

**PLANNING & ZONING COMMISSION
CITY OF PALMER, ALASKA**

**REGULAR MEETING
THURSDAY, MAY 16, 2013
7:00 P.M. - COUNCIL CHAMBERS**

A. CALL TO ORDER:

The regular meeting of the Planning and Zoning Commission was called to order by Chairman Madar at 7:00 p.m.

B. ROLL CALL:

Present and constituting a quorum were Chairman Madar and Commissioners Campbell, Kircher, Lucas, and Kerslake. Commissioner Prosser was not in attendance/excused. Also present were Sandra Garley, Community Development Director, Kimberly McClure, Planning and Code Compliance Technician, and Pam Whitehead, Recording Secretary.

C. PLEDGE OF ALLEGIANCE: The Pledge was led by Commissioner Kerslake.

D. APPROVAL OF AGENDA: The agenda was approved as presented.

E. MINUTES OF PREVIOUS MEETING(S):

The minutes of the April 18, 2013 Regular Meeting were approved as presented.

F. PERSONS TO BE HEARD: None.

G. PUBLIC HEARING:

1. **Resolution 13-005** Request for a 1'3" variance to the required 25' front yard setback on Lot 2, Block 1, Gold Key Estates Addition #1, located at 441 East Eagle Avenue, Palmer.

Commissioner Kerslake moved, seconded by **Commissioner Kircher** (for purposes of discussion), to recommend approval of the stated variance request.

Ms. Garley gave a staff report. The applicant is requesting a variance to allow a 1'3" reduction to the required 25-foot front yard setback, for property located at 441 E. Eagle Avenue, Palmer. All notice and publication requirements per the code have been met. Zero comments were received in response. Reason for the request: the original plat was recorded in 1983 on which plat note #7 states that no building line shall be placed within 25 feet from the right-of-way line of any public right-of-way; the original 1983 as-built survey shows the 25' front yard setback in compliance; however, a more recent as-built obtained by the owner for their lending institution (April, 2013) shows the front yard setback at 23.9'. The code requirement for an R-1 district is a 25' setback.

In order to grant a variance, the commission must find that each of the following code requirements have been met and staff offered the following proposed findings of fact for the commission's consideration:

- A.** That there are unusual circumstances applying to the property that do not apply generally to other properties in the same vicinity and that the problem of the applicant is not the result of his own action;

Facts:

- 1) The original As-Built survey dated November 9, 1983 on file with the City as part of the 1983 Building Permit shows a 25' front yard setback in compliance with the front yard setback requirements.
- 2) There has been no enlargement or change to the exterior structure since the house was built in 1983 which would cause a violation of the front yard setback requirement.
- 3) The applicant, Andrew Evans, Flagship Properties LLC, purchased the property on August 1, 2012.
- 4) The owner's lender required a current survey to be done. The As-Built survey dated April 26, 2013 shows a 23.9' front yard setback.

- B.** That strict interpretation of this title would deprive the applicant of the rights commonly enjoyed by other properties in the same district under the terms of this title;

Facts:

- 1) The owner(s) enjoys the same right to a single family dwelling unit as other properties in the R-1 district who meet the 25' front yard setback.
- 2) The single family dwelling unit has existed on Lot 2, Block 1, Gold Key Estates Addition #1 with the 23.9' setback for 30 years.
- 3) Due to the information on the April 2013 As-Built showing the 23.9' setback, the owners may continue to have problems getting a conventional mortgage for sale of this property.

- C.** That the authorization of the variance will not be injurious to nearby property nor harmful to the public welfare;

Facts:

- 1) There is no evidence to support a finding that granting the variance will be injurious to nearby property or harmful to the public welfare as the structure was built in 1983 and a search of City records did not find any records of complaints regarding the front yard setback.

- D.** That the granting of the variance will be in harmony with the objectives of this title and the comprehensive plans;

Facts:

- 1) The intent of the R-1 district is to establish a district in which the principal use of land is for single-family dwellings. The principal use of Lot 2, Block 1, Gold Key Estates Addition #1 is a single-family residential dwelling unit.
- 2) Goal 2 of the Comprehensive Plan states "Maintain high quality residential neighborhoods; promote development of a range of desirable new places to live in

Palmer.” The single family dwelling is part of an established neighborhood.

- E. That the application is due to unusual lot shape, topographic condition or governmental action or regulations which render the property unusable.

Facts:

- 1) Lot 2, Block 1, Gold Key Estates Addition #1 is a standard rectangular shaped subdivision lot; there is no topographic condition or governmental regulations which render the property unusable.
- 2) The lot is 75 feet wide by 120 feet deep with 25-foot setbacks on the front yard and rear yard resulting in a buildable area 63 feet by 70 feet totaling 4,410 square feet. There is sufficient room on this lot for placement of the structure in compliance with all setback requirements.
- 3) Governmental action is not a cause for the request and does not render the property unusable as the need for a variance arises due to mathematical discrepancies between the 1983 and 2013 As-Built surveys.

Ms. Garley also went over the reasons where variances are illegal in accordance with PMC 17.76.030 and state law: no variance shall be granted:

- 1) *because of conditions caused by actions of the applicant* – the need for a variance here arises due to mathematical discrepancies between the 1983 and 2013 As-Built surveys;
- 2) *for reasons of financial hardship or inconvenience* – the applicant states the strict interpretation of this title prevents the property from being conveyed, refinanced, or otherwise transferred resulting in financial hardship;
- 3) *nor which will permit a land use in a district in which that use is prohibited* – single family dwellings are permitted in an R-1 district.

Because of the way that the language is written in the code where a variance *must meet* each requirement under PMC 17.76, staff cannot recommend approval as the facts under PMC 17.76.020(E) do not support the granting of a variance.

Chairman Madar opened the public hearing at 7:12 p.m.

Andrew Evans, Flagship Properties, LLC, applicant, spoke in support of the variance and noted for clarification under 17.76.030, discussing cases where a variance may not be granted, directed attention to his application, page 2, pointing out that his actual statement in answer to C) The variance is sought solely to relieve pecuniary hardship or inconvenience, was *“Again, 1983 original as-built survey shows no violations. The variance is being requested because an updated as-built alleging a setback violation prevents the transfer of property that would otherwise be commonly enjoyed by other properties in the same district.”* He wanted to make very clear that there is no issue of financial hardship. They purchased the property and have done considerable improvements to it, relying on the original as-built done in 1983, a copy of which was obtained from the City. They acted on good faith. The new as-built was required by a lender; otherwise, they would not have ordered it. He pointed out the property has

changed owners several times since 1983 and there has been no problem until now.

Keith L. Woock, East Eagle Avenue, next-door neighbor, spoke in support, pointing out that after a recent survey where Eagle Avenue was restructured and recalculations made, there are probably another five houses on the block with the same problem; that no one was aware of it and he has concerns that they will all have to go through the same process should they want to sell their properties. He doesn't have any complaints with the applicant and applauded the improvements made to the property from what it was; stated it was a total mess and everyone wanted it gone. His main concern is for the future for himself and the rest of the neighbors.

There being no others coming forward to speak, the public hearing was closed at 7:17 p.m.

Commissioner Kerslake spoke in support of the requested variance, noting that based on review of the application and staff's explanations, he believes it is basically correcting a technical error, believes the applicant has met the standards and sees no reason that the variance should not be granted.

Commissioner Kircher spoke in opposition for the reasons 1) that the City in its letter of non-objection dated May 6, 2013 views the 1983 survey as the official document for this property showing compliance with city setback requirements and continues to view this 1983 survey as the official document for this property, and 2) Eagle Avenue was completely restructured, reengineered, rebuilt, and repaved and monuments could have been shifted from the original survey. He noted that among surveyors, it is considered axiomatic that old data is usually more reliable. And since the City has no problem accepting the 1983 survey, he questions why a variance is even being considered since the petitioner is in compliance. He encouraged denial of the request.

Commissioners Lucas and Campbell agreed with the points made by Commissioner Kircher.

Chairman Madar spoke in support of granting the variance because the current as-built survey shows noncompliance and could prevent sale of the property. He spoke to old methods of surveying using a chain which could allow for variations versus today using GPS which is almost exact. He raised concerns of setting a precedent if the commission does not grant the variance, noting every house 30 years old or older could run into the same problems and not be able to sell. He does not believe this is the fault of the owner and pointed out that financial institutions have more stringent requirements for loans and are requiring new as-builts. He encouraged the variance be granted, setting a precedent for future requests, and it is his hope the commission can work on an easier process by which the city can deal with these types of requests in the future.

Further debate and discussion continued.

VOTE ON MOTION [granting approval]: PASSED [4 in favor; 1 opposed (Kircher)]

H. UNFINISHED BUSINESS:

There was no Unfinished Business.

I. NEW BUSINESS:

1. **IM 13-015** Review of Academy Charter School Addition.

Ms. Garley gave a staff report. The commission is to review the site plan for the addition of Phase III to the Academy Charter School at 801 E. Arctic Avenue, Tract 2-1, Sherrod Park Survey, located in the P-Public Use District. Phase III is a continuation of on-going additions/modifications to the Academy Charter School. This addition will contain 6 additional classrooms, 2 science labs and some storage area. See drawings at pages 47-51 in the packet. She summarized the details of the project. All requirements have been met. Staff recommends approval of the addition plan as submitted.

The applicant was available for questions if any.

Commissioner Kircher moved, seconded by **Commissioner Kerlake**, for approval of the Phase III addition to the Academy Charter School.

VOTE ON MOTION: CARRIED UNANIMOUSLY.

J. PLAT REVIEWS:

1. **IM 13-014** To subdivide tax parcel A003 into 20 to 22 lots, located in Section 7, Township 17 North, Range 2 East, Seward Meridian, located outside Palmer city limits.

Ms. Garley gave a staff report directing attention to vicinity map on page 63 of the packet. The parcel is adjacent to the existing Green Valley development and the aerial on page 64 shows the area of potential development.

Commissioner Kerlake noted for fire service only one way in and one way out.

2. **IM 13-016** To divide lot 3, Timbered Acres Unit #1 into 2 lots, located outside Palmer city limits.

Ms. Garley gave a staff report directing attention to the vicinity map at pages 76-77 of the packet showing an overview of the parcels and the location of the property adjacent to Brittany Estates. There were no comments from City staff.

The commission had no comments.

K. PUBLIC COMMENTS: None.

L. STAFF REPORT: Ms. Garley reported:

- Reminded the commission of the June 18 Special Meeting with the City Council commencing at 6:00 p.m.
- City Clerk, Janette Bower, has been invited to the July 18 commission meeting to give a refresher course on Parliamentary Procedures and the Open Meetings Act.
- Note handout, Excerpt, City of Wasilla Municipal Code, Sec. 16.24.020 C & D, Land Development, as an example of how exceptions for setback requirements and amnesty for certain setback violations under rules for nonconforming structures are handled in other cities. They are not called variances, they are called exceptions. Further discussion ensued proposing this as a way to handle the types of issues raised at tonight's meeting in the future.

M. COMMISSIONER COMMENTS:

Commissioner Kerlake proposed to direct staff to draft language for exceptions for setback requirements.

Commissioner Lucas concurred, noting it seems like it would be a good way to head off future variance requests like the second speaker indicated might be likely, particularly in the case of rebuilding Eagle Avenue; that it seems like a reasonable solution.

Commissioner Campbell also agreed. He particularly liked the 10 percent exception because it was one of his concerns in the case tonight that yes, it sets precedence for the other five or six properties, but voiced concern it also set precedence for *everything*.

Commissioner Kircher also agreed with the 10 percent exception and thinks it is probably something that could be pursued fairly rapidly, but wanted to reiterate that the letter written by Ms. Garley on behalf of the City should have sufficed to satisfy the financial institution.

Ms. Garley noted it was because the bank's criteria states "based on a current as-built," therefore the setback was not in compliance, so they really didn't care what the City said. Brief further discussion ensued regarding financial institution requirements.

Commissioner Kircher reiterated that this should not be the City's problem; it is the owner's problem obtaining financing. He is worried the commission may have set a precedent of granting a variance under conditions where a variance shouldn't be granted; said that technically a variance is very strict, at least within the city of Palmer; that it should only be granted if the property cannot be used without the variance; noted there are options associated with the use of this property and that it is not unusable, which is why he voted against it.

Ms. Garley spoke to variances rarely being given, which is why the 10 percent special exception is becoming very common and growing in use.

Chairman Madar commented that he believes the commission made the right decision; that the property owner should not be held responsible for this kind of difference between surveys, noting how does anyone know that it wasn't the City's

reconstruction of the road that took away the 1'3". He believes it is the City's responsibility to deal with the problem.

N. ADJOURNMENT:

There being no further business, the meeting was adjourned at 7:48 p.m.

Michael W. Madar, Chairman

Kimberly McClure
Planning and Code Compliance Technician