

## OPEN

V5-23-82 Harwin Variance  
859 Jennifer Street Incline Village, NV.

Discussion by the County Commissioners 1982 : “  
Following discussion on motion by Commissioner  
Brown , seconded by Commissioner Ferrari , which  
motion duly carried , Chairman Ferrari ordered that ,  
based on findings that other properties in the immediate  
vicinity are enjoying a similar encroachment, that the  
variance will not be detrimental to the health, safety and  
welfare of the general public, and that the structure will  
not have significant negative visual or environmental  
impact , the recommendation of the Board of Adjustment  
be overturned and variance case No. V5-23-82 be  
granted to the following conditions. :

See the following record and findings

Staff Assigned Case No.: 1A08-004

Washoe County Development Application

Project Information			
Project Name (commercial/industrial projects only):			
Project Description: <u>CARPORT TO GARAGE CONVERSION</u>			
Project Address: <u>859 JENNIFER ST., INCLINE VILLAGE, NV</u>			
Project Area (acres or square feet): <u>APPROX. 450 #</u>			
Location Information			
Project Location (with point of reference to major cross streets AND area locator):			
Assessor's Parcel No(s):	Parcel Acreage:	Assessor's Parcel No(s):	Parcel Acreage:
<u>125-241-05</u>	<u>6.163 #</u>		
Section(s)/Township/Range:			
Indicate any previous Washoe County approvals associated with this application:			
Case Nos. <u>V5-23-82</u> <u>FOR CARPORT</u>			
Applicant Information			
Property Owner:		Professional Consultant:	
Name: <u>EDWARD D. HARWIN</u>		Name: <u>Same as above</u>	
Address: <u>774 MAYS BLVD. #10-144</u>		Address:	
<u>INCLINE VILLAGE</u> Zip: <u>89451</u>		Zip:	
Phone: <u>775-813-4563</u> Fax: <u>832-6738</u>		Phone: Fax:	
Email: <u>EDHARWIN26@AOL.COM</u>		Email:	
Cell: <u>775-813-4563</u> Other:		Cell: Other:	
Contact Person: <u>ED HARWIN</u>		Contact Person:	
Applicant/Developer:		Other Persons to be Contacted:	
Name: <u>Same as above</u>		Name: <u>Same</u>	
Address:		Address:	
Zip:		Zip:	
Phone: Fax:		Phone: Fax:	
Email:		Email:	
Cell: Other:		Cell: Other:	
Contact Person:		Contact Person:	
For Office Use Only			
Date Received:	Initial:	Planning Area:	
County Commission District:			
CAB(s):		Land Use Designation(s):	

251-3051

Commissioner Ferrari;  
THAT OTHER PROPERTIES  
IN THE IMMEDIATE VICINITY  
ARE ENJOYING A SIMILAR  
ENCROACHMENT; ETC WILL  
NOT BE A DETRIMENT

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July 16, 1962

actual roadway. He further noted that Leif Neilson of the Incline Road Department has viewed his property and agrees that the proposed structure would not create a snow removal problem. He advised that he intends to make this residence his permanent, full-time home; that the proposed roof would keep the snow off his cars thus allowing him to get out of his carport in the winter months; that his neighbors have been shown the plans for the proposed roof cover and have no objections; and that he has prepared an "ACKNOWLEDGMENT AND ASSUMPTION OF RISK AND COVENANT NOT TO SUE" (hold harmless agreement), which he is willing to execute.

Commissioner Ferrari questioned granting the variance based on Mr. Hunter's "hardship" reasons, noting that every resident at Incline Village faces the same problems every winter.

Robert Mays, Road Superintendent, advised that houses in the subject area are built right next to each other, thereby leaving little or no place for the snow to be blown except on the houses, and recommended denial of the variance request. Mr. Hunter noted that on the south side of his property there is a big gully with ample room to deposit snow, and reiterated his willingness to execute a hold harmless agreement on behalf of Washoe County. He submitted photos of 10 other properties in the same subdivision where they have been allowed to construct garages within 10' of the roadway.

There being no one else wishing to speak, the hearing was closed.

Following discussion, on motion by Commissioner Brown, seconded by Commissioner Ferrari, which motion duly carried, Chairman Ferr offered that, based on findings that other properties in the immediate vicinity are enjoying a similar encroachment, that the variance will not be detrimental to the health, safety and welfare of the general public, and that the structure will not have significant negative visual or environmental impact, the recommendation of the Board of Adjustment be overturned and Variance Case No. VS-23-82 be granted subject to the following conditions:

- (1) Conformance to plans approved as a part of the variance;
- (2) Commencement of construction within six months and completion within one year;
- (3) Review in two years;

Variance WPVAR21-0004

Appeal of Action Order by Board of Adjustment

Owner: Mr. and Mrs. Birta

919 Jennifer Street Incline Village, NV.

Request: Washoe County Commissioners support a front yard setback reduction from 15 feet to 8 feet pursuant to NRS 278.300,

Opening Statement: There are principally three areas that the planner for Washoe County misrepresented or omitted relevant facts, thereby misleading the Board of Adjustment.

- A. The planner misrepresented the approvals of other similar properties, finding of fact, that open space easements do result in findings for those properties, each having obtained a variance under the NRS.
- B. The planner created the perception that the request was over-reaching because the Applicant's property was unique with the recorded 15 foot front yard setback
- C. The planner misrepresented design options for other garage locations on the site.

A.

The 60 Foot Dimension Rule implies a square shape when looking at the County's chart for parcel sizes. The Planner Staff Summary states the idea of "narrowness or shallowness" only affects parcels less than 60 feet in dimension, and that these criteria (width and depth) should not be applied to parcels with "open space easements" and parcels that are rhombus, rhomboid, trapezoid or trapezium in shape. Non-square parcels result in angular, restricted and/or reduced building areas. Historically, such non-square angular areas led to findings in support of variance approvals for the following parcels near 919 Jennifer Street—the subject property. These variance approvals were based on the finding under the NRS as an "extraordinary and exceptional situation or condition" (open space easements) and the 60 Foot Dimension Rule was not applied on these subject properties.

MAP EXHIBIT E0

County Record: Exhibits E1, E2A, E2B and E3 are variances approved due to slope at the southern end of Jennifer St.

Exhibits E4, E5, E6, E7 and E9 are variances approved due to OPEN-SPACE, SLOPE, SETBACKS, TRPA RULES AND SCENIC. These properties received a variance despite the fact that the 60 foot small lot criterion was not applied to them.

From existing Washoe County Records for Approved Variances for Front Yard Setback Reductions (See Map):

Map Locations:

4. 893 Jennifer St.: Front Yard setback from 10 ft. to 8 ft. / 19% area; Property Reduced to 82 ft., 86ft., 50ft., 57ft.
5. 901 Jennifer St.: Front Yard setback from 20 ft. to 11 ft. / 39% area; Property Reduced to 64ft., 55ft., 61ft., 54ft. Action order: Open-space, coverage and scenic.
6. 907 Jennifer St.: Front Yard setback from 10 ft. to 4 ft. / 31% area; Property Reduced to 61 ft., 61 ft. ,60 ft., 60ft. Action order: Open Space, Set-backs and 31 % lot area.
7. 911 Jennifer St.: Front Yard setback from 10 ft. to 6 ft. / 53% area; Property Reduced to 59 ft., 56 ft., 76ft., 78ft.
8. Our request before the Commissioners for 919 Jennifer St. / M/M Birta: Front Yard setback reduction from 15 ft. to 8 ft. Property Reduced to 61 ft., 81ft., 92ft., 82ft. / Open Space 39% area.

9. 967 Jennifer St.: Front Yard setback from 25 ft. to 15 ft. / Property Reduced to 52 ft., 89 ft., 94 ft., 67 ft.  
Action order: 10% slope, Open Space, Lot area reduced to 60%.

Mr. Stanley of the BOA made/asked the following statements/question: "There are no exceptions currently to this rule, to the variance rules as defined, in other words, there aren't other dwellings that have encroached or that have, that don't meet the traditional variance requirements?..."

Mr. Pelham's answer: "That is a very difficult question...."

The truth is not difficult to state, yet at times may be inconvenient. This was one of those times for Mr. Pelham. By omission of relevant variance histories on Jennifer St., Mr. Pelham misled Mr. Stanley in his attempt to know the truth about properties that have been granted variances next to 919 Jennifer St.

B.

EXHIBIT E10

Planner stated in Staff Summary: "It is instructive to note that all other similarly situated lots from "Block M" of Incline Village Unit IA are required to have *larger* front yard setbacks."

This statement is NOT TRUE

FOUR (4) other properties on the same side of the street, just south of 919 Jennifer have equal or smaller setbacks than the Applicant's property. Some of these properties have been granted setbacks, front yard reductions less than the Applicant has requested in order to build garages.

THE IMPACT OF THE MISREPRESENTED FACTS OF OTHER  
SIMILAR PROPERTIES

Members of the Board of Adjustment were shown information that would lead them to think the Applicant was over-reaching with the request to reduce the front yard setback from 15 feet to 8 feet. By the planner implying the Applicant was not satisfied with the current setback—the only one in the area—it painted the image the Applicant was not being reasonable in his request. IN REALITY HE WAS ONLY ASKING FOR WHAT OTHER HAVE ALREADY RECEIVED: A FINDING ALLOWED UNDER THE NRS. (EXCEPTIONAL SITUATION OR CONDITION.)

IF THIS DENIAL REMAINS, THEN THE OTHER PROPERTIES IN THE AREA THAT HAVE BEEN GRANTED A VARIANCE, THEY WILL HAVE BEEN GRANTED SPECIAL PRIVILEGES ON THEIR PROPERTY. THIS IS CONTRARY TO THE INTENT OF THE NRS.



C.

### PLANNERS DESIGN OPTONS DO NOT WORK

"Staff would like to emphasize that it is not incumbent upon staff to show how to construct a garage on the parcel of land without a variance, as there is no absolute right for an applicant to construct a garage."

There is a Washoe County requirement for any home expanding more than 10% must have at least to have one enclosed parking space, i.e. a garage. ( WC. Code Table 110.410.10.1 )

Further, the Planner states "While not cited as a special circumstance in this application often the limitations on development of parcels of land within the Tahoe Basin (which are subject to compliance w/ TRPA regulations) ..... TRPA regulations do constitute exceptional circumstances as they are applied equally to all development. "

All the examples that the Planner gave do not make design sense or work for the existing residence, without the TOTAL REMOVAL OF THE RESIDENCE which would create a level of environmental and other impacts that make no sense considering the variance being requested only will encroach 7 feet on one end and is only 90 square feet of area into the front setback. In addition Washoe County Roads recommends that the variance be approved.

TRPA: Findings to make and justify under two sections of TRPA Code 30.4.5:

1. Subsection A which states: “The relocation is to an equal or superior portion of the parcel or project area, as determined by reference to the following factors:”
  - a. Subsection A1 states “Whether the area of relocation already has been disturbed;”
    - i. The areas suggested by the planner have not been disturbed.
  - b. Subsection A2 states “The slope of land and natural vegetation of the relocation;”
    - i. At least two more full-size, old-growth trees (greater than 24 in. in diameter) will have to be removed at the location the planner suggested.
  - c. Subsection A4 states: “Whether the area of relocation appropriately fits the scheme of use of the property;”
    - i. The Planner’s suggested development location is further from the places of attachment that make sense and that are appropriate for the existing residence. His ideas place the garage structures next to bedrooms, remove access to and egress from the residence and impact the structural safety of the residence. This design will result in additional required restoration of the area in front of the home.
2. Subsection B which states: “The area from which the land coverage was removed for relocation is restored in accordance with subsection 30.5.3.”

OUR PLAN, REQUIRING ONLY A MINOR VARIANCE IS JUST COMMON SENSE ENVIRONMENTALLY AND CAN BE SUPPORTED BY A FINDING OF HARDSHIP DUE TO THE OPEN SPACE EASEMENT WHICH RESULTED IN THE CURRENT HOMES LOCATION WHEN IT WAS BUILT IN 1980

TRPA Guiding Principle: (Ref. Section 20.3.B (1) (d) (ii) Driveways): location shall be one with the least harm to the natural environment through minimization of land alterations, grading, removal of vegetation and preservation of trees and other flora.

All but two of the Planner's proposed garage locations violate all of the above TRPA principles, and all are substandard design.

The current residence has used all but 555 sq. ft. of allowable coverage on the site. That situation alone limits many of the ideas put forth. In addition, the suggestions that expand the visual area as seen from Mt. Rose. 431 Scenic Byway should not be done because that Byway does not need to have any more man made visual impacts. Under our proposal, a garage can be added that does not visually impact Highway 431.

The suggested simple addition to the shed roof at the existing pitch on the north side would not allow create a useable garage—it would have only a 4 foot high wall for a 12 foot wide garage which would not allow sufficient space for a car. A lesser pitch would result in added snow loads on existing roof which was built under lesser snow loads requirements. In this case 50% of the existing roof and support structure(s) would have to be removed and rebuilt.

Another suggestion for pushing the garage back into the existing structure seems reasonable at first glance. However, it would compromise the structural integrity of the home, particularly in the case of seismic events. This suggestion requires removal of a major shear wall over an existing foundation. There is no simple fix to replace that shear wall and mitigate the loss of its integrity. Doing so would require that seismic loads in this section of the structure be relocated into the floor systems and other wall systems connected to the roof and foundation which don't exist in the current residence. Additionally, the design proposed would be too short unless the existing stairs to the second floor are removed.

Yet another suggestion doesn't allow for protected access from the garage to the home, nor does it provide sufficient vehicle parking, and would require reconstruction of the entire front wall system to meet fire code ratings due to the proposed garage placement.

ALL OF THE PLANNER'S DESIGNS INDICATE VERY LITTLE KNOWLEDGE ABOUT DOING DESIGN FOR A GARAGE ATTACHED TO AN EXISTING STRUCTURE BUILT IN 1980. IN ADDITION THE DESIGNS DON'T EMBRACE THE TRPA CODES AND GUIDELINES.

PLEASE REVERSE THE BOA DENIAL/ APPROVE THE VARIANCE WITH THE SUGGESTED FINDINGS THAT ARE CLEARLY A HARDSHIP.

## NOTE

It is understood by the applicant that the County Transcript is a very short version of what was said at the BOA Hearing. Yet in this case some key discussions and statements were made by the planner that have been documented in a full transcript of the hearing. ( see yellow on pages and on exhibits)

Transcribed by Denise Hinxman, CCR #234

Captions Unlimited of Nevada, INC 775-746- 3534

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County Transcript is missing key statement by the planner Mr. Pelham. Page 4 of transcript lines 18,19,20 and 24.

County Transcript is missing key discussions by Board Member Stanley and the planner Mr. Pelham

See page 11 – lines 18 through 25

See page 12- line 1.

Captions Unlimited of Nevada  
Full Transcript

Public Comment:

Robert Birta, owner, we are asking for 1% to be able to provide master bedroom and to be able to store the cars in the garage and off the street. We are residents of Incline Village since 2006. We are good people who pay our taxes. Thank you for listening to us.

Discussion by Commission:

Chair Hill said she is having a hard time; there are a lot of folks that don't have garages. It's something you can have when it's appropriate. She said I see you are doing a deck addition which takes up coverage; maybe build a garage instead of deck addition. She said she doesn't know the alternatives. She said she doesn't feel confident with approving at this time.

Member Thomas said NRS 278.300 limits our authority whether we can grant the variances with exceptional challenges with the property such as narrowness, exceptional topography, or other extraordinary exceptions for property. He said he doesn't believe the applicant has met one of those requirements.

Member Stanley agreed with Clay's analysis. He said as a citizen, he appreciates planner Pelham providing help to those who are filing applications. He said he would want that kind of assistance. There is always an alternative.

Mr. Lloyd said Chair Hill's comments are correct, there are a number of homes in Tahoe that do not have a garage; however, it's a code requirement for stick-built homes to have a minimum one car enclosed garage. Chair Hill said they can do that without a variance.

**MOTION:** Member Thomas moved that, after giving reasoned consideration to the information contained in the staff report and information received during the public hearing, the Washoe County Board of Adjustment deny Variance Case Number WPVAR21-0004 for Robert and Calin Birta, being unable to make all five required findings in accordance with Washoe County Development Code Section 110.804.25:

1. Special Circumstances. Because of the special circumstances applicable to the property, including exceptional narrowness, shallowness or shape of the specific piece of property; exceptional topographic conditions; extraordinary and exceptional situation or condition of the property and/or location of surroundings; the strict application of the regulation results in exceptional and undue hardships upon the owner of the property;
2. 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;
3. No Special Privileges. The granting of the variance will not constitute a grant of special

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BEFORE THE WASHOE COUNTY BOARD OF ADJUSTMENT

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MEETING

Thursday, February 3, 2022

**ITEM F. VARIANCE CASE NUMBER WPVAR21-0004  
(Birta Front Yard Setback Reduction)**

County Commission Chambers  
1001 E. 9th Street  
Building A, 1st Floor  
Reno, Nevada

Transcribed by: DENISE HINXMAN, CCR #234



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A P P E A R A N C E S

BOARD MEMBERS PRESENT

KRISTINA HILL, CHAIR  
CLAY THOMAS, VICE CHAIRMAN  
DON CHRISTENSEN, MEMBER  
ROB PIERCE, MEMBER  
BRAD STANLEY, MEMBER

STAFF

TREVOR LLOYD, SECRETARY  
ROGER PELHAM, MPA, SENIOR PLANNER

1 RENO, NEVADA, THURSDAY, FEBRUARY 3RD, 2022, 1:30 P.M.

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5 CHAIR HILL: Variance Case No.  
6 WPVAR21-0004, Birta Front Yard Setback Reduction.  
7 Staff presentation by Roger Pelham.

8 MR. PELHAM: Thank you very much, Madam  
9 Chair. Members of the Board, for the record, my name  
10 is Roger Pelham, Senior Planner with the Community  
11 Services Department.

12 And Variance Case No. WPVAR21-0004 is a  
13 request to reduce the front yard setback from 15 feet  
14 to 8 feet for the Birta residence.

15 This is to facilitate the construction of a  
16 two-car garage, a one-car carport, and then a new  
17 master bedroom suite on the floor above the new garage  
18 and carport. This is located in Incline Village as  
19 shown on the vicinity map. And this is an overhead  
20 photo of the existing dwelling. The roadway where the  
21 reduction in front yard setback variance is requested  
22 is to the left. That is to say the west here.

23 Okay. And here we have a graphic showing  
24 the area of the proposed variance as highlighted in  
25 yellow, and the remainder of the addition proposed with

1 this is highlighted in blue. Again, the existing  
2 dwelling there in a couple of different textures of  
3 gray.

4 This is an elevation looking at this from  
5 street level. The highlighted yellow area is the  
6 two-car garage. This would be looking from the street,  
7 the green area being the carport and the orange being  
8 the proposed bedroom suite on the second floor above.  
9 This is the existing and proposed floor plans of the  
10 dwelling.

11 As you can see, what they're asking for is  
12 the garage and carport directly in front of the  
13 existing dwelling.

14 And here we have a close-up that shows the  
15 variance area in relationship to the proposed addition.

16 So project evaluation. Let's begin with  
17 the required setbacks. This subdivision has special  
18 setbacks that are defined for each parcel. This one  
19 has the smallest setbacks of any on this particular  
20 block of only 15 feet. This is actually less than \*  
21 would be otherwise required for a parcel of this size  
22 in this regulatory zone.

23 The front yard setback, you can see there,  
24 is generally speaking 20 feet. And this one is already  
25 reduced to 15, again, with the approval of that

1 original map.

2 Variances are a unique type of  
3 discretionary action and can be granted only when there  
4 are shown to be special circumstances applicable to the  
5 land. And those are called out in Nevada Revised  
6 Statute. They come over essentially verbatim into  
7 Washoe County code.

8 And those special circumstances are defined  
9 as exceptional narrowness or shallowness or shape of a  
10 specific piece of property by reason of exceptional  
11 topographic conditions; or other extraordinary and  
12 exceptional situation or condition of the piece of  
13 property.

14 And what I would note here, particularly,  
15 is this deals with the property, not necessarily the  
16 configuration of development, not necessarily the  
17 convenience of the applicant, but the physical  
18 characteristics of the land itself.

19 This is the outline of the parcel of land.  
20 The minimum lot dimension in this zone is 60 feet.  
21 This one has an average lot width of approximately  
22 88 feet. This parcel is not exceptionally narrow.

23 Likewise, the minimum lot depth, again,  
24 that dimension is 60 feet. This one is approximately  
25 94 feet -- average after the open space easement on the

1 back of the parcel is subtracted.

2 This parcel is not exceptionally shallow.  
3 I will talk a little bit more about that open space  
4 easement later in my presentation.

5 Exceptional shape. This parcel is  
6 essentially rectangular, slightly narrow at one end  
7 than the other, but by no means irregular.

8 Exceptional topography. Topography is  
9 considered to be constrained when it has slopes above  
10 15 percent. This has a slope of approximately  
11 13 percent.

12 Drops approximately 16 feet from the  
13 northwest corner to the southeast corner over a  
14 distance of approximately 116 feet. So approximately  
15 13 percent slope. That is not exceptional.

16 In the application materials, the  
17 open-space easement on the back is cited as an  
18 exceptional or extraordinary situation or condition.  
19 It is not in the opinion of staff.

20 And what I've done is I've highlighted here  
21 all of the open-space easements. You can see the  
22 subject parcel there, indicated with the red callout,  
23 and then the yellow area surrounding it are the other  
24 open-space easements that were recorded with this final  
25 map.

1           And, you know, there are others that are  
2 smaller. Some others might be a little larger. But  
3 what remains is essentially a relatively flat,  
4 relatively square, buildable area.

5           After the evaluation of hardship, we  
6 actually have several more findings to be made. And  
7 one is that the relief will not create a substantial  
8 detriment to the public good, substantially impair  
9 affected natural resources or, in this case, impair the  
10 intent and purpose of the development code or  
11 applicable policies under which the variance is  
12 granted. In this case, I believe that it would.

13           Because we have no special circumstance, if  
14 we grant a variance we're therefore impairing the  
15 intent of the development code. The development code  
16 is meant to have setbacks to allow light and air for  
17 the surrounding area.

18           I believe this can be seen to impair that  
19 intent because there are no special circumstances  
20 otherwise applicable.

21           Likewise, special privileges. Again,  
22 without the finding of the special hardship, approval  
23 of the variance results in a special privilege to this  
24 person who is -- that is inconsistent with the,  
25 limitations on other properties.

1           We have to find that the variance does not  
2 authorize a use that's not otherwise granted or not  
3 otherwise allowed. And this does not. A garage is  
4 perfectly acceptable on this residential piece of  
5 property.

6           And, in fact, I'll show later how a garage  
7 can be built in several different ways, while  
8 maintaining the required setbacks.

9           And the variance will not have a  
10 detrimental effect on a military installation. There  
11 are none within the noticed distance required for this,  
12 so that finding certainly can be made.

13           What I do want to point out is it is not  
14 required for staff to point out how a garage can be  
15 constructed here. There's no absolute right to that.  
16 However, in the interest of simply shedding a little  
17 more light on this request, there are a number of ways  
18 that that can be done. Those are shown in the staff  
19 report.

20           And in anticipation of a question, did we  
21 let the applicant know this early on in the process,  
22 that it was very likely that there was going to be a  
23 recommendation of denial from staff?

24           The answer to that is yes. I called the  
25 applicant. I tried to explain that what I really

1 wanted to do was let them know that I just don't want  
2 anybody to go forward unless they have a reasonable  
3 expectation of a recommendation of approval or  
4 reasonable expectation of an approval, because this is  
5 a long and expensive process. And that was made clear.  
6 And this applicant chose to go forward.

7 So other options for garages. The first  
8 thing, the orange or yellow box here is the same size  
9 as that garage and is simply pushed backwards into the  
10 area where the new stairwell is proposed to be  
11 constructed.

12 If they simply pushed it back, a two-car  
13 garage could be put right there. And there are any  
14 number of ways that this could be done with frankly  
15 relatively minor adjustments.

16 The entryway could be made wider and the  
17 stairs could be put there.

18 The stairs could be sort of put going above  
19 part of the area of the garage. So there's many ways  
20 that that can be done.

21 And, again, our little boxes here show  
22 approximately the size of a one-car garage, other areas  
23 on the parcel of land where they can be placed without  
24 violating the setbacks.

25 And what I would note is that they're on



1 the top, that is to say, the north side of this parcel  
2 where there are several of those boxes. There's about  
3 a four-foot fall from the front to the back of those  
4 other garages. So only a four-foot difference in  
5 elevation. That's fairly easy to work around.

6 So I do not have conditions of approval  
7 because I am recommending denial based on the lack of a  
8 hardship. I did receive this letter from the  
9 applicant's attorney. It has been provided to you.  
10 And we will let the applicant's attorney discuss the  
11 points that he makes in that letter.

12 Notice was sent to 56 property owners  
13 within 500 feet. That does give us 30 individual  
14 property owners.

15 And I've gone over, I think, the  
16 appropriate findings of fact. I do not believe that  
17 the findings of fact can be made. Therefore, I am  
18 recommending denial and we have a possible motion. And  
19 with that I'm available for any questions that you  
20 might have.

21 CHAIR HILL: Any questions for staff?

22 MEMBER STANLEY: Yes.

23 CHAIR HILL: Mr. Stanley.

24 MEMBER STANLEY: Not too surprised, and  
25 thank you for offering various alternatives to the

1 applicant and to notifying them or giving them a  
2 heads-up early on.

3 I just want to see if I've understood this  
4 correctly, that the open space in the -- I don't want  
5 to say in the backyard -- does not, is not a valid  
6 input to the variance criteria. Is that correct? It  
7 has no impact?

8 MR. PELHAM: Not in this case. It is  
9 possible that on a different piece of property that it  
10 might be, if the result of the subtraction of that  
11 open-space easement resulted in a buildable area that  
12 was smaller in dimension than the minimum lot  
13 requirements. It's possible.

14 In this case, it does not. In this case,  
15 even after you take away that open-space easement, the  
16 remaining area is both deeper and wider than the  
17 minimum lot dimensions for the zone.

18 MEMBER STANLEY: Okay, thank you. And I  
19 don't think I heard you mention it, but in, let's say  
20 in the notifying area, there are no exceptions  
21 currently to this rule -- to the variance rules as  
22 defined? In other words, there aren't other dwellings  
23 that have encroached or that have, that don't meet the  
24 traditional variance requirement?

25 MR. PELHAM: That's a very difficult

1 question. I have not done that analysis. There may be  
2 other dwellings that have been constructed with an  
3 appropriate variance.

4 What I would say to that, though, or the  
5 light in which I would like that to be seen is each  
6 parcel of land is unique and the evaluation against  
7 those required findings is unique to that parcel of  
8 land. Another parcel of land that is not the same as  
9 this parcel of land may very well have a different  
10 evaluation.

11 MEMBER STANLEY: Thank you.

12 MR. PELHAM: Certainly.

13 CHAIR HILL: Any other questions? Okay.  
14 Is the applicant here to make a presentation?

15 MR. FORD: The owner would like to make  
16 public comment. And then I'll do my 15 minutes.

17 CHAIR HILL: Well, what we've been doing is  
18 having staff and then the applicant and then questions  
19 and then public comment. We've kind of changed the  
20 format a little.

21 MR. FORD: My name is Wayne Ford. I'm the  
22 applicant's residential designer. I'm going to hold  
23 out about 90 seconds to two minutes for the legal side  
24 of this for Mr. Angres to come on Zoom.

25 Good afternoon, members of the Board. I

1 live at 731 Linda Court in Incline Village.

2 Really would like some questions from you  
3 later because it appears to me that the planner has put  
4 a lot of information in in terms of doing my job, as  
5 far as a planner, and he's not aware of the other  
6 regulations that I'm up against that would deny many of  
7 his options.

8 My goal is to correct those statements by  
9 the planner and many areas that were covered had  
10 incorrect and misleading information.

11 This information results in many cases  
12 affecting what you as board members see as design  
13 options for the owner and me, and basically mislead you  
14 down a path of thinking we have those options  
15 available.

16 I assure you, we don't. I am in charge,  
17 under my license as an RD, to focus on life and safety.  
18 And the attorney that we brought in here is mainly -- I  
19 always represent to a client that if a staff member  
20 basically says we're going to deny this, that we have  
21 somebody that's available that understands what the  
22 issues are to write the appeal letter which is only ten  
23 days from now based on your vote, one way or the other.  
24 Hopefully you won't have to write that.

25 A, the idea that somehow we can build down

1 the northeast side of the property, we don't have  
2 enough coverage. Suggested plans that other areas that  
3 this garage can be built as a one-car garage, well,  
4 frankly, my client has three cars. And one case, his  
5 drawing that he put up there, we couldn't get two cars  
6 in it with the stairway there. We can get one and a  
7 half in.

8 And that particular solution, given the  
9 cost of building today, is not a viable solution to  
10 have one car. He's got a family of three children  
11 right now. And they're planning more.

12 The idea -- and he didn't touch on it in  
13 his presentation, that somehow we can get a 10 percent  
14 reduction through the director of community services  
15 and planning, that code was never intended for that  
16 purpose. And in fact to imply it is to imply going  
17 around this board and its wisdom to what I would hope  
18 would be an approval on this.

19 And then he stated that other lots in the  
20 area -- and your question, Mr. Stanley -- there are  
21 other lots in the area that have setbacks just like  
22 this. And in fact we identified one home, that's  
23 basically 907 Jennifer, that's already received a  
24 variance to two feet for their garage. It was added on  
25 sometime prior to the home being built in 1988. Well,

1 during that construction.

2 So how do I address all this in the short  
3 period of time?

4 Well, number one, we have basically 143  
5 square feet of coverage left. That's it after we build  
6 out front. And we're all concerned about the  
7 environment. TRPA tells us, as designers, you build  
8 where there's already been disturbance. You don't  
9 create new areas of disturbance. And that is a mandate  
10 of the TRPA code. That's why we're building out front.  
11 And I emphasize, I have never seen road departments  
12 say, grant the variance.

13 They're not concerned about any of this  
14 other than the fact of getting vehicles enclosed. And  
15 understand, we're asking for basically a one percent  
16 increase to the buildable area on this lot that is  
17 restricted by what's called zoning. Roger's idea of  
18 what a minimal lot is, in terms of the county code, was  
19 developed many years ago and has never evolved.

20 This open-space easement takes up over  
21 39 percent of the parcel -- 39 percent. Then you have  
22 all the setbacks around that.

23 We're left with less than 5,000 square feet  
24 to develop on the parcel within the setbacks. Now,  
25 that would have been something that was anticipated

1 back when this home was built. That house would have  
2 been twisted a little bit, we wouldn't have this  
3 discussion today.

4 But the road department found that this was  
5 something that would not interfere with them and, in  
6 fact, would improve the life and safety with no issues  
7 of snow plowing.

8 But I want to come to the misrepresentation  
9 that was given. It's instructive and I'm quoting to  
10 note that all the other similar-situated lots from  
11 block M, that's on the side of Jennifer, of Incline  
12 Village 1A are required to have larger front yard  
13 setbacks. That's what the planner said.

14 Lot 7 on his own chart has a 15-foot  
15 setback. Lot 14, lot 11, lot 10, and lot 15 all have  
16 15-foot setbacks, with open space.

17 And then we come to lot 13. Lot 13 had a  
18 20-foot setback and it appears -- and, by the way, I  
19 asked for county records, never got them from the  
20 variance process.

21 What we know, that we've talked to the  
22 owner, they bought this home a few years back. They  
23 have something around a two-foot setback for their  
24 garage. So other people have gotten the same finding.

25 I'd like to emphasize one thing here.

1 Other people have gotten this. And this argument, I  
2 brought up to Mr. Pelham before. They've been granted  
3 that special right to be able to add on to their home  
4 without tearing it down and starting all over again.

5 And they have that grandfathered in now.  
6 So if this is not granted, doesn't that create a  
7 special privilege for them that my client doesn't get?

8 The other thing is most of what Mr. Pelham  
9 shows to the north and northeast side where all these  
10 one-car garages are, under TRPA height rules cannot be  
11 approved. The low point is too far down the lot to  
12 connect those to the residence at all.

13 And more importantly, structurally, to  
14 connect on that side, down there, with roof systems, we  
15 would have to flatten those roofs, which basically mean  
16 the whole roof would have to come off the garage --  
17 excuse me, come off the main home on the bedroom side  
18 of the home.

19 So we're in basically a box. And that box  
20 can best be solved in terms of where the garage can be  
21 built, the two-car garage and the carport, by allowing  
22 a normal garage in front, not having a driveway that  
23 goes down under roofs on the north side, shedding snow.

24 I've lived up there 40 years; you don't  
25 want a driveway on the left side of a structure where



1 the snow comes off the north side. Or you better have  
2 very good car insurance or personal liability because  
3 that snow is going to basically destroy a vehicle.

4 So in front it's all safe. Not to mention  
5 one of the other areas, we have major utilities  
6 underground in the subdivision. And to put those  
7 garage ideas where the planner said we could put them,  
8 we're having to move gas lines and a lot of other  
9 things.

10 The other thing is the garage in front that  
11 showed one car, the development code requires and the  
12 building code that when you put a detached structure in  
13 front of another structure, less than five feet away,  
14 it has to be all one-hour construction. You can't even  
15 have a window in it. So that's not an option at all.

16 I'd like to go to this map up here, if I  
17 may. And I'm getting down to doing pretty good on my  
18 time, given I have a gentleman waiting.

19 This is Mount Rose Highway. So we have no  
20 ability to get in behind. This is about a 20 percent  
21 slope up to the property line. This is all of what's  
22 taken up by this parcel that is considered normal.

23 Well, guess what? When you go down the  
24 street, the planners that laid out the subdivision,  
25 they did say that other parcels needed 15 feet because

1 of what's here.

2 Then you take all this out of here, through  
3 here. This leaves basically 39 percent of this parcel  
4 taken up with -- in other words, we only get 39 percent  
5 of this parcel to build on. And the home was set in  
6 here at angle, probably facing somewhat southeast for  
7 sun.

8 We're asking for one corner, one corner, 90  
9 square feet of area, right here, so that an adequate  
10 garage can be built with roof shedding this direction  
11 and that direction into areas where we can infiltrate  
12 properly and keep it from getting into other  
13 properties.

14 We're not asking for side yard. In fact,  
15 if you look at those yellow lines on here, he drew, two  
16 or three of them show the line going over this  
17 property, setback over here.

18 So, we're asking for a one percent increase  
19 in the buildable area down here -- one percent right  
20 there. That is something I think is extremely  
21 conservative and reasonable to request.

22 And if you look at the last part of the NRS  
23 that was quoted, it states -- the wisdom of this  
24 document amazes me that was done in 1930-something:  
25 Other extraordinary and exceptional situation or

1 condition of a piece of property.

2 When this was drawn up, open-space  
3 easements, they didn't exist on property. In fact,  
4 many times setbacks didn't even exist, until this was  
5 done to basically bring zoning into the 21st century so  
6 that people would have some restrictions on what they  
7 did to their neighbors.

8 This right here does nothing to any  
9 neighbor. In fact, the neighbors support it because  
10 they want to see the vehicles under a roof. The stair  
11 systems and access to this home's interior was never  
12 discussed.

13 They personally now have three children.  
14 They're looking for a master bedroom, a modest bedroom  
15 above this. They're not looking to rent this home out.  
16 They're planning to have a larger family. They need  
17 the bedrooms. We don't have the coverage to go  
18 anywhere else with it. And the bottom line is this is  
19 the most reasonable place to put it.

20 I've been doing variances for over 25 years  
21 up here under my own license. This is probably the  
22 most reasonable variance that's been asked for. And on  
23 the street at 907, it was granted for a two-foot  
24 setback on the front yard.

25 I don't have that variance number because I

1        couldn't get it from staff. In fact, I barely got the  
2        subdivision maps. I got them through IVGID, not  
3        through staff. I asked for records of all these  
4        subdivisions to show these 15-foot setbacks exist on  
5        other lots. That's in block M. There's all kinds of,  
6        in 1A, lots that have 10-foot setback, 10-foot.

7                To sum this up -- and I would leave it to  
8        Mr. Angres at this point to come on Zoom and I would  
9        defer the rest of my time to him -- but I recommend  
10       approval, because this is an extraordinary and  
11       exceptional situation given all the open space, almost  
12       over half this property is taken up with that.

13               And we can't get back there. We can't get  
14       up Mount Rose Highway to build anything, even if we did  
15       have the coverage, even if we did have the low-point  
16       heights and issues that TRPA imposes on us.

17               You know how much room we have? And I'll  
18       leave it here. We have two inches, two inches with  
19       this design of allowed height left under their rules.  
20       And if I was doing a brand new home all over on  
21       something like this, I'd probably be asking the same  
22       thing, based on the fact that this lot is very  
23       restricted in height, coverage, land capability four,  
24       20 percent allowed, that's it.

25               If the board has any questions about any of

1 these things I've said, please get back to me.

2 Mr. Angres.

3 CHAIR HILL: I have a question, Wayne.

4 MR. FORD: Yes.

5 CHAIR HILL: What's the dimensions of the  
6 garage you're proposing?

7 MR. FORD: 20 by 20.

8 CHAIR HILL: Okay.

9 MR. FORD: Very modest.

10 CHAIR HILL: Okay, I mean, I don't have my  
11 scale. And I know one inch is --

12 MR. FORD: 20 by 20. And going back into  
13 that stairway, we have no other place to put a stair.  
14 And we know that starting a stairway halfway through a  
15 garage, you lose one space totally. We only get one  
16 and a half spaces instead of two.

17 The carport is for his larger vehicle  
18 that's 22 feet long. It's a larger suburban vehicle,  
19 Tahoe vehicle, and we can't get it in a garage so we  
20 figured we'd put it over in the carport and protect it,  
21 too. Other questions?

22 CHAIR HILL: No. Thank you.

23 MR. FORD: Mr. Angres, I'm kind of running  
24 out of time for his 90 seconds. Thank you.

25 CHAIR HILL: Thank you, Wayne.

1 MR. ANGRES: Can you hear me?

2 CHAIR HILL: Do we have other comments? Or  
3 public comment? Oh, Robert Angres, the attorney.

4 MR. ANGRES: Yes, can you hear me?

5 CHAIR HILL: Yes, we can.

6 MR. ANGRES: Okay. Thank you.

7 Ms. Chairman, members of the board, I'll be brief. You  
8 already know what's happening with snow fall, the  
9 budgets for snow removal, emergency and medical  
10 services.

11 The idea of hardship should apply to life  
12 safety issues, especially at altitude in Incline  
13 Village where I lived for 23 years.

14 You've been shown that staff was not  
15 accurate in its portrayal of what has been accorded to  
16 other lots in the subdivision, highlighting the issue  
17 of equity and fairness and enforceability.

18 The issue of the open-space easements are  
19 relatively new to Incline Village and exist everywhere  
20 except in Mill Creek, and they have to be taken into  
21 account.

22 And while staff disclaims any  
23 responsibility for proposing alternatives, it actually  
24 did -- in an impracticable, unworkable way -- which is  
25 truly a distraction from the key issues at the heart of

1 this matter.

2 So you have my letter, which argues for  
3 equal protection, support of fundamental property  
4 rights and erring, if at all, in favor of fairness  
5 rather than holding a line, which line keeps changing.

6 What is at stake here? Fairness, highest  
7 and best use of property.

8 So I urge this board to grant this  
9 application based on what it seeks, which is a plus for  
10 everyone and a detriment to no one.

11 CHAIR HILL: Thank you.

12 Madam Secretary, are there any more  
13 comments?

14 SECRETARY: I have a comment from Calin  
15 Birta.

16 MR. BIRTA: Hello, good evening. My name  
17 is Robert Birta. I'm the owner of 919 Jennifer. And  
18 we're here, like Mr. Wayne says, to ask for one  
19 percent, which is 90 square foot, of our garage to be  
20 able to build the master on top because we're a big  
21 family and to hide the cars in that garage, pull them  
22 from the street.

23 We are residents of Incline since 2006.  
24 We're good people. We are paying our taxes. And thank  
25 you so much for you to be here to listen to us. And we

1 are at your mercy right now. Thank you so much.

2 CHAIR HILL: Thank you.

3 SECRETARY: There's no further public  
4 comment in chambers.

5 CHAIR HILL: Okay, then.

6 SECRETARY: I have no hands raised via  
7 Zoom.

8 CHAIR HILL: Thank you. I guess we'll  
9 close public comment and bring it back to the board for  
10 consideration. Anybody have any thoughts about what we  
11 can do with this?

12 I'm having a hard time. There's a lot of  
13 folks in Incline that don't have garages. It's not  
14 something that's required. It's something that you can  
15 have where it's appropriate. And if your subdivision  
16 allows it and you go through the proper channels you  
17 can get a garage.

18 But if they wanted a garage, I think -- I  
19 don't know when you bought the property, but it is hard  
20 to really -- I see you're doing the deck addition and  
21 that's going to take up coverage. And maybe you could  
22 put the garage somewhere instead of doing a deck  
23 addition. I don't know what the alternatives are. But  
24 it's not something that I feel confident approving at  
25 this time.



1 Yes?

2 MEMBER THOMAS: Thank you, Madam Chair.  
3 Clay Thomas, for the record. I think we're all aware  
4 that NRS statute 278.300 limits our authority as to  
5 when we can go ahead and grant a variance.

6 CHAIR HILL: Right.

7 MEMBER THOMAS: And those circumstances are  
8 exceptional narrowness, shallowness, shape on a  
9 specific piece of property or exceptional topography  
10 conditions or other extraordinary and exceptional  
11 situations or conditions for a piece of property.

12 And I do not believe that the applicant has  
13 met any of the -- one of those, one or more of those in  
14 our requirements.

15 CHAIR HILL: Yes, Mr. Stanley?

16 MEMBER STANLEY: Yes, Madam Chair, I would  
17 agree with Clay's analysis on not meeting the  
18 definition of what is required for us to be able to  
19 grant a variance.

20 I'd also like to comment that, as a  
21 citizen, I appreciate the fact that Roger, Mr. Pelham,  
22 Planner Pelham, does offer help to people in  
23 applications.

24 I expect that when I apply for something as  
25 a citizen I'll get that same kind of help and guidance

1 as well.

2 CHAIR HILL: I've experienced it firsthand.  
3 And there's always an alternative, I've found. You  
4 know?

5 MEMBER STANLEY: Yes.

6 CHAIR HILL: Okay. Anybody else have a  
7 comment or discussion?

8 MR. LLOYD: Madam Chair, I wanted to make a  
9 clarification to something that you mentioned. You are  
10 correct, there's a number of homes that currently do  
11 not, up in Tahoe, currently do not have garages.  
12 However, it is a code requirement for all stick-built  
13 homes to have a minimum one-car, enclosed garage.  
14 That's code requirement.

15 CHAIR HILL: And I think they could do that  
16 without a variance. Yeah.

17 MR. LLOYD: Well...

18 CHAIR HILL: Does anyone want to entertain  
19 a motion?

20 MEMBER THOMAS: Madam Chair, I'll make a  
21 motion.

22 CHAIR HILL: Mr. Thomas, go ahead.

23 MEMBER THOMAS: Thank you. I move that  
24 after given reasonable consideration to the information  
25 contained in the staff report and information received

1 during public hearing, the Washoe County Board of  
2 Adjustment deny variance case No. WPBAR21-0004 for  
3 Robert and Calin Birta, being unable to make all five  
4 finding required -- I'm sorry, to make all five  
5 required findings in accordance with the Washoe County  
6 Development Code, section 110.804.25, that being, one,  
7 special circumstances; two, no detriment; three, no  
8 special privileges; four, use authorized; and, five,  
9 effects on a military installation.

10 MEMBER STANLEY: Madam Chair, I second.

11 CHAIR HILL: Thank you, Mr. Stanley. All  
12 in favor?

13 [Chorus of ayes.]

14 Mr. Lloyd, could you read the appeal  
15 procedures, please?

16 MR. LLOYD: Most decisions rendered by the  
17 Board of Adjustment are appealable to the Board of  
18 County Commissioners. If you disagree with the  
19 decision of the Board of Adjustment, you may want to  
20 appeal its action. You may do so in writing within ten  
21 calendar days from the date that the decision being  
22 appealed is signed by the secretary of the Board of  
23 Adjustment and mailed to the original applicant in the  
24 proceedings being appealed in accordance with Washoe  
25 County code. Please call the planning staff

1 immediately at 328-6100 for information on the appeal  
2 procedure and the application fee.

3 CHAIR HILL: Thank you.

4 [End of Item]

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STATE OF NEVADA )  
 ) ss.  
COUNTY OF WASHOE )

I, Denise Hinxman, do hereby certify:

That I transcribed from audio recording the proceedings had in the above-entitled matter;

That the appearances on the cover page are from this transcriber's understanding of who was present during the proceeding;

That speaker identification was made to the best of my ability through voice recognition;

That the foregoing transcript, consisting of pages 1 through 30, inclusive, is a full, true and correct transcription of said proceeding to the best of my ability.

Dated at Reno, Nevada this 22nd day of February 2022.

/s/ Denise Hinxman

Denise Hinxman

# Attorney's Brief

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5  
6 **BEFORE THE WASHOE COUNTY COMMISSION**  
7 **ON APPEAL FROM A DENIAL OF VARIANCE**  
8 **BY THE WASHOE COUNTY BOARD OF ADJUSTMENT**  
9 **(WCC 110.912.20)**

10 **APPEAL OF ROBERT BIRTA AND DIANA BIRTA**  
11 **IN VARIANCE CASE # WPVAR-21-0004**

12 **BRIEF OVERVIEW OF APPEAL**

13 Robert and Diana Birta are residents of Incline Village, Washoe County, Nevada. They  
14 duly made application for a variance to the front-yard setback of their home at 919  
15 Jennifer Street. Immediately upon receipt of their application, Roger Pelham contacted  
16 them to advise them that they should abandon their application as it would not be  
17 approved and he could thereby return their application fee. In that conversation Mr.  
18 Pelham unequivocally informed them that their application did not qualify and declined  
19 the request of Mr. Birta that Mr. Pelham speak first with the Birta's residential designer,  
20 Wayne Ford. Mr. Birta received the strong impression that Mr. Pelham was acting in a  
21 cavalier, dismissive and even prejudicial manner with regard to an extremely important  
22 matter for the Birta family. Under these circumstances, the Birta family proceeded to  
23 pursue their application for variance.  
24

25  
26 At the hearing before the Board of Adjustment, Mr. Pelham, on behalf of the staff,  
27 presented his arguably pre-conceived case against recommending grant of the  
28

1 variance and purportedly based on his presentation, the Board of Adjustment denied  
2 the application, citing its failure to satisfy the first criterion: Special Circumstances.

3 As noted in the Appeal form timely filed with the County, the presentation of staff was  
4 replete with profound defects, including, but not necessarily limited to, incorrect  
5 assertions of fact unsupported by law or regulation and repeated instances of  
6 inappropriate or negligent analyses and substantial bias. In this fashion, it is submitted,  
7 that the Board of Adjustment failed to properly assess the application and proceeded  
8 to deny the application in derogation of the long-standing and numerous instances of  
9 substantially-similar applications being granted, all inconsistent with fundamental  
10 fairness, equal protection and the application thereof to the fundamental rights  
11 accorded to the ownership of real property in the United States and rights reserved to  
12 Nevada citizens under the State Constitution. (The Fourteenth Amendment's Equal  
13 Protection Clause requires states to practice equal protection. Equal protection forces  
14 a state to govern impartially—not draw distinctions between individuals solely on  
15 differences that are irrelevant to a legitimate governmental objective).

### 19 PRACTICAL/COMMONSENSE CONSIDERATIONS

20 While our laws are intended to be the codification of commonly-held mores, the  
21 complexity of societal life frequently strains this intention, often in tortuous ways. It is  
22 therefore appropriate to take the time to ascertain a practical/commonsense approach  
23 to these problems, rather than engage endlessly in the taxing exercise of appeals and  
24 litigation which not only burden the hardworking staff and commissions of County  
25 government, but which create damage for the constituents and sow deep feelings of  
26 being prejudicially treated by government. The Commissioners can take "judicial  
27 notice" that we are living in times with greater apparent conflict and division in the  
28



1 populace than since the Civil War. Inequal and negligent treatment of residents before  
2 county government does nothing to alleviate, but only exacerbates, these worrisome  
3 state of national and local affairs.

4         The practical/commonsense issues in this case are manifest: that within normal  
5 parameters, grant of a variance is not an absolute right; that the County must have  
6 some discretion with respect to being able to deny an improper application for a  
7 variance; that certain interests are sought to be protected and, conversely that an  
8 applicant seeking some relatively minor latitude in seeking the highest and best use of  
9 their property in an instance where numerous other of their neighbors have been  
10 accorded relief, should not be denied such relief based on misperception, inaccurate  
11 facts presented to the arbiter, negligence or even possible bias, conscious or not.

14 Further, it is not practicable to focus on considerations which are not set forth in NRS  
15 or the County Code, while discounting or ignoring language contained in each and  
16 interpreting matters in one variance in an entirely different fashion than in others.

17 There is no intervening statute or regulation which mandates a departure from past  
18 practice upon which variances were granted in the past. While the County needs some  
19 latitude to deal with the concept that every piece of property could be "unique", relying  
20 on that concept while acting in blatant derogation of the facts and trying to support  
21 inconsistent application of the criteria, is simply unlawful. (See Transcript of Hearing,  
22 p. 12, lines 4-10). Staff cannot arrogate to themselves a license to discriminate and  
23 cloak it with a veneer of "uniqueness". Mr. Birta is confident that the District Court  
24 would, on a truly simplistic basis of equity, find that a violation of law has occurred with  
25 regard to the proceedings at the Board of Adjustment level. The undersigned has been  
26 practicing before the Board of County Commissioners for four decades, shared law  
27  
28

1 offices with the late Bennie Ferrari, both before and during his tenure as Chairman of  
2 the Washoe County Commission, and is keenly aware of how seriously he and other  
3 Commissioners have taken their duty of public trust in this regard. It is palpable that  
4 justice in the form of equal application of the law was not accorded to the variance  
5 application of Mr. and Mrs. Birta.

6  
7 Thus, it is requested that the Commissioners address this variance application  
8 under their *de novo* jurisdiction per NRS and WCC as, under the unfortunate  
9 circumstances presented here, compounded by the failure to timely produce documents  
10 regarding past variances on Jennifer which were requested by the applicant (appellants)  
11 and the consequential prejudice to appellants who otherwise could have shown the  
12 Board of Adjustment what had been done in the past on Jennifer alone! It is submitted  
13 that careful assessment of this application must result in remedial relief by the  
14 Commissioners without having to occasion the further expense and delay which would  
15 result either from further action at the Board of Adjustment level or necessitating an  
16 appeal to the District Court.

17  
18 **STATED BASIS OF BOARD OF ADJUSTMENT'S DENIAL**

19  
20 Based on its Action Letter, the Board of Adjustment's denial is based upon the  
21 their acceptance of the defective determination and presentation by staff that there were  
22 no "special circumstances" and inherently that the relief sought by the applicants was  
23 not accorded to others in similar situations in the very same subdivision.

24  
25 **REGULATORY SCHEME PROVIDED BY NRS AND WCC**

26 The Commissioners are aware that the creation of the County boards and the  
27 variance procedure began in 1956. Naturally that legislation contemplated more precise  
28 regulations at the County level. However, such regulations were expected to flow from

1 the mandate set forth in NRS. A relatively cursory review of what staff has done with  
2 statute and regulation, including criteria none of which are expressly set forth therein,  
3 includes, but is not limited to, the impact of Open Space Easements, Scenic  
4 considerations, including the Mt. Rose Scenic Corridor, all effectively kept in perpetual  
5 obfuscation by staff's insistence of each lot being unique for purposes of grant or denial.  
6 Whether one wishes to imagine an abacus, a teeter-totter or a super computer tasked  
7 with making these attempts at discernment and balance, it is entirely indispensable that  
8 a pervasive cloak of respect for equal protection, equal application of the criteria of law  
9 and regulation and an all-encompassing effort at fairness be placed, faithfully hovering  
10 above.  
11

12  
13 It appears a miscarriage of justice and a disturbing occurrence where staff only  
14 quoted that which served its purpose in the Birtas' case when it is manifest from NRS  
15 278.300 that the statutory intent is to handle these matters equitably.

16 One hopes that an assumption that the County intends to serve its constituents in  
17 a manner which enhances their rights, issues of life/safety and the common good  
18 naturally balanced by observance of necessary regulation, would pervade such  
19 proceedings. This is not to suggest any type of "rubber stamp", however where  
20 numerous instances of granting similar variances are in evidence, having staff state to  
21 the members of the Board of Adjustment that they "have not done that analysis", along  
22 with actual inaccurate statements and a type of advocacy which is jaundiced and  
23 shockingly suggestive of the opposite of appropriate service to county residents, it  
24 behooves the Commission to take stock and reverse the harm.  
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## ROLE OF ADVOCACY BY STAFF

1  
2 While county staff has a duty of advocacy for appropriately informing a governing  
3 board of its analysis, this duty goes hand in hand with their duty to properly serve the  
4 public, consisting also of applicants. A balance between assessing a circumstance and  
5 providing a recommendation to the Boards must be bounded by impartiality,  
6 thoroughness, and absence of bias. In the instant case on appeal, this balance was  
7 substantially absent. Staff made its determination with less than one hour's  
8 investigation, as evidenced by the phone call to Mr. Birta strongly suggesting he  
9 abandon the variance attempt. This "gesture" was reported to the Board of Adjustment  
10 as the height of courtesy and consideration, but rather reveals a biased mindset and  
11 just the type of failure of "service oriented" stewardship of County procedures  
12 unfortunately pervading this case. It was further compounded by the purported  
13 derogatory and dismissive comments to Mr. Birta about Mr. Ford. There were additional  
14 perceptions of bias which need not be set forth before the Commissioners, but which  
15 may be quite germane to an appeal to the District Court.  
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18  
19 Similarly, while staff wanted to clearly state that nothing was incumbent upon  
20 them to suggest alternatives for achieving staff's perceptions of the applicants' goals for  
21 their home and safety, it is important to note that the alternatives that staff did present  
22 were uniformly defective and impractical. Thus, we have staff failing to accurately  
23 represent the facts of the case and surrounding properties, responding to a board  
24 member's query about similarly granted variances by blithely stating "I have not done  
25 that analysis" (see transcript of hearing at page 12, line 1, Roger Pelham), but regaling  
26 the board with alternatives which do not meet TRPA or fire codes as applied to this  
27 "unique" property, eventually eliciting an inaccurate statement by the Chairperson of the  
28

1 Board of Adjustment that residents do not need a garage (See transcript, p. 25, lines  
2 13-17). The essence of presenting these alternatives, defective or not, is to convince  
3 the Board of Adjustment that a variance should not be granted. It is submitted that this  
4 type of advocacy was inappropriate under these circumstances. Mr. Ford will graphically  
5 demonstrate in substantial detail why such alternatives will not work. Additionally, he will  
6 highlight the numerous instances where neighboring properties were granted variances  
7 in largely indistinguishable cases.  
8

9 It is submitted that staff strayed from the basic tenets of NRS 278.300 (1) (c) in the  
10 matter of the Birta variance. It is suggested that staff cited whatever language, cherry  
11 picked from a statute or regulation which served a recommendation of denial and  
12 inaccurately stated others, or left information out entirely. This is unlawful and erodes  
13 people's confidence in their government. Mr. Ford will cite to numerous instances of  
14 granting variances in the same subdivision, on the same street called Jennifer, where  
15 lots just like Birta's, bordering Mt. Rose, having large Open Space easements and are  
16 part of the Mt. Rose Scenic Corridor calling for reduced visibility of homes from the  
17 highway, crowding out possible other reasonable alternatives. The Commissioners will  
18 draw their attention to these other variances which met with success, either at the Board  
19 of Adjustment level or in front of the Commissioners, where there are no other  
20 justifications for grant materially different than those obtaining in that of the variance  
21 request by the Birta family.  
22  
23

24 As was argued at the Board of Adjustment hearing, snow conditions at that elevation  
25 constitute "practical difficulties" which, like other noted criteria, can constitute "special  
26 circumstances".  
27

28 NRS 278.300(1)(c):

1 (c) Where by reason of exceptional narrowness, shallowness, or shape of a specific  
2 piece of property at the time of the enactment of the regulation, or by reason of  
3 exceptional topographic conditions or other extraordinary and exceptional situation or  
4 condition of the piece of property, the strict application of any regulation enacted  
5 under NRS 278.010 to 278.630, inclusive, would result in peculiar and exceptional  
6 practical difficulties to, or exceptional and undue hardships upon, the owner of the  
7 property, to authorize a variance from that strict application so as to relieve the  
8 difficulties or hardship, if the relief may be granted without substantial detriment to the  
9 public good, without substantial impairment of affected natural resources and without  
10 substantially impairing the intent and purpose of any ordinance or resolution. (emphasis  
11 added).

12 Tellingly, Mr. Pelham was on staff when Michael Harper was director and Sharon Kvas  
13 was on staff. Mr. Harper and Ms. Kvas were principals in many of the decisions to  
14 recommend the grant of variances, and were consistent in their analysis of these  
15 matters, resulting in approval by the Boards in numerous instances just like the Birtas  
16 case. There have been no changes to NRS or WCC which would explain how the type  
17 of relief granted in prior years cannot or should not now be granted.

18 Perhaps, most persuasively, we can quote Chairman Bennie Ferrari in **Variance #5-23-**  
19 **82**:

20 "Following a discussion on motion by Commissioner Brown, seconded by  
21 Commissioner Ferrari, which motion duly carried, Chairman Ferrari ordered that based  
22 on findings that other properties in the immediate vicinity are enjoying a similar  
23 encroachment, that the variance will not be a detriment to the health, safety, and  
24 welfare of the general public, and that the structure will not have significant negative  
25 visual or environmental impact, the recommendation of the Board of Adjustment be  
26 overturned and variance case No. V5-23-82 be granted subject to the following  
27 conditions." (Standard conditions followed on plan conformance, start of construction,  
28 and review within two years).

29 This result would be entirely consistent with WCC:

30 Section 110.804.00 Purpose. The purpose of this article, Article 804, Variances,  
31 is to provide a means of altering the requirements of this chapter in specific instances  
32 where the strict application of those requirements would deprive a property of privileges  
33 enjoyed by other properties with the identical regulatory zone because of special  
34 features or constraints unique to the property involved. (emphasis added).

1           Once one moves past “special circumstances” found in these cases, no other  
2 failure of a required finding was cited by the Board of Adjustment. Moreover, the Birta  
3 variance application did not elicit one single objection from any neighbor noticed of the  
4 proceeding and remarkably the Washoe County Roads Department proactively  
5 indicated it was in favor of the variance!  
6

7           The undersigned, having lived at high elevation for 23 years in Incline, wonders  
8 why the County does not appear to acknowledge that safety conditions due to snow  
9 accumulation have indeed grown more concerning (climate change...) and effectively  
10 the burdens of life/safety issues, shared by the owners, their neighbors and families and  
11 the County charged with road maintenance and involved with emergency care  
12 agencies, might easily qualify as a presumed basis for the grant of a variance for  
13 construction of a garage. If scenic conditions which are not generally accorded validity  
14 under state law and the impact of open space easements (of which there were none  
15 when NRS 278 was originally enacted, (and likely a host of other concepts tossed in  
16 here and there), why not acknowledge that upper-elevation living, which has always  
17 been a challenge, is very much more so now? It is submitted that it is a seriously  
18 appropriate candidate as a worthy addition to criteria for consideration in the variance  
19 context. When added that many other properties on the same street and in the very  
20 same subdivision have been accorded this relief, often for a much greater reduction of  
21 front-yard setbacks, one has to carefully wonder what is going on here.  
22  
23

24           Although the undersigned is traditionally reluctant to assign egregious error to  
25 staff’s analysis and presentation, an examination of staff’s proper role in these types of  
26 matters, juxtaposed with the defective presentation, requires such objections: Not only  
27 did Mr. Pelham “warn” the applicants immediately that their application was very likely to  
28

1 be denied; staff became partisans in that they inaccurately presented and left out crucial  
2 facts in presentation to the Board of Adjustment, chose criteria when it suited staff's  
3 recommendation to the Board and baldly ignored or obfuscated salient aspects of the  
4 entire process and inconsistently applied the facts of this case to the body of prior  
5 variance applications and grants. All of this resulted in a miscarriage of justice as to the  
6 Birta family and a dishonoring of the expected consistent application of the law which  
7 each of us expects to comport with our constitutional rights and the process governing  
8 each of us as applied by our representatives.

10 While Mr. Ford will provide graphic evidence of the arguments made herein and  
11 the undersigned will make an oral legal presentation and be available to answer any  
12 questions posed by Commissioners, it is submitted that the appropriate result of this  
13 appeal would be a vote of the majority of Commissioners (preferably unanimous) to  
14 reverse the decision of the Board of Adjustment and order the granting of the Birta  
15 variance, with standard conditions.

17 **RESPECTFULLY SUBMITTED**, this 10<sup>th</sup> day of March, 2022.

19 /s/ Robert J. Angres  
20 ROBERT J. ANGRES, ESQ.