



City of Valdez, Alaska
Planning & Zoning Commission
Exception
Proposed Findings & Conclusions

VMC Section 17.04.570 Exception.

“Exception” means a new structure constructed in violation of this title by innocent error.
(Ord. 03-15 § 1 (part); prior code § 30-8(b) (part))

Date: August 10, 2016
File No.: Exception #16-01
To: Planning & Zoning Commission
From: Lisa Von Bargen, Director
Exception: Encroach two (2.0) Feet into Western Side Yard Setback for an existing house on Lot 9A, Block 7, Mineral Creek Subdivision

General Information

Applicant: Myrna Dahl
Property Owner: Myrna Dahl
Property Address: 107 Eklutna Street
Legal Description: Lot 9A, Block 7, Mineral Creek Subdivision
PIDN: 7040-007-009-0
Parcel Size: 13,750²
Zoning: Single Family Residential (R-A)
Utility Service: City Water, City Sewer, CVEA Electric, CVTC or GCI Telephone, CGI Cable
Existing Land Use: Residential
Access: Eklutna Street
Surrounding Land Use: North – Single Family Residential
South – Single Family Residential
East – Public/Hospital
West – Single Family Residential

Project Description and Background Summary

The City produced an application for Myrna Dahl for an Exception for an existing house encroachment into the Western side yard setback for two feet on Lot 9A, Block 7, Mineral Creek Subdivision. The property is located at 107 Eklutna St. Staff researched the building file for the property and there was a building permit dated 8/8/66. A Certificate of Completion for the home was dated 8/22/67. A new garage permit was dated 7/30/68. The plot plan was approved 5/26/67. An as-built of the property was done 8/3/07 and there was no mention of the house encroachment into the western side yard setback. Staff noticed the encroachment on 6/28/16 when the owner came into the office to pull a permit to

construct a shed. The house is only encroaching into the side yard setback and not someone else's property.

Findings

The Director of Community & Economic Development shall make findings on an application for an exception. The Planning and Zoning Commission shall review and adopt the findings unless it finds by a preponderance of the evidence that the findings are in error. The director's findings are:

1. Is the requested exception proper according to the zoning district?

The exception request is in conformance with the permitted uses of the zoning district. The exception request meets the standard for a new structure constructed in violation of this title by innocent error. The building was built when the setbacks were different. This exception makes the two foot encroachment legal.

An exception can be granted to the setbacks within the zoning district if it meets the standards for an exception in the Valdez Municipal Code Section 17.06.050(2) as follows:

- a) There is adequate factual evidence to suggest that the building was erected in good faith and every intent of meeting the provisions of this title, and that the innocent error does not violate the spirit and intent of this title;
- b) The granting of the exception will not result in material damage to other properties in the vicinity nor be detrimental to the public; health, safety or welfare;
- c) The granting of the exception will not be contrary to the objectives of the comprehensive plan.

2. Is the application complete?

Yes. The application was complete prior to the public hearing.

17.50.030 Applications—Requirements.

A. A person intending to apply for an exception under this section shall submit the proposed project data to the community & economic development department. The community & economic development department shall contact the applicable agencies and utilities to allow them the opportunity to comment. The agencies to be contacted may include but not be limited to:

- 1. City public works department for water and sewer and snow removal;
- 2. City engineering department;
- 3. City building inspector;
- 4. State Highway Department, if applicable;
- 5. Local electricity utility;
- 6. City fire department;
- 7. Local telephone utility; and
- 8. Cable TV utility.

B. It is recommended that the application be accompanied by the following materials:

1. Narrative Documentation.

a. A legal description of all properties involved in the projects;

b. A statement of the objectives expected to be achieved by the project for the consumer and the public;

c. A detailed description of all aspects of the project, including land use, building types and sizes, population density, parking and traffic circulation, building coverage and other information which the applicant feels would assist the planning and zoning commission in making this decision; and

d. The community development department shall provide the proposed findings and conclusions for consideration by the planning and zoning commission. The proposed findings and conclusions will include comments and issues presented by the reviewing agencies along with a list of any unresolved issues.

2. Site Plans and Supporting Drawings.

a. As appropriate, details of the proposed project showing land use layout, building location, vehicular and pedestrian circulation, open space and recreation area, parking layout, schematic sewer and water layout, and any other information necessary to adequately describe the project;

b. A preliminary subdivision plat showing proposed lot and dedicated street layout;

c. A site grading and drainage plan including existing and proposed topography; and

d. Utilities. (Ord. 97-11 § 1: prior code § 30-44)

3. Does the proposed development follow the other requirements of the City of Valdez land use code?

The land use code for the City of Valdez is Title 17 Zoning of the Valdez Municipal Code. Yes, this is an existing house that is located in a district zoned for single-family residential homes.

17.06.050 Variances and exceptions.

A. Generally. It is recognized that the strict literal enforcement of this title might not always be in the public interest, might deprive a property owner of rights commonly enjoyed by other properties in the same district or is impractical due to physical characteristics peculiar to the particular property. A variance grants an exception to a standard of a zoning district but not to the use restriction of **that zoning** district, and **then only when** unusual physical characteristics of the land make application of the standard an undue hardship.

In both cases, the following provisions shall apply:

1. A variance or exception shall not be granted that will permit a land use in a district in which that use is prohibited.

2. A variance or exception shall not be granted because of conditions of financial hardship or convenience, or when caused by actions of the applicant seeking relief.

B. Application. An application for a variance or exception shall be filed with the community

development department by any property owner or authorized agent. The application shall contain the following data:

1. Legal description of affected property;
2. Plot plan showing the locations of all existing and proposed buildings or alterations of such buildings and other such data as may be required, such as utilities and roads.

C. Investigation. The community development department shall investigate the facts bearing on the case and shall present a written recommendation to the planning and zoning commission.

D. Decision on Granting or Denial. Within thirty days after receipt of the application by the planning and zoning commission, a decision shall be rendered. If it is the finding of the commission that the necessary facts and conditions as set forth in this section have been met, the commission may grant the variance or exception. If, however, such facts and conditions do not prevail and adjacent properties in the vicinity would be adversely affected, the commission shall deny the application.

E. Conditions of Granting Approval. The commission shall determine that all the following conditions exist and are satisfied prior to granting approval:

2. Exception.

- a. There is adequate factual evidence to suggest that the building was erected in good faith and every intent of meeting the provisions of this title, and that the innocent error does not violate the spirit and intent of this title;
- b. The granting of the exception will not result in material damage to other properties in the vicinity nor be detrimental to the public health, safety or welfare;
- c. The granting of the exception will not be contrary to the objectives of the comprehensive plan.

3. Conditions Established by the Commission. In addition to the specific findings required under subsections (EX 1) and (2) of this section, the commission may also establish conditions under which a lot or parcel of land may be used or a building constructed or altered, require conditions of operation of other requirements or safeguards it may consider necessary to prevent damage or prejudice to adjacent properties or to the city. When necessary, the city may require guarantees in such form as deemed proper under the circumstances to insure the conditions designated will be complied with. (Prior code § 30-57)

4. *Will the proposed development materially endanger the public health or safety?*

No. It is an existing house.

5. *Will the proposed project substantially decrease the value of or be out of harmony with property in the neighboring area?*

No. This exception should not have any impact on the value or harmony of the area.

6. Will the proposed project be in general conformity with the land use plan, thoroughfare plan, or other officially adopted plans?

This question is more properly worded, “Will the proposed project be in general conformity with the Valdez Comprehensive Plan, or other officially adopted plans?” To staff’s knowledge, the only plan governing this area is the Comprehensive Plan. Following are the aspects of the plan that help shed light on the situation.

Comprehensive Plan – Land Use Goal

The goal for the development of residential land use within the Comprehensive Plan is to “provide safe, convenient, and attractive residential areas that protect and enhance property values while encouraging economies in necessary community expenditures for required community infrastructure and utilities.

The above request is not contrary to the objectives of the comprehensive plan.

7. Are any of the following criteria such to materially endanger the public health or safety: topography, slope and soil stability, geophysical hazards, surface and subsurface drainage and water quality?

No.

8. Will the proposed project require the enlargement, upgrading or extending of public utilities or service systems?

No.

Decision of the Commission

The Planning and Zoning Commission may, regardless of the above findings conditionally approve or deny the permit. The Commissioners’ own independent review of information submitted at the public hearing and work meeting provides the basis for the decision. The decision needs supportive findings based on factors associated with the same questions answered in the Director’s Findings.

Staff Recommendation

Staff recommends approval of the two (2) foot western side yard setback encroachment exception.