



May 3, 2024

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VIA E-MAIL (GSTMICHEL@TRPA.GOV)

Tahoe Regional Planning Agency
Governing Board
c/o Graham St. Michel, Associate Attorney
P.O. Box 5310
Stateline, NV 89449

Re: Opposition to Statement of Appeal of Figone Garage / Accessory Dwelling Unit (ADU) Project - TRPA Project File Number ERSP2023-0701

Dear Honorable Members of the Governing Board and Mr. St. Michel:

This Opposition to the Egerland, Meyer, and Catterson's (collectively, "Appellants") Written Statement of Appeal is respectfully submitted on behalf of Victoria Figone ("Ms. Figone"), trustee of the Figone Family Trusts. Ms. Figone is the owner of the property at 32 Moana Circle, Tahoma, California (the "Property") and applicant for a garage/accessory dwelling unit ("ADU") project, TRPA Project File Number ERSP2023-0701 (the "Project").

TRPA's findings are supported by substantial evidence and the appeal raises no issue sufficient to overturn staff approval. As such, we respectfully ask the Governing Board to deny Appellants' appeal and affirm staff's approval.

I. Background Facts

a. Ms. Figone's Plans to Improve the Property

Ms. Figone is the Trustee of family irrevocable trusts that own a lakefront property within the Moana Beach Subdivision. The Property has been in Ms. Figone's family for over 50 years. Ms. Figone began the process of improving the Property for her family in 2020. Ms. Figone has since worked tirelessly with architects, the Moana Beach Property Owners Association ("HOA") and, as pertinent here, TRPA staff on her application to build living space above her garage (the "ADU").

The Property is currently a one-story residence with 2,204 square feet of living space and a 687 square foot detached garage. The Project proposes to add a deed restricted ADU with 618 square feet of living space with one bedroom, one bathroom, a living room, and kitchen. (Evolve Design Works letter to Project Review Committee, dated June 5, 2023.) The garage is 687 square foot of unconditioned, detached space. (*Id.*) Thus, with the ADU, the total living space of the Property will be 2,822 square feet.

b. HOA's Illegal Attempts to Block Improvement

Appellants are property owners within the Moana Beach Subdivision. Appellants allege that the Project will adversely impact their properties on “economic, aesthetic, and environmental grounds,” yet provide no facts to support their position and misrepresent both the record and required findings in their Statement of Appeal. The proposed improvements of the Project would have no material impact to Appellants’ views. Moreover, private views are not part of TRPA’s review and approval process. There is a separate proceeding in the Placer County Superior Court between Ms. Figone and the HOA and its board members regarding the HOA’s improper and arbitrary denial of Ms. Figone’s proposed improvements based on the opposition by insider board and architectural review committee members.¹

TRPA need not engage with Appellant’s HOA-related claims, as these claims are being separately adjudicated in court and are not part of TRPA’s purview. To the extent Appellants attempt to bring the HOA dispute into this TRPA appeal, such attempts are improper and should be disregarded.

c. Ms. Figone’s Process with TRPA

Ms. Figone submitted a single-family dwelling project application to TRPA on April 20, 2023. Ms. Figone worked closely with TRPA staff on design development to ensure the proposed plans complied with TRPA’s Code. TRPA made proper findings as required by the Agency’s ordinances and rules in approving the Project. In addition, TRPA properly made a complete Site Assessment and coverage findings.

TRPA approved the Project and issued the permit on January 25, 2024 subject to standard conditions of approval and special conditions.

II. Standard of Review

In general, when challenging the approval of a project, it is the appellant’s burden to demonstrate that there is insufficient evidence in the record to justify the agency’s action. (*See Citizens for a Megaplex-Free Alameda v. City of Alameda*, 149 Cal.App.4th 91, 112-13 (2007).) As with all substantial evidence challenges, an appellant challenging an agency’s findings for insufficient evidence “must lay out the evidence favorable to the other side and show why it is lacking. Failure to do so is fatal.” (*Tracy First v. City of Tracy*, 177 Cal.App.4th 912, 934-35 (2009).)

Appellant’s Statement of Appeal fails to demonstrate why TRPA’s findings were insufficient. The Statement of Appeal erroneously bases its arguments on TRPA Code Chapter 21.2.2 but, as further explained below, Chapter 21.2.2 does not apply to the Project since the Project is not a “special use.” Appellants also cite information regarding the HOA’s denial of the Project which is not pertinent to TRPA’s review or findings, and which is being adjudicated in a separate

¹ The HOA’s denial is also illegal, as California law prohibits a HOA from prohibiting or unreasonably restricting ADUs on a lot zoned for single-family residential use. (Civ. Code, § 4751.)

forum. Finally, Appellants argue without bases that there is misrepresentation in the application materials and on scenic impact. Ms. Figone worked closely with TRPA staff on her application materials which were complete and accurate. A baseline scenic assessment was approved on September 5, 2021 and a separate scenic assessment for the Project was prepared on June 6, 2023. TRPA staff included a condition in the permit requiring scenic mitigation maintenance for the project, ensuring compliance with TRPA’s scenic standards in perpetuity.

TRPA’s staff decision is supported by substantial evidence and should be upheld by the Governing Board.

III. Argument

a. The Project is Not Subject to Special Use Findings in Chapter 21.2.2

The main basis stated in Appellants’ Statement of Appeal, and the sole basis tied to TRPA’s Code regarding the project approvals, relates to Code section 21.2.2. Code section 21.2.2 identifies the findings that are required for approval of special uses. These findings are not required for the Project, as the ADU that TRPA permitted is an allowed land use, not a special land use.

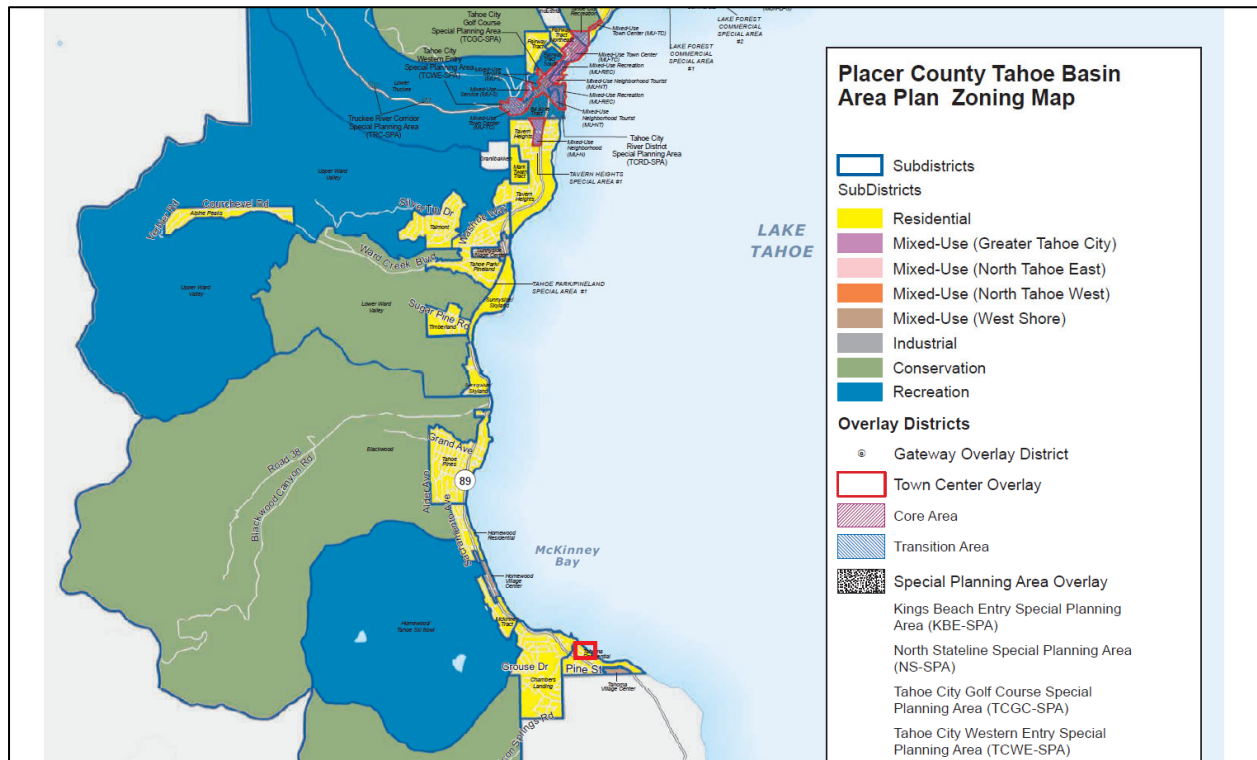
TRPA Code section 21.2.1 states:

- Uses listed in applicable local plans, redevelopment plans, or specific or master plans as “allowed” (“A”) are appropriate uses for the specified area, and projects and activities pursuant to such uses may be permitted. Allowed uses are assumed to be compatible with the direction of the Regional Plan and the surrounding uses.

(TRPA Code, § 21.2.1 (emphasis added).)

In contrast, uses that are listed in applicable local plans, redevelopment plans, or specific or master plans as “special” (“S”) may be permitted only with certain additional findings. Specifically, “[t]o allow a special use, TRPA shall conduct a public hearing according to the procedures in the TRPA Rules of Procedure,” and make findings consistent with 21.2.2 subsections A, B, and C. (TRPA Code, § 21.2.2.)

Ms. Figone’s Property is located in the Tahoma Residential Subdistrict of the Tahoe Basin Area Plan (“TBAP”). (Exhibit A, TBAP Zoning Map.) As shown in the below excerpt of the Area Plan Land Use Diagram (Figure 4-5), the Property (depicted with the red box) is in the yellow Residential zone of the TBAP.



According to the TBAP Implementing Regulations, single family residential are allowed in the Residential zone, as well as multi-person dwellings if 100% of the units are deed restricted to affordable, moderate, or achievable housing per TRPA Code of Ordinances Chapter 90. (TBAP Implementing Regulations, Table 2.03.BB-1.)

TRPA Code section 21.3.2 states that ADUs “shall be considered an accessory use to the primary use it serves and may be permitted where the primary use is a permissible use.” (TRPA Code, § 21.3.2.) The primary use of the Project is a single-family residence, a permissible use under the TBAP. As such, the ADU is a permissible use, and the Project does not necessitate special findings under Code section 21.2.2.

Appellants arguments related to Finding 21.2.2.A, 21.2.2.B, and 21.2.2.C are baseless and must be dismissed. These special findings are not required for the Project since the Project is a permissible use, rather than a special use, under applicable local plans.

b. If Chapter 21.2.2 Findings Were Required, the Project Complies and is an Appropriate Use for the Parcel

Even if Code section 21.2.2 findings were required, which they are not, the Project would be an appropriate use for the parcel as it will not disturb health and safety or the general welfare or not alter or detrimentally affect the purposes of the TBAP.

i. The Project Complies with Finding 21.2.2.A

Finding 21.2.2.A requires the project to be of such a nature, scale, density, intensity, and type to be an appropriate use for the parcel and surrounding area. (TRPA Code, § 21.2.2.A.)

Of the approximately 29 residential properties within the Moana Circle Subdivision, depicted on the site map below, 24 to 25 have two story residences. Ms. Figone's existing residence, highlighted in yellow in the below site map, is single-story. Ms. Figone considered adding a second story, consistent with other residences in the neighborhood, but decided to proceed with the smaller improvement of a second story garage and ADU. The Project's improvements are consistent with and on a smaller scale than other recent development within the subdivision.



Several lakefront residences that neighbor Ms. Figone's are much larger than Ms. Figone's Property. For example, 48 Moana Circle is located three lots north of the Figone Property. The owners at 48 Moana Circle completed a large remodel and addition of over double the size of the prior residence to an approximately 4,654 sq. ft. two-story residence and garage in or around 2015. As a further example, the improvements at 52 Moana Circle included a large two-story residence and two-car garage that doubled the size of the residence to over 6,040 square feet of living area. In addition, in 2010, TRPA issued a permit for the replacement of a detached garage with living quarters for 28 Moana Circle, another lakefront property in the Moana Beach Subdivision that is located directly across the street from one of the Appellants. (TRPA File No. ERSP 2010-1065.) Finally, TRPA recently approved the teardown of an existing single-family

dwelling and rebuild of a new single-family dwelling on 56 Moana Circle that will result in 10,120 square feet of coverage. (TRPA File No. ERSP 2022-0609.)

In contrast, Ms. Figone's Project proposes a 618 sq. ft. ADU with one bedroom, one bathroom, a living room and kitchen. The Project proposes 4,994 square feet of coverage, less than the 5,022 square feet of coverage allowed for the parcel. (Evolve Design Works Findings, dated January 10, 2024.) With the additional 618 square feet of living space, Ms. Figone's Property will be a total of 2,822 square feet of living space, a fraction of the living space in other Moana Bay lakefront residences.

Ms. Figone's Property will be a comparable size or smaller than Appellants' properties. Appellant Meyer's property at 25 Moana Circle is a two-story residence with 3,435 square feet of living space with an 876 square foot garage. Appellant Catterson's property at 35 Moana Circle is a two-story residence with 2,030 square feet and a 370 square foot garage. Appellant Egerland's property at 45 Moana Circle is a single-story residence with 2,934 square feet and a 336 square foot garage.

The Project complies with Finding 21.2.2.A, as it is a consistent nature, scale, density, intensity, and type to the surrounding area.

ii. The Project Complies with Finding 21.2.2.B

Finding 21.2.2.B requires the project to not be injurious or disturbing to the health, safety, enjoyment of property, or general welfare of persons in the neighborhood or general welfare of the region, and requires the applicant to take reasonable steps to protect against any such injury and to project the land, water, and air resources of the applicant's property and that of surrounding property owners. (TRPA Code, § 21.2.2.B.)

While Appellants repeatedly raise concerns about their private views, the "hindrance of private views" are not considered a significant environmental impact. (*Sierra Club v. Tahoe Reg'l Planning Agency*, 916 F. Supp. 2d 1098, 1150 (E.D. Cal. 2013) (citing *Mira Mar Mobile Cmty. v. City of Oceanside*, 119 Cal. App. 4th 477, 494 (2004) ("neither state nor local law protects private views from private lands and the rights of one private landowner cannot prevail over the rights of another private landowner")); see also *Mira Mar*, 119 Cal.App.4th at 492 ("California landowners do not have a right of access to air, light and view over adjoining property." (citing *Wolford v. Thomas*, 190 Cal. App. 3d 347, 358 (1987))).) Appellants' arguments regarding their private views are both factually false, as the Project will not detrimentally impact views, and irrelevant to the current proceeding.

iii. The Project Complies with Finding 21.2.2.C

Finding 21.2.2.C requires the project to not change the character of the neighborhood, or detrimentally affect or alter the purpose of the applicable local plan, and specific or master plan, as applicable. (TRPA Code, § 21.2.2.C.)

The mountain architecture style of the residence and associated landscaping blends with the character of the existing neighborhood of similar sized and designed single-family residences. (Evolve Design Works Findings, dated January 10, 2024.) The TBAP states that the Tahoe Residential Subdistrict “should continue to be residential, maintaining the existing character of the neighborhood.” (TBAP Implementing Regulations 2.03 BB.) The Project is consistent with the local plan’s goals and purposes and, as such, complies with Finding 21.2.2.C.

In sum, while the Project does not need to comply with TRPA Code section 21.2.2, as it is a permissible land use, it complies with all three special findings. The Governing Board should accordingly reject Appellants’ baseless arguments to the contrary.

c. The Project Complies with Placer County and TRPA Code for ADUs

TRPA Code states that ADUs “shall be considered an accessory use to the primary use it serves and may be permitted where the primary use is a permissible use.” (TRPA Code, § 21.3.2.) Further, “[u]p to two accessory dwelling units per parcel shall be considered accessory uses where the primary use is a single-family or multi-family use and is a permissible use.” (*Id.*)

Ms. Figone complied with TRPA’s procedures for permitting the Project, as she completed a single-family residential application through TRPA, worked with TRPA staff on the submittal, and received a lawful permit from TRPA. (See *Accessory Dwelling Units in East Placer County*, Placer County and TRPA, <https://www.placer.ca.gov/DocumentCenter/View/55810/Assessory-Dwelling-Units-in-Placer-County-Tahoe?bidId=>.)

Appellants argue that Ms. Figone “appears to misuse the ADU designation” in order to circumvent HOA CC&Rs and TRPA rules. Appellants cite no evidence or support for this contention. Indeed, Ms. Figone has the right as a California citizen to build an ADU on her property. California’s ADU laws protect all homeowners, including Ms. Figone. Appellants further misconstrue Ms. Figone’s changes to the Project to imply deviousness when, in fact, Ms. Figone did so to clarify the scope of the Project, minimize impacts, such as reducing the overall height of the structure, and ensure compliance with TRPA’s rules. Appellants’ arguments that Ms. Figone has misrepresented facts or tried to “take advantage” of ADU laws are unfounded.

As Ms. Figone’s property is a permissible single-family residence, the proposed improvement of adding one ADU is consistent with TRPA’s Code and processes. Condition 3.D of the permit requires a TRPA deed restriction restricting the ADU to Achievable Area Median Income Housing and prohibiting the use of the ADU as a vacation rental, consistent with the TBAP

Implementing Regulations. TRPA staff's careful and thoughtful review of the Project should be upheld.

d. Scenic Mitigation

Appellants' final argument is that the scenic photos are outdated and the scenic assessment is from an older project approved in 2021. Again, this contention is baseless.

A baseline scenic assessment was approved on September 5, 2021. This assessment was prepared and approved prior to removal of the lakefront tree, and thus, the lakefront tree was included as part of the baseline and any visual impacts associated with the project must account for the loss of the tree and any associated screening.

A separate scenic assessment for the proposed project was prepared on June 6, 2023, after the removal of the lakefront tree. This assessment took into account the removal of the lakefront tree and the contrast rating was scored based on the current conditions. The contrast rating for the proposed project is 25, which allows up to 1,190 square feet of visible mass. The project as approved proposes only 1,158 square feet of visible mass, 32 sf less visible mass than allowed. The project conditions of approval require post project visible mass elevation drawings on photos taken from 300 feet offshore to ensure scenic compliance. Indeed, removal of the tree actually increases the view to the lake for surrounding homeowners which cuts against Appellants' argument.

Condition 6 of the Project requires maintenance of scenic mitigation in perpetuity. Ms. Figone intends to comply with Condition 6 and all conditions of the permit. TRPA properly reviewed scenic mitigation and Appellants raise no substantial evidence to the contrary.

IV. Conclusion: TRPA Committed No Errors in Approving the Project

Appellants cite a variety of alleged bases in their Statement of Appeal, but each is baseless and should be rejected by the Governing Board. TRPA has not committed any procedural errors in processing Ms. Figone's permit.

Based on the foregoing, Ms. Figone respectfully requests that the Board uphold the determination of TRPA approving the Project.

Yours very truly,



Michael B. Brown

cc: Katherine Huston, TRPA (khuston@trpa.gov)