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**AGENDA ITEM NO.:** XX (Action Item – Public Hearing)

**PLANNING COMMISSION  
MEETING DATE:** June 24, 2009

**SUBJECT:** Conditional Use Permit #2009-04/Ver Hoef

#### **EXECUTIVE SUMMARY**

The project is a request for a Conditional Use Permit, the approval of which will allow the applicant to build a second story addition onto a pre-existing structure that is non-conforming with respect to the required rear yard and side yard setback requirements. Section 18.78.250 of the Inyo County Code requires an approved Conditional Use Permit in such situation:

***“A non-conforming building shall not be enlarged, extended, or structurally altered without submission of, and approval by, the Planning Commission of a conditional use permit application. No non-conforming use of a building shall be changed to a different non-conforming use, except upon application to and approval by the Planning Commission as provided for a conditional use.”***

#### **PROJECT INFORMATION**

**Supervisory District:** Fifth

**Applicants:** Tom Ver Hoef, 5536 Clarendon Way, Carmichael, CA, 95608 (phone: 916-359-5449)

**Landowners:** Tom Ver Hoef

**Address/  
Community:** 51 Sundown Street, Tecopa Hot Springs

**A.P.N.:** 046-370-15

**General Plan:** Residential Rural High Density (RRH)

**Zoning:** Residential Rural (RR), 1.0-acre minimum lot size, Mobile home (MH) overlay

**Size of Parcel:** 1.1 acre

**Surrounding Land Use:**

<b>Location</b>	<b>Use</b>	<b>General Plan Designation</b>	<b>Zoning</b>
Site	Ver Hoef residence	Residential Rural High Density (RRH)	Rural Residential (RR), 1-acre minimum lot size & mobile home (MH) overlay
North	Contains some trucks & large boulders	Residential Rural High Density (RRH)	Rural Residential (RR), 1-acre minimum lot size & mobile home (MH) overlay
East	Site of Poo-Ha-Bah native American spiritual healing center (parcel to the northeast) & contains an assortment of trailers (parcel to the east)	Resort/Recreational (REC) & Residential Rural High Density (RRH)	Commercial Recreation (C-5), 5-acre minimum lot size & Rural Residential (RR), 1-acre minimum lot size & mobile home (MH) overlay
South	Vacant (owned by Mr. Ver Hoef)	Residential Rural High Density (RRH)	Rural Residential (RR), 1-acre minimum lot size & mobile home (MH) overlay
West	County-operated dumpster site	Public Facility (PF)	Public (P)

**Requested Action:** Approval of a Conditional Use Permit to allow the expansion of a pre-existing non-conforming structure.

**Recommended Action:** **Approve the Conditional Use Permit, in accordance with the Findings outlined by staff.**

**Alternatives:**

- 1.) Deny the Conditional Use Permit.
- 2.) Continue the public hearing to a future specific date, and provide specific direction to staff regarding additional information and analysis.

**Project Planner:**

Tanda Gretz

**STAFF ANALYSIS**

Site History

The applicant bought the property with a small pre-existing structure and several other buildings on site (see Attachment #1, the applicant's project description). The applicant has used the pre-existing structure as a residence while he was constructing the new home over the past several years "around" the pre-existing structure. As the new home is now constructed, the applicant is at the phase where he is ready to physically incorporate/attach the pre-existing home into the now-existing larger new home (see Attachment #2, photos of the existing house, which shows the pre-existing structure at the southwest corner of the home).

It should be noted that pre-existing structure was non-conforming with respect to setback requirements: it only had a 19'-8" rear yard setback, where a 30-foot setback is needed and it only had a 14-foot side yard setback, where a 20-foot setback is needed (see Attachment #3, site plan). The new home the applicant constructed on site, however, was constructed to conform with all the required setback requirements; it is just the pre-existing structure that doesn't conform. Thus, the newly constructed home conformed with Section 18.78.260 of the Inyo County Code:

*"A dwelling in a residential district which is non-conforming only with respect to a deficiency in yard dimensions or in parking spaces may be structurally altered or enlarged, **provided that any addition or enlargement shall itself be fully conforming**, and that the number of dwelling units in the structure shall not be increased."*

Proposed Expansion of the Pre-Existing Non-Conforming Structure

However, as the applicant is now at a point where he is ready to physically incorporate the pre-existing structure onto the new home, he wants to take the opportunity to also construct

additional bedrooms onto the home as a second story, to be located over the pre-existing, non-conforming structure (see Attachments #4 & #5: a floor plan showing the bedroom placement in the home, and elevations showing the planned second story). The proposed second story addition will be approximately 26 feet in height, which is within the allowed height for principle structures in the Rural Residential zone (i.e., 30 feet). At issue is the fact that the proposed new second story addition, unlike the rest of the new home, will not meet required setback requirements, as it would be built over the pre-existing non-conforming structure. This situation is addressed in Section 18.78.250 of the Inyo County Code:

*“A non-conforming building shall not be enlarged, extended, or structurally altered without submission of, and approval by the Planning Commission of a conditional use permit application. No non-conforming use of a building shall be changed to a different non-conforming use, except upon application to and approval by the Planning Commission as provided for a conditional use.”*

As a result, the applicant is requesting approval of a conditional use permit to allow the proposed construction.

#### Surrounding Use Issues/Other Issues

The proposed second story addition, which would be located at the extreme southwest corner of the property, is unlikely to negatively affect or impinge on any neighboring properties due to the fact that:

- The applicant owns the property to the south.
- The property to the west is a County-operated dumpster site.
- Other neighboring sites to the north and east are intermittently used, and in any case would not be immediately adjacent to the proposed second story portion of the home.

In addition, while other structures in the area are single story, the proposed second story addition is unlikely to cause any controversy or negative impacts with respect to obstructing the views/vistas of neighbors, since the topography immediately to the southwest of the site rises into a rocky hill, estimated by the applicant to be 150 feet high, which will buffer/provide a backdrop to the proposed second story addition (see Attachment #6: photo of the home, with rock outcrop/hill in background).

#### **ENVIRONMENTAL REVIEW**

The project was deemed to be categorically exempt from California Environmental Quality Act (CEQA) review under Class 3: “New construction of limited small new facilities; installation of small, new equipment and facilities in small structures; and conversion of the use of small existing structures” (Section 15303)

## RECOMMENDATIONS

### Recommended Findings – Conditional Use Permit

1. The proposed use is necessary or desirable.

*Affirmative: The proposed second story addition adds to the space and livability of the newly constructed home, and is desirable for such a residentially designated and zoned property.*

2. The proposed use is properly related to other uses and transportation and service facilities in the vicinity.

*Affirmative: The residential use of the site complies with its designation and zoning as a residential parcel. The proposed second story addition is properly related to both other parcels in the area that are similarly designated and zoned, as well to area parcels which are publically designated (County dumpster site to the west) or recreationally designated (Poo-Ha-Bah native spiritual healing center to the northeast).*

3. The proposed use would not, under all the circumstances of this case, affect adversely the health or safety of persons living or working in the vicinity or be materially detrimental to the public welfare.

*Affirmative: The proposed second story addition does not pose a health or safety risk, as it simply slightly expands the already-existing home and residential use of the site.*

4. The proposed use is consistent with the Inyo County General Plan.

*Affirmative: The parcel is designated Residential Rural High Density (RRH), and the proposed second story addition is consistent with this designation.*

5. The requirements of the California Environmental Quality Act (CEQA) have been met.

*Affirmative: The project is exempt from the requirements of CEQA review under Class 3: “New construction of limited small new facilities; installation of small, new equipment and facilities in small structures; and conversion of the use of small existing structures” (CEQA Guidelines Section 15303).*

### Recommended Conditions of Approval

- 1.) Hold Harmless: The applicants shall defend, indemnify, and hold harmless Inyo County, its agents, officers, and employees from any claim, action, or proceeding against the County or its agents, officers, or employees to attack, set aside, void or annul an approval of the County, its advisory agencies, its appeal board, or its legislative body concerning Conditional Use Permit #2009-4/Ver Hoef. The County reserves the right to prepare its own defense.

### **ATTACHMENTS**

- 1.) Applicant's project description
- 2.) Photos of site/home
- 3.) Site Plan
- 4.) Floor Plan
- 5.) Elevations
- 6.) Photo of home, with rocky hill in background