered all of the information presented to it, including its staff report, information presented by the appellant, and public testimony presented in writing at the meeting; and

WHEREAS, Government Code §65906 provides that "(v)ariances from the terms of the zoning ordinances shall be granted only when, because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification"; and

WHEREAS, Government Code §65906 also requires any variance granted to be "subject to such conditions as will assure that the adjustment thereby authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is situated"; and

WHEREAS, Government Code §65906 also provides that "(a) variance shall not be granted for a parcel of property which authorizes a use or activity which is not otherwise expressly authorized by the zone regulation governing the parcel of property"; and

WHEREAS, Calaveras County Code 17.80.010 further provides that “(v)ariiances are intended to provide relief from strict enforcement of the standards of this title when unique, special and unusual circumstances are applicable to the subject property, and when the variance is necessary to alleviate a hardship which would prevent execution of a property right”; and

WHEREAS, Chapter 17.80 of the Calaveras County Code authorizes the Planning Department to approve or conditionally approve setback variances only if four findings can be made, the evidence for each of which is described below.

BE IT THEREFORE RESOLVED that the Planning Commission grants the appeal of Jonathan Cloward based on the following findings:

1. Calaveras County code §17.80.050(A) states:

A. Exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same zone or vicinity and result from lot size or shape, topography, or other circumstances over which the owners of property have no control;

EVIDENCE: The parcel's rear building setback sits on the 515-foot elevation level, which is the high water level of Lake Tulloch, below which development is heavily restricted pursuant to the Tri-Dam Authority, which governs development below that level. Unlike most other residential developments of similar size in the vicinity of the parcel, the encroachment of the reservoir and 515-foot elevation line into the rear portion of the parcel, and the S-curved shape of these topographical features, would—given existing front setback restrictions—prevent the development on the parcel of a residence that 1) is of similar size and design to neighboring residences, 2) has a similarly sized level surface for outdoor lakefront recreation, and 3) would not require exceedingly expensive re-design to avoid the unique topographical features at the rear of the property. A letter from the Tri-Dam Authority supported the appellant's contention that his parcel is uniquely impacted by the 515-elevation line, including Tri-Dam's restoration work at the rear of the property, which is not permitted to be disturbed.

2. Calaveras County code 17.80.050(B) states:

B. The variance is necessary for the preservation of a property right of the proponent substantially the same as owners of other property in the same zone or vicinity possess;

EVIDENCE: The appellant's requested variance would allow for the construction of a 3806 square foot lakefront home on a vacant parcel in the R1-PD Zone. Appellant does have a right to build a single family residence on the parcel, as this use is permitted by right in the zone. For the reasons discussed in the Evidence section of Finding 1, a five-foot front setback variance is necessary to allow for a rear, lakefront

pedestrian surface that is level and provides similar recreational opportunities to those found on most other residences in the same zone and vicinity.

3. Calaveras County Code 17.80.050(C) states:

C. The variance would not be materially detrimental to the purpose of this title, or to property in the same zone or vicinity in which the property is located, or otherwise conflict with the objectives of any county plan, ordinance or policy;

EVIDENCE: The front of the property is adjacent to a road, and that road is wider in front of appellant's house than it is in front of most other houses in the subdivision the parcel is located in. The construction of the home closer to the road would not obstruct traffic, pose any hazards, or otherwise materially conflict with the purpose of the restrictions in Title 17, with neighboring properties, or with the objectives of any county plan, ordinance, or policy. The homeowner's association with jurisdiction over appellant's property has also determined that the proposed design, including with a variance, will not conflict with the development restrictions of the subdivision.

4. Calaveras County Code 17.80.050(C) states:

D. The variance requested is the minimum variance which would alleviate the hardship.

EVIDENCE: In order to construct a level backyard surface for outdoor lakefront recreation that is similar in size and scope to those of most other residential properties in the vicinity, a five-foot variance is the minimum that would alleviate the hardship. The rear building setback line lies directly on the 515-elevation line, so granting appellant a five-foot front setback variance would allow for a five-foot wide area at the rear of the property on which appellant can construct a level surface area in front of the lake. A five foot wide area allows two people to pass each other comfortably while walking on this surface.

5. The granting of this variance is consistent with the Calaveras County General Plan.

EVIDENCE: General Plan Land Use Element Policy LU 1.2 supports growth in and around existing communities while protecting and enhancing community and neighborhood character. The Peninsula Estates subdivision is a well- established residential subdivision and the granting of a variance to build a single-family residence within it as proposed by appellant is consistent with surrounding land uses and allows for the development of a previously undeveloped parcel within the neighborhood.

6. The project is exempt from the California Environmental Quality Act (CEQA).

EVIDENCE: Pursuant to CEQA Guidelines Section 15305(a), setback variances not resulting in the creation of a new parcel are exempt.

CONDITIONS:

I. PLANNING DEPARTMENT

- I-1. Pursuant to 17.02.040, the Applicant shall defend, indemnify, and hold harmless the County or its agents, officers and employees from any claim, action, or proceeding against the County or its agents, officers and employees to attack, set aside, void or annul the County's approval of the Applicant's project, if any.
- I-2. The area of construction shall be confined to those areas delineated in the submitted site plan, as approved by the Planning Commission and conditioned herein.
- I-3. This variance is only for the front building setback along the northeast property line, allowing construction of the proposed single-family dwelling and attached garage to occur a minimum of 15 feet from this boundary instead of the usual 20 feet. All future structures or additions shall be at minimum setbacks from the property lines, unless an additional variance is obtained.
- I-4. This permit will expire if not validated by December 31, 2023. Validation of this permit will consist of a Building Permit being issued for the construction of the proposed dwelling and attached garage. If a Building Permit has not been issued by that date, the Applicant will need to re-apply for a variance.

PASSED AND ADOPTED by the Planning Commission of the County of Calaveras, at a regular meeting of the Planning Commission held on January 13, 2022 on a motion by Commissioner _____ and seconded by Commissioner _____.

AYES:
NOES:
ABSTAIN:
ABSENT:

Chair, Planning Commission

ATTEST:

Timothy Pitt, Planner II

The project files are available for public review in the Planning Department, County of Calaveras, Government Center, 891 Mountain Ranch Road, San Andreas, CA. 95249, between the hours of 8:00 a.m. and 4:00 p.m.