



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

VMC Section 17.06.050 Variance and exceptions.

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.

VMC Section 17.04.570 Exception.

“Exception” means a new structure constructed in violation of this title by innocent error. (Ord. 17-04 § 1 (part): Ord. 16-04 § 2 (part): Ord. 03-15 § 1 (part): prior code § 30-8(b) (part))

Date: September 13, 2017

File No.: E #17-01

To: Planning & Zoning Commission

From: Rochelle Rollenhagen, Senior Planner

Exception request: Exception request submitted by Brad Barnett for a one foot 3 inch (1’3”) encroachment into the required twenty (20) foot front yard setback for a single family residence, located at 355 Nebesna Street, Lot 15, Block 6, North Portion Mineral Creek Subdivision.

General Information

Applicant: Brad Barnett

Property Owner: Brad Barnett

Property Address: 355 Nebesna Street

Legal Description: Lot 15, Block 6, North Portion Mineral Creek Subdivision

PIDN: 70.400060150

Parcel Size: 6,600 square feet

Zoning: Single-Family Residential

Utility Service: City Water, City Sewer, CVEA Electric, CVTC or GCI Telephone, CGI Cable

Existing Land Use: Unfinished Single-family residence

Access: Nebesna Street

Surrounding Land Use: North: Single-Family Residential/Developed

South: Single-Family Residential/Developed

East: Single-Family Residential/Developed
West: Single-Family Residential/Developed

Project Description and Background Summary

The applicant has built a new single-family residence one foot 3 inch (1'3") into the required twenty (20) foot front yard setback by an innocent error. Mr. Barnett states that he measured from the outside of curb to curb on the sixty (60) foot wide Nebesna Street, that distance being forty-one (41) feet. He then pulled in ten (10) feet from the curb. He then pulled in twenty-two (22) feet from an existing property marker thinking he would have a two (2) foot front yard setback "buffer." He states in his application that it would have worked but somewhere in his building process his foundation pins got moved forward and therefore instead of a setback buffer he was now encroaching one foot 3 inches (1'3") into the front yard setback. He then acquired an as-built survey that revealed the encroachment, which now necessitates a one foot 3 inch (1'3") exception/encroachment into the required twenty (20 foot) front yard setback.

Findings

The Director of Community Development shall make findings on an application for a variance/exception request. 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 permit proper according to the Variance/Exception for the zoning district?

Yes, it is a permitted use in the Single-Family Residential district.

2. Is the application complete?

Yes. The application is complete with additional requested information attached.

17.50.030 Applications—Requirements.

A. A person intending to apply for a variance or exception under this section shall submit the proposed project data to the Community Development Department if applicable. The Community 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 and dimensions, 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 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. This exception is being pursued in conformance with Title 17 as a single-family residence is a permitted use within the Single-Family Residential Zoning District.

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

No.

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

No. The residence is located in an established neighborhood.

6. Is the 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 relate to the proposed exception.

Comprehensive Plan - Overall Goal

To create an atmosphere that will encourage stable economic development in Valdez while enhancing the quality of life. Improvements should be made to all elements that give the community its' character. This would include enhancing the economic productivity and diversification of the region to assure continued economic prosperity; providing for public safety and the economic welfare of the community when siting future industrial, commercial, residential, and public land uses; enhancing the scenic beauty, uniqueness and historic significance of the Valdez area; and opening up new land for residential, commercial, and industrial land.

Residential Land Use

Goal -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.

Objective - Encourage residential construction and expansion in those areas of the community where necessary community facilities and utilities are already in place and/or can easily be extended.

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.

9. Is the proposed use a permitted or conditional use in the zoning district?

Yes.

10. Is the exception being requested because of conditions of financial hardship or convenience?

No.

11. Are there exceptional physical characteristics or conditions pertaining to the property which may affect intended use or development which do not generally apply to other properties in the same zoning district?

The lot is 6,600 square feet and slopes downward to Nebesna Street. The applicant states because he thought he was within the setbacks, the building location was also the best fit for the home on the lot.

11. Would the strict application of the provisions of this ordinance result in practical difficulties or unnecessary hardship?

Yes. If the exception is not granted the applicant will have to move the structure or otherwise remove one foot three inches (1'3") of the house to comply with the twenty foot setback. This would be very difficult and result in unnecessary hardship.

12. Would the granting of the exception result in material damage or prejudice to other properties in the vicinity or be detrimental to the public health, safety and welfare?

No. The residence is located in an established neighborhood.

13. In addition to the above general information:

Valdez Municipal Code Section 17.06.050(2) outlines the standards for an exception 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.**

The applicant states that he measured from the original stake with a ribbon that he thought was a property marker. Trying to buffer the setback by two feet, he actually thought he had a twenty-two (22) foot front yard setback. As he felt confident in the existing markers he did not acquire a survey and also his usual surveyor had retired. He states that he constructed the house in good faith and to the best of his ability. There is no financial gain or any other good reason not to be in the setbacks and it appears this was an honest mistake. This appears to be an innocent error and does not violate the spirit or intent of the 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.**

There is no damage resulting from this exception to the front yard setback. The encroachment is into the front yard setback and not the adjacent property. Granting the exception will "legalize" a non-compliant structure under the current setback distances allowed. Allowing the exception will ensure that the owners will not run into problems should they ever decide to sell the residence.

- c) **The granting of the exception will not be contrary to the objectives of the comprehensive plan.**
- d) The exception is not contrary to the objectives of the Comprehensive Plan. Please see the relevant sections of the Comprehensive Plan in #6 above.

Section 17.14.010 Single Family Residential Zoning District Intent

The R-A (single-family residential) district is intended to include lands for urban development and which are provided with a full range of public utilities, including sewers, water, electricity and street drains or are intended to be provided with such utilities in the near future. This district is intended primarily for single-family dwellings, excluding mobile homes, at moderate densities. Structures and uses required to serve recreational, religious and other noncommercial needs of residential areas are allowed as permitted or conditional uses subject to restrictions intended to preserve the residential character of the R-A district. (Ord. 03-15 § 3 (part); prior code § 30-14(a))

Decision of the Commission

The Planning and Zoning Commission may, regardless of the above findings conditionally approve or deny the exception. The Commissioners' own independent review of information submitted at the public hearing and additional information requested 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 Exception #17-01 be approved by the Commission with the following condition:

In conformance with Valdez Municipal Code Section 17.06.070 (B), any conditional use, variance or exception approved by the planning and zoning commission shall be conditional upon the privilege granted being utilized within twelve months after the effective date of the approval. In the event construction work is involved, it must actually commence within the stated period and must be diligently prosecuted to completion; otherwise the approval is automatically voided. The planning and zoning commission may extend the time the construction is to start if satisfactory evidence of planning progress is presented. Any substantial change to the plans or building proposal shall require resubmission to the planning and zoning commission.

