

**NEVADA COUNTY ZONING ADMINISTRATOR**  
**STAFF REPORT**

**APPLICANT:** David Lewandowski

**HEARING DATE:** December 14, 2016

**OWNER:** David & Michelle Lewandowski

**FILE NO:** PLN16-0051, VAR16-0003

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**PROJECT:** Application for a Variance to reduce the 30' required rear and side setbacks to 10' rear and side setbacks to accommodate an existing permitted garage to be converted into a second dwelling unit.

**LOCATION:** 11757 West Brookview Drive, Grass Valley, about 1.2 miles southeast of the intersection of Highway 174 and Rattlesnake Road.

**ASSESSOR'S PARCEL NO.:** 12-600-11

**PROJECT PLANNER:** JD Trebec, Associate Planner

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<b>General Plan:</b>	EST	<b>Water:</b>	Well
<b>Region/Center:</b>	Rural	<b>Sewage:</b>	Septic
<b>Zoning:</b>	RA-3	<b>Fire:</b>	Ophir Hill
<b>Flood Map:</b>	0650 Zone X	<b>Schools:</b>	Union Hill/NJUHSD
<b>ZDM No.:</b>	2407	<b>Recreation:</b>	Grass Valley
<b>Parcel Size:</b>	1.00 acre	<b>Sup. Dist.:</b>	Dan Miller, District III
<b>Farmland Map Designation:</b>	X		
<b>Date Filed:</b>	August 23, 2016	<b>Receipt No.:</b>	389745
<b>Prev. File Nos:</b>	N/A		

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**ATTACHMENTS:**

1. Recommended Conditions of Approval
2. Vicinity, Zoning and Public Notice Map
3. Applicant's Site Plan

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**RECOMMENDATION:**

Environmental Action:

- I. Find the project exempt from environmental review per CEQA Sec. 15305

Project Action:

- II. Conditional Approval of Variance (VAR16-003)

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**BACKGROUND:**

The project parcel is Lot 12 of the Brookview Acres subdivision which was filed with the County in July of 1965. The lot is served by an on-site well and a septic system and has a General Plan Designation of EST, "Estate", intended for lower density residential uses. The corresponding zoning of RA-3 "Residential Agricultural" allows densities up to one dwelling

unit per three acres. The older Brookview Acres subdivision has a wide range of lot sizes, but most are under the 3-acre minimum required by the zoning. This 1-acre lot is developed with a mobile home that was permitted in 1982 and a garage permitted in 1984.

The applicant had applied for a building permit to remodel the existing four-car garage into a second dwelling unit. A review of the application found that the structure is within the required 30-foot setbacks for the side and rear of the lot. Unable to secure a setback easement or lot line adjustment from the neighboring parcels, the applicant has requested a variance to allow 10-foot setbacks for the side and rear yards.

**PROJECT DESCRIPTION:**

The request is for a variance to reduce the required rear and side setbacks for the existing garage from thirty to ten feet. The 1-acre lot is zoned RA-3. The lot slopes steeply from the west corner at the rear to the east corner at the front from over 2600 feet elevation to about 2520 feet across less than 300 feet of distance. This is an average of over 26 percent slope and the terrain approaches 30 percent slope in places. Much of the lot appears to have required extensive grading in order to develop level areas for the centrally located residence and the existing garage that is under consideration for the variance. Much of the southwestern and northwestern portions of the property remain steeply sloped. The driveway and southeastern area are surfaced in asphalt. A 90 square foot shed, temporary 160 square foot shipping container, and the well pump house are located just off the asphalt area within the thirty-foot side yard setback (figure 1).

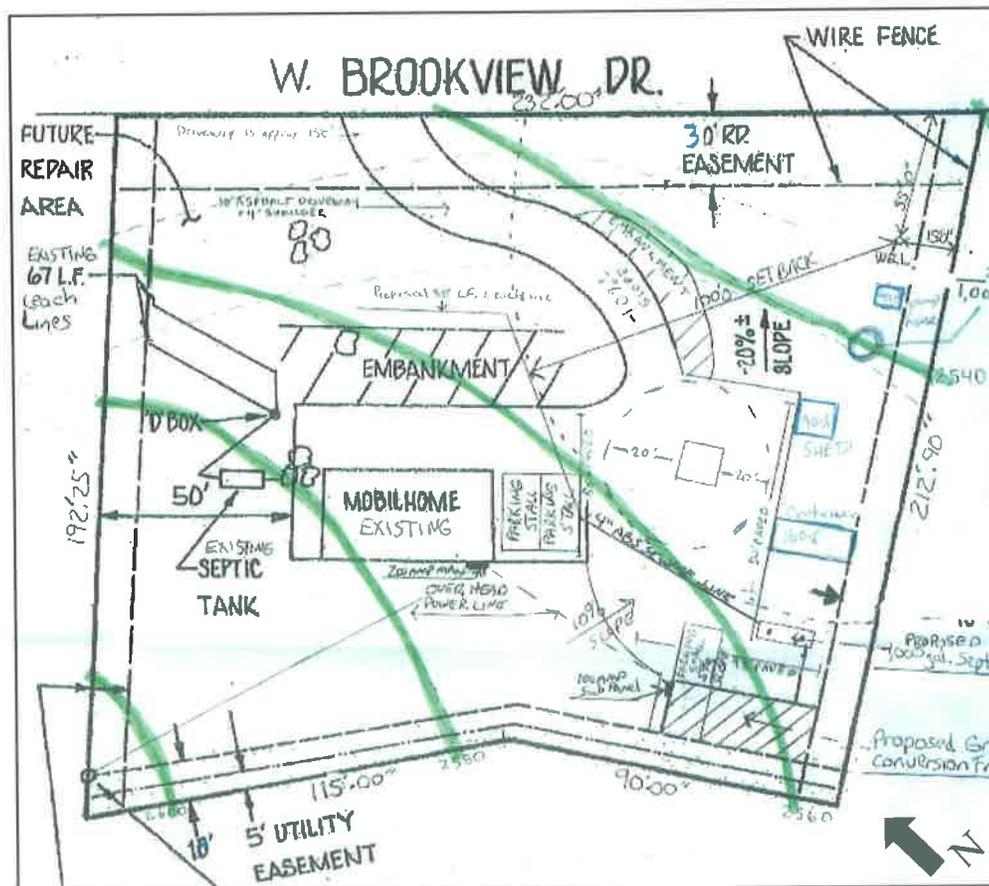


Figure 1. Site Plan

## **ANALYSIS OF ISSUES:**

### **Building Setbacks**

The garage that is to be converted was originally permitted in 1984 and met the ten-foot setback requirements of the time. The project is not seeking to expand the existing footprint for the structure. In 1991, the zoning ordinance was updated to require 30-foot setbacks for the structure. Under the update, the structure no longer meets the setback standards. The applicant was unable to obtain a setback easement or lot line adjustment and has asked for a variance to come into compliance with the new setback standard.

At 1 acre, the lot meets the minimum size requirement allowing a detached accessory second dwelling unit. Parcels less than an acre require accessory second dwelling units to be attached to the main dwelling. Although the lot does meet the minimum requirement for a detached accessory second dwelling unit, it is constrained both by a smaller buildable envelope and the steep wooded terrain found on the site.

A shipping container and ninety-square foot shed are also found in the thirty-foot required side setback and are not included in the variance. The shipping container is for temporary use and shall be removed prior to the final building inspection or require a siting permit for a new location outside the setback. The shed shall also be required to be removed from the setback before final building approval for the second dwelling unit.

### **Topographic Constraints**

As mentioned in the description of the project, the lot is quite constrained by topography. There is over eighty feet of relief from the western corner to the eastern corner of the lot. The average slope exceeds 26 percent for the lot with areas approaching 30 percent slope. The original development in the mid-eighties shows evidence of extensive cut-and-fill excavation to create level areas for the permitted structures (Figure 2).



**Figure 2. Existing Structure**

Relocating the proposed second dwelling unit would require further disturbance and possible erosion of the site as well as removal of some of the remaining mature oaks. By allowing the second dwelling to take the place of the existing garage, these resources are effectively protected.

**ZONING AND GENERAL PLAN CONSISTENCY:**

The parcel is zoned RA-3 "Residential Agricultural" which allows densities up to one dwelling unit per three acres with a General Plan Designation of EST, "Estate", intended for lower density residential uses. Land Use and Development Code Sec. L-II 5.7.E states that in order to grant a variance, in addition to finding special circumstances applicable to the property, including size, shape, topography, location or surroundings, which would deprive the property of privileges enjoyed by other property in the vicinity through the strict application of zoning ordinance, the Zoning Administrator must determine that the integrity and character of the zoning, the utility and value of adjacent property, and the general welfare of the neighborhood would be maintained. In this case, an accessory second dwelling unit is an allowed use for the zoning and the project would maintain the residential integrity and character of the area.

**SUMMARY:**

The proposal is for the conversion of a four-car garage into an accessory second dwelling unit and garage. When originally permitted, the structure met setback requirements and the project is not seeking to expand the existing footprint of the structure. Under current zoning standards, however, the existing garage encroaches into the rear and side yard setbacks.

The project site has a special set of circumstances which makes meeting the rear and side yard setbacks difficult. These circumstances include the 1-acre lot size in a minimum 3-acre zone and slopes over twenty-five percent over most of the undeveloped lot. The applicant sought, but was unable to obtain setback easements or a lot line adjustment from his neighbors. The approval of the setback variance is not anticipated to result in a significant environmental impact and the variance is found to be categorically exempt from environmental review pursuant to Section 15305 of the California Environmental Quality Act Guidelines. Staff finds that the approval of the proposed variance is the minimum departure from the requirements of the zoning ordinance, which is necessary to grant relief to the applicant.

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**RECOMMENDATION:**

Staff recommends the Zoning Administrator take the following actions:

- I. Find that the project is Categorically Exempt from environmental review pursuant to Section 15305 of the California Environmental Quality Act Guidelines because the alteration will result in a minor change in the land use limitations and will not result in any change to the allowable density of the lot in question.
- II. Approve Variance VAR16-003 reducing the rear and side yard setbacks from 30 feet to 10 feet, subject to the conditions shown in Attachment 1, making findings A-F pursuant to Section L-II 5.7 of the Nevada County Land Use and Development Code:

- A. That this variance does not constitute the granting of a special privilege inconsistent with the limitations placed on other properties in the vicinity and in the same zoning district in which the subject property is located;
- B. That there are special circumstances applicable to the property in terms of the smaller lot size and steep terrain, and the strict application of the setback provisions of the zoning ordinance, with regard to the rear and side yard setback, would preclude a reasonable use of the improvement;
- C. That the variance does not authorize a use not otherwise authorized by the zoning district in which the property is located;
- D. That the granting of the variance, as conditioned, will not adversely affect the public health, safety, or welfare, the integrity and character of the district, nor the utility and value of nearby property in that the proposed improvements will not have any impact on nearby properties;
- E. That the variance, as conditioned, is consistent with the Nevada County General Plan which designates this property for residential uses; and
- F. That the variance is the minimum reasonable departure from the requirements of this ordinance necessary to grant relief to the applicant.

Respectfully Submitted,

  
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Tyler Barrington, Principal Planner

**CONDITIONS OF APPROVAL  
PLN16-0051, VAR16-003**

**A. PLANNING DEPARTMENT**

1. This Variance approves a setback reduction from 30 to 10 feet for the rear and side yard setbacks of the existing garage to be converted into a second dwelling unit. No further encroachment into setbacks is authorized by this variance condition.
2. Pursuant to the requirements of the Land Use and Development Code, the applicant is hereby notified that this Variance is not valid until the expiration of the ten (10) day appeal period from the date of the Zoning Administrator's final action on the project, December 26, 2016.
3. Within 15 days after project approval the applicant shall sign and file with the Nevada County Planning Department a Defense and Indemnification Agreement, in a form approved by County Counsel. No further permits or approvals shall be issued for the project, including without limitation a grading permit, building permit or final map approval, unless and until the applicant has fully complied with this condition. The standard Defense and Indemnification Agreement shall be attached to the approval letter.
4. This variance applies only to the existing garage to be converted into a second dwelling unit and the shipping container and shed located within the 30-foot side yard setback shall be removed prior to final building approval.

**B. BUILDING DEPARTMENT**

1. Applicant shall reinstate building permit 16001019 and address all plan review comments for this permit from the Building Department dated June 23, 2016 and the Planning Department dated June 24, 2016. The applicant shall also provide an accurate site plan with all structures shown that are currently on the parcel.

**C. FIRE MARSHAL**

1. Prior to approval of the final map, the existing structures located on parcel 12-600-11 shall comply with the following;

Vegetation clearance around structures shall meet the minimum requirements of Public Resources Code Section 4291. Structures shall have a maintained Defensible Space/Fuel Reduction Zone by removing, limbing, and/or thinning trees, brush, flammable vegetation or combustible growth no less than 100 feet from structures or to the property line, whichever is closer to prevent the transmission of fire. This is not a requirement to clear all vegetation from the property. Such thinning or removal of vegetation does not apply to individual isolated trees, ornamental shrubbery or ground cover plants unless such vegetation forms a means of rapidly transmitting fire from ground vegetation to canopy trees.

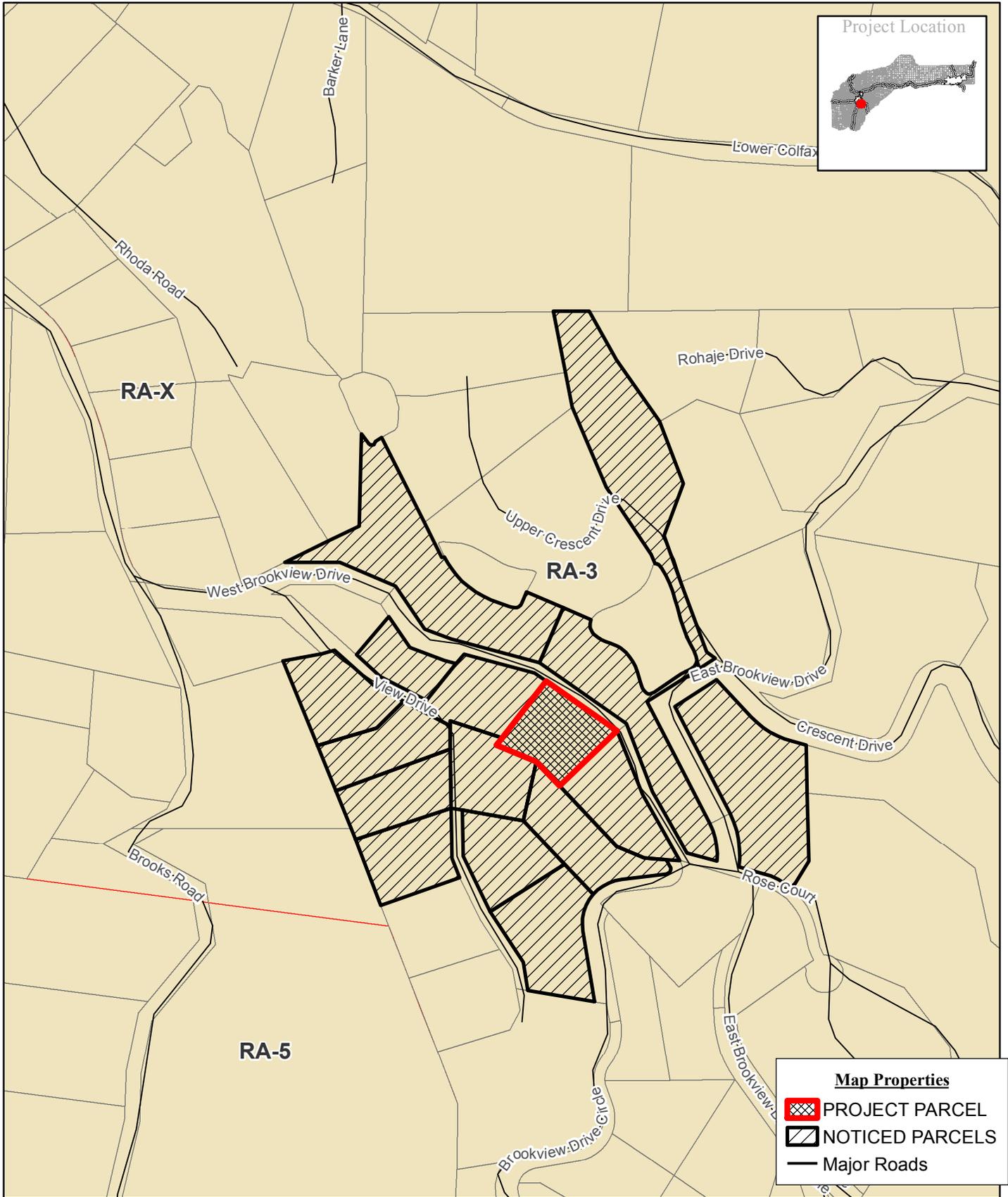
Replacement vegetation should be ornamental shrubbery of the fire safe varieties. Additional clearing may be required by the Fire Marshal if extra hazardous conditions exist. All flammable vegetation and fuels caused by site development shall be legally disposed or removed.

2. The facility shall have appropriate addressing consisting of highly visible numbers which are at a minimum 4 inches in height, have a .5 inch reflectorized stroke, and contrast with the background color of the sign viewable from either direction.
3. Driveway must remain clear at all times to provide for Fire Department access.
4. As a part of the building permit application, the applicant shall submit a Fire Protection Plan, which shall be site specific and address the following issues:
  - 1) The proximity to emergency responders and estimated emergency response times;
  - 2) Describe the primary (and secondary if applicable) access road conditions;
  - 3) Identify the project's emergency water supply or emergency water storage facilities consistent with Article 4 of Chapter XVI of the Land Use and Development Code;
  - 4) Identify if a fire sprinkler system is proposed or required;
  - 5) Provide a Fuels Management Plan that requires:
    - a) Defensible space design consistent with Public Resources Code 4291;
    - b) Identification of high fuel load areas;
    - c) How adequate defensible space will be ensured; and
    - d) The mechanism for maintaining defensible space.
    - e) Identification of a feasible evacuation plan and/or safe evacuation routes for use by future occupants of the project.
5. Prior to Final inspection, applicant shall verify that all Fire Codes and Standards have been fully satisfied with the Nevada County Fire Marshal's Office.

**D. ENVIRONMENTAL HEALTH**

1. Due to a low yield well (measured at 2 GMP as of 7-14-15), 1000 gallons of water storage for each of the two residences for a total of 2000 gallons of storage shall be installed prior for approval of the certificate of occupancy.

# Lewandowski Variance Zoning, Vicinity and Public Notice Map



Every reasonable effort has been made to assure the accuracy of the maps and data provided; nevertheless, some information may not be accurate. The County of Nevada assumes no responsibility arising from use of this information. THE MAPS AND ASSOCIATED DATA ARE PROVIDED WITHOUT WARRANTY OF ANY KIND, either expressed or implied, including but not limited to, the implied warranties of merchantability and fitness for a particular purpose. Before making decisions using the information provided on this map, contact the Nevada County Public Counter staff to confirm the validity of the data provided.

