PLANNING & ZONING COMMISSION
CITY OF PALMER, ALASKA
REGULAR MEETING
THURSDAY, JUNE 20, 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. 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 May 16, 2013 Regular Meeting were approved as presented.

F. PERSONS TO BE HEARD:

Kevin Baker, spoke in reference to the Dogwood Extension to Felton, noting he represents the landowner that owns Tract A, Golden Glenn Estates; asked whether the City of Palmer had given that proposed street a classification name; said he is not expecting an answer tonight, but just wanted to bring it up because he was not able to determine it from the paperwork submitted.

G. PUBLIC HEARING:

1. Resolution 13-007 Variance Request to Allow a 4 Foot (4') Reduction to the Required 25' Front Yard Setback on Lot 4, Block 3, The Highlands Phase IA, located at 533 W. Quick Silver Circle, Palmer.

Commissioner Kerslake moved, seconded by **Commissioner Campbell,** to recommend approval of the stated variance request.

Ms. Garley gave a staff report. The applicant is requesting the 4-foot reduction to the required 25' front yard setback as described. All notice and publication requirements per the code have been met. Two comments were received in response, both in favor. An additional comment was later received, also in favor. This parcel is zoned R-1 and

requires a 25' front yard setback. According to the Matanuska-Susitna Borough tax records, the house was built in 1982. The As-Built Survey dated August 17, 1982, showed the structure to be in excess of the required 25' front yard setback. A building permit for a garage was issued in September, 1984. The recently obtained As-Built Survey dated April 19, 2013 shows the garage setback at 21' in violation of the required 25' setback.

Pursuant to PMC 17.76.020, in order to grant a variance the commission must determine, supported by findings of fact, that each of the following requirements have been met. Staff proposed the following findings for the commission's consideration, noting in addition the applicant's responses:

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.

Applicant's response: We purchased the property (2001) after it was constructed by prior owners (1984), that the property is similar to all other houses on the street, and the problem is not the result of action taken by us.
Staff Findings:
1) The original As-Built survey dated August 17, 1982, on file with the City as part of the 1982 Building Permit shows the front yard of the structure to be in excess of 25' in compliance with the front yard setback requirements.
2) Due to the addition of the garage in 1984, the current As-Built survey dated April 19, 2013, shows a 21' front yard setback in violation of the 25' front yard setback requirement.
3) According to the Building Permit issued September 27, 1984, the owner at that time was James Garrett who was also the contractor for the addition of the garage.
4) The applicants, Howard and Darleen Walsh, purchased the property from James G. Garrett and Gloria J. Garrett on July 31, 2001.
5) There are unusual circumstances which apply to this property that do not apply generally to other properties in the same vicinity due to actions of the federal government tightening the rules for mortgage lending for which the current owners are being held liable. **(#5 added by motion of the Commission)**

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;

Applicant's response: Strict interpretation of the ordinance is depriving us the right to sell our property.
Staff Findings:
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 with the garage addition has existed on Lot 4, Block 3, The Highlands Phase IA with the 21' front yard setback for 29 years and has been bought and sold during that time frame.

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

Applicant's response: Authorization of the variance will not be injurious to nearby property, indeed it will enhance their ability to sell their properties.
Staff Findings:
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 addition of the garage was built in 1984 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.

Applicant's response: Is otherwise in conformity with all other parts of the title and contributes to the overall tranquility of the City of Palmer.
Staff Findings:
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 4, Block 3, The Highlands Phase IA 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.

Applicant's response: This variance application is due to unusual lot shape. Strict interpretation of the title by City of Palmer renders the property unusable as we cannot sell the property without the variance being granted.
Facts:
1) Lot 4, Block 3, The Highlands Phase IA is a standard cul-de-sac shaped subdivision lot; there is no topographic condition or governmental regulation which render the property unusable.
2) The lot is 76.50 feet wide by an average of 150.08 feet deep with 25-foot setbacks on the front yard and rear yard, and 6-foot side yard setbacks resulting in a buildable area 64.50 feet by 100.08 feet totaling 6,455.16 square feet. There is sufficient room on this lot for placement of the structure in compliance with all setback requirements.
3) Governmental action does not render the property unusable as the property has been sold and purchased since the addition of the garage.
4) Government action may be the cause for the request because the building permit was issued for the garage without retaining a copy of the proposed site plan in the building file. There was no knowledge of setback violation until the current As-Built survey was made available for the records in April, 2013. The result is the property is not in compliance with setback requirements and is not able to be sold because

lending institutions are now more closely adhering to federal guidelines that may have been relaxed in previous years. **(#3 and #4 added by motion of the Commission)**

Ms. Garley also went over 17.76.030, Cases where variance is illegal: In accordance with state law, no variance shall be granted because of conditions caused by actions of the applicant or for reasons of financial hardship or inconvenience, nor shall a variance be granted which will permit a land use in a district in which that use is prohibited.

In this case, is the need for this 4' variance due to:

- *conditions caused by actions of the applicant:*

Applicant's response: We purchased the home in 2001 and did not build the garage. The garage was already existing.
Staff Findings:
The need for a variance arises due to the previous owner having built the southeast corner of the garage encroaching 4' into the required 25' front yard setback. While the special conditions that require the variance were not caused by the applicant, the conditions were caused by the previous owner.

- *for reasons of financial hardship or inconvenience*:

Applicant's response: We moved out of state for medical/doctor recommendations and no longer reside in the state of Alaska. The house is currently empty and does not do any good for the City of Palmer.
Staff Findings:
The applicants, Howard and Darleen Walsh, mention not being able to sell the property, which could be a potential financial hardship.

- *will this variance permit a land use in a district in which that use is prohibited.*

Applicant's response: This home is in a single family residence in which both the house and garage are permitted.
Staff Findings:
Single-family dwellings and necessary buildings are permitted in an R-1 District.

Staff recommendation: A variance *must meet each requirement* under PMC 17.76.020, therefore staff cannot recommend approval because the facts under A and E do not support the granting of this variance.

[Commissioner Madar opened the public hearing at 7:15 p.m.]

Jim Summers, a neighbor across the street, 534 Quick Silver, who shares the cul-de-sac, spoke in favor encouraging the granting of the variance. He has lived there for over 30 years and they are the only original still-remaining residents on the street. His house was built by the same builder as the house in question. Neither house had a garage at the time so he had the builder add one to his. Mr. Garrett, the contractor/owner, waited a couple of years before building his own garage. Mr. Summers stated he has no financial interest in subject property. He doesn't think there was any intent to do anything illegal or that would make his property unsellable

for sure. At the time the street was not paved and house was even further from the street. He speculated there may have been some confusion as to whether the setback was from the property line or the street. All the right processes were followed when the property was sold to the Walshes and no violations were discovered then. The street got a little closer to the garage when it was paved, but he measured it himself and that "corner" of the garage is still over 29' from the street. Although his neighbor, Bob Frost, at 524 Quick Silver, wasn't able to come tonight, he brought his signed response also in favor. The house in question is a very nice house at the end of the cul-de-sac and they would like to see the property able to be sold. The garage is a great garage and a real selling point. So far there have been no problems with it being vacant; he keeps the yard mowed and keeps an eye on it; does not want it to be vandalized; would like to see new neighbors move in.

Mr. Summers responded to brief commissioner questions: The house has been on the market since last July, 2012 but he wasn't aware of anyone looking at it until last December; he knows of at least one serious buyer but the violation was discovered just prior to closing.

Tait Zimmerman, current real estate licensee representing Mr. and Mrs. Walsh, also spoke in support of granting the variance. The Walshes just recently listed with his firm after the sale fell through with the previous buyer as a result of this setback issue. It is not their fault that this issue exists. Mr. Zimmerman was here to be available for any questions; that he can't make a better case for granting the variance than has already been written and said. He informed that he had just received an offer today on the property, but it is subject to the decision on the variance; that it was a huge concern for prospective buyers that have looked at the property.

[There being no other persons coming forward to speak, the public hearing was closed at 7:25 p.m.]

Commissioner Kerslake spoke in favor of granting the variance. He inquired of staff as to a time frame for adoption of the 10% setback exception by the council, noting this request would probably fall under that exception. Ms. Garley noted mid-August would probably be the soonest it could get through the process. He wanted further discussion and asked to be convinced why the variance should not be granted.

Commissioner Campbell also spoke in favor, noting there were road improvements after the structure was built; spoke to the measurements and only the outside corner of the garage in violation of the setback; that in his opinion this is about the best-case scenario for a variance to be granted.

Discussion ensued regarding building permit inspection and requirements in the 1980s versus today and the tightening of financial institutions requiring current as-built.

Commissioner Kircher spoke in support of granting the variance in this case for the reason that he feels the financial hardship here is the result of the actual encroachment into the setback as opposed to the variance request last month where there was no

actual problem. He believes that a building permit should be "sacred" once it is granted; that the property owner should be able to rely on the building inspector's approval that the standards are being met. He discussed performance-oriented standards noting he has been a promoter for over a decade; that under performance-oriented standards, there would not be a significant problem here -- we'd just say nobody cares, nobody objects, it's not causing a problem, it's okay. Despite his misgivings that technically it should not be granted under current code, he believes the code is flawed, and encouraged granting of the variance in this case.

Chairman Madar inquired if this property would fall within the 10% setback exception currently under consideration. Ms. Garley directed attention to the drawing in the packet showing that the measurement from the west side of the structure is clearly not in violation and is actually 28.5 feet from the property line. She assured that this applicant would clearly be within the 10% exception. Chairman Madar believes the commission set a precedent at last meeting when it recommended approval of the previous variance request. He also agrees that the code is flawed, needs updating, and encouraged the granting of this variance.

Commissioner Kerslake added that he differs with staff findings on item E, stating that it *was* a government action that caused this situation, and item A, stating that unusual circumstances *do apply* to this property because of government action, with this property being held to a standard that probably other properties, even on the same street, would not be necessarily held to because they have the correct setback. He encouraged passing the requested variance.

Commissioner Kerslake moved, seconded by **Commissioner Lucas**, to amend the main motion to adopt the findings proposed by staff and to include the findings added under 17.76.020 (A)(5) and (E)(3) and (4) as above stated.

VOTE ON AMENDMENT: Carried unanimously.

VOTE ON MAIN MOTION, AS AMENDED: Carried unanimously.

H. UNFINISHED BUSINESS: None.

I. NEW BUSINESS:

1. IM 13-019 Consideration of Recommendation to Adopt 10% Setback Exception.

Ms. Garley gave a staff report. At last meeting, staff had presented two options for review regarding alternative solutions for setback violations and was subsequently directed to draft language regarding the 10% setback exception for consideration by the commission. When discussed at the recent joint meeting, the City Council appeared to show support for 17.60.055 Exceptions for setback requirements, over the proposed 17.60.057, Amnesty for setback requirements. Staff recommended that the commission only consider moving forward the exception standard and not the amnesty.

Commissioner Kircher moved, seconded by **Commissioner Kerslake**, to move forward to City Council, 17.60.055, Exceptions for setback requirements.

Commissioner Kircher spoke in support, stating this is a very good idea and is along the lines of performance-oriented standards he has proposed for years. In addition, the commission may want to amend the language, after further discussion, to set a date beyond which it does not apply.

Commissioner Kerslake concurred.

Additional comments were in agreement. Also that a cutoff date should be inserted and that exceptions to setback requirements should only apply to structures existing on such date. It was suggested the date should be the date the City Council actually passes the title. Discussion ensued as to various scenarios how the proposed variance exception would be applied. It was also suggested at some point in future addressing the issue of variances possibly rewriting that portion of the code to make it a bit more reasonable and more understandable. Following brief further discussion:

Amendment to Main Motion:
Commissioner Kircher moved, seconded by **Commissioner Kerslake**, to amend the language of the proposed section to read as follows:

17.60.055 Exceptions for setback requirements

A. Setbacks may be reduced to up to ten (10) percent on existing structures by the zoning administrator after an investigation and written finding that the resulting lesser setback would meet the purpose of the setback standard;

B. The calculations would be based on the average encroachment into the required setback;

C. This exception shall take effect upon the date of passage by the City Council.

VOTE ON AMENDMENT: Carried Unanimously.

VOTE ON MAIN MOTION, AS AMENDED: Carried Unanimously.

J. PLAT REVIEWS:

1. **IM 13-018** Right-of-way acquisition plat for the completion of the Glenn Highway and West Dogwood Avenue project for Tract A, Golden Glenn Estates, Phase I, Plat #84-199, located inside Palmer city limits.

Ms. Garley gave a staff report directing attention to the vicinity map on page 54 of the packet. The shaded area represents the ROW acquisition. It is an odd-shaped parcel purchased by the City of Palmer from Golden Glenn Estates in order to provide for the traffic signal and access into the back portion of the Pioneer Plaza Shopping Center. This is for the completion of the above-stated project. The right-of-way has already been acquired and intersection has been constructed. This ROW acquisition plat will complete the process. Preliminary approval has been given and final approval awaits

comment, if any, by the Commission. The City expects to file the final plat sometime this fall.

The Commission had no objection or additional comment.

K. PUBLIC COMMENTS: None.

L. STAFF REPORT:

Ms. Garley thanked the Commission for attending the recent joint City Counsel/P&Z Commission meeting and informed them that the feedback she received is that the Council found it very fruitful and were very pleased with the dialog that took place.

M. COMMISSIONER COMMENTS:

Commissioners Lucas, Campbell, and Kircher had no comments.

Commissioner Kerslake expressed kudos to MEA for putting the wood fence around the substation in the Triangle; that it was a definite improvement.

Chairman Madar asked that Title 17.76, Variance, be put on the agenda for next meeting. There was no objection.

N. ADJOURNMENT:

There being no further business, the meeting was adjourned at 8:05 p.m.

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Michael W. Madar, Chairman

_____
Kimberly McClure
Planning and Code Compliance Technician