

STAFF REPORT FOR VARIANCE

**#V_2015-0002
AUGUST 13, 2015
PAGE ZA-1**

OWNER: NAOMI GELARDI
70875 DILLON ROAD, SPACE # 85
DESERT HOT SPRINGS, CA 92241

APPLICANT: NAOMI GELARDI AND BRUCE VOGEL
70875 DILLON ROAD, SPACE # 85
DESERT HOT SPRINGS, CA 92241

REQUEST: Variance for a 16 foot setback in the side yard to allow for an existing accessory building set 3 feet inside of the 20 foot setback requirement.

LOCATION: In Willits, 2± miles southeast of town center, lying east of Center Valley Road (CR 303), 1500± feet north of its intersection with East Hill Road (CR 301). Located at 2540 Center Valley Road; APN 103-120-10.

TOTAL ACREAGE: 1± acres

ZONING: Agriculture AG: 40

ADJACENT ZONING: North: Agriculture-40 acre minimum (AG: 40)
East: Agriculture-40 acre minimum (AG: 40)
South: Agriculture-40 acre minimum (AG: 40)
West: Agriculture-40 acre minimum (AG: 40)

GENERAL PLAN: Agriculture – 40 acre minimum (AG: 40)

SURROUNDING G.P.: North: Agriculture-40 acre minimum (AG: 40)
East: Agriculture-40 acre minimum (AG: 40)
South: Agriculture-40 acre minimum (AG: 40)
West: Agriculture-40 acre minimum (AG: 40)

EXISTING USES: Rural Residential

SURROUNDING LOT SIZES: North: 1± acres
East: 20± acres
South: 1± acres
West: 25± acres

SURROUNDING LAND USES: North: Residential
South: Agriculture Preserve
East: Residential
West: Agriculture/Center Valley Road

SUPERVISORIAL DISTRICT: 3

GOV. CODE 65950 DATE: 5/7/2015

PROJECT DESCRIPTION: The applicant is requesting a side yard setback of 16 feet for an existing accessory building where a 20 foot setback is required. The existing accessory building is a 210 square foot, four sided building which is used for storage and office space. The site is 1± acres in size and fronts

directly onto Center Valley Road (CR 303), to the west. The site is flat with an existing residence, barn, horse stalls, green house and detached carport. The 210 square foot accessory building (the building for which this variance applies), a 1500 square foot green house, a 250 square foot horse shelter and a detached carport were all constructed without permits.

A complaint was filed with the County Code Enforcement Division in 2008 (BI_2008-0107) and it appeared to have been handed down to four different persons who were involved with code enforcement until 2013 when the owners were again notified of the complaint and advised to resolve the issue of the accessory building that was constructed without a building permit. The owner applied for a building permit and it was determined that the building did not meet the required 20 foot side setback requirement. In November of 2014, the Planning Division sent a letter to the owners advising them that they would need to remove the structure or apply for and have granted a variance to permit the reduced side yard setback.

REVIEW AGENCY AND DEPARTMENT COMMENTS: The following agency comments were received from: 1) the Building Services Division which noted that after Building Services inspection of the property, it was determined that there were other un-permitted structures on the property and 2) the Code Enforcement Division which noted that the variance was requested to abate the existing violation concerning Case BI_2008-0107.

APPLICANT'S INFORMATION: The applicant has submitted the following information to substantiate the required findings that must be made prior to action by the Zoning Administrator:

- (A) That there are special circumstances applicable to the property involved, including size, shape, topography, location, or surrounding.
Narrowness of acre with proximity to driveway, ease of preparation, best use of space available
- (B) That such special circumstances or conditions are not due to any action of the applicant subsequent to the application of the zoning regulations contained in the chapter.
There are several pre-existing structures, one on the adjacent property that are (is) less than 5 feet from the property line.
- (C) That such variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same vicinity and zone and denied to the property in question.
Adjacent property has garage/storage structure of greater size less than 5 feet from property line in direct view of home, proposed structure is hidden from neighbor
- (D) That the granting of such variance will not be materially detrimental to the public welfare or injurious to the property or improvements in such vicinity and zone in which the property is located.
Adjacent property is derelict and has been for decades. New structure is well designed and tucks into barn, unobtrusive to water run off or views
- (E) That the granting of such variance will not adversely affect the General Plan.
As an office/storage space it does not affect the General Plan

STAFF'S ANALYSIS: Staff conducted a site view of the project site and after reviewing the findings and the applicant's statements, determined that the applicant has not substantiated the findings that must be made for Findings A, B and C as noted in Mendocino County Code Section 20.200.020.

Findings:

- (A) Staff would suggest that there may be other feasible sites on the property where the accessory building could have been located and had the property owner submitted a building application prior to construction, the owner would have been advised to seek another location. Staff cannot find: *That there are special circumstances that are applicable to the property involved, including size, shape, topography, location, or surrounding; Finding (A) cannot be made.*

- (B) The applicant created the conditions or circumstances by building the accessory building on the property without a building permit. Staff has concluded that the applicant has created their own hardship by not following set back requirements or building code requirements when constructing this structure. Staff cannot find: *That such special circumstances or conditions are not due to any action of the applicant subsequent to the application of the zoning regulations contained in the division.* **Finding (B) cannot be made.**
- (C) Other properties in this area are developed with structures that are encroaching on setback requirements much in a manner being considered in this variance request. Staff has not found that there are other variance requests in this area that have been approved for the same reasons as provided above. Staff would suggest that most structures encroaching into setbacks are legal non-conforming having been constructed prior to the current requirements. However, there may be other structures in the area that have been constructed without permits but there is no record of additional building or zoning code violations near the subject property. Staff suggests that there are other locations on the subject property where this accessory building could have been located and still met the 20 foot setback requirement. Staff cannot find: *That such variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same vicinity and zone and denied to the property in question.* **Finding (C) cannot be made.**
- (D) The subject structure is 16 feet off of the side property line and isn't very visible from Center Valley Road or from neighboring properties. Staff can make the finding: *That the granting of such variance will not be materially detrimental to the public welfare or injurious to the property or improvements in such vicinity and zone in which the property is located.* **Finding (D) can be made.**
- (E) The General Plan land use designation for the subject property is Agriculture-40 and the proposed use is compatible with this designation. The 1.0± acre subject property is consistent in size with the other properties in the area and, in reality, these properties should have a General Plan designation of RR-1 (Rural Residential-1 Acre Minimum) and a zoning designation of RR-1 (Rural Residential-1 Acre Minimum), a zoning district where the side yard setback would only be 6', not the 20' setback that is required in the AG-40 zoning district. Staff can make the finding: *That the granting of such variance will not adversely affect the General Plan.* **Finding (E) can be made.**

ENVIRONMENTAL REVIEW: The application is Categorically Exempt-Class 5 (a)-Minor lot line adjustments, set back variances not resulting in the creation of any new parcel. Therefore, no further environmental review is required.

GENERAL PLAN CONSISTENCY RECOMMENDATION: The proposed project is consistent with applicable goals and policies of the General Plan.

REQUIRED FINDINGS:

- A. That there are special circumstances applicable to the property involved, including size, shape, topography, location, or surrounding. **Finding cannot be made.**
- B. That such special circumstances or conditions are not due to any action of the applicant subsequent to the application of the zoning regulations contained in the chapter. **Finding cannot be made.**
- C. That such variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same vicinity and zone and denied to the property in question. **Finding cannot be made.**
- D. That the granting of such variance will not be materially detrimental to the public welfare or injurious to the property or improvements in such vicinity and zone in which the property is located. **Finding can be made.**
- E. That the granting of such variance will not adversely affect the General Plan. **Finding can be made.**

PROJECT RECOMMENDATIONS: Staff recommends that the Zoning Administrator deny Variance #V_2015-0002 for a 16 foot setback in the side yard to allow for an existing accessory building where there is a 20 foot setback requirement. Three of the five required findings necessary for approval of a variance cannot be made.

DATE

FRED TARR
PLANNER II

Categorically Exempt
Appeal Fee: \$910.00
Appeal Period - 10 days

REFERRAL AGENCIES	REFERRAL NOT RETURNED	COMMENTS RECEIVED "NO COMMENT"	RECEIVED
DOT	X		
DEH		X	
Building			X
Assessor	X		
Ag Commissioner	X		
Code Enforcement			X
Little Lake Fire District			

ATTACHMENTS

- A. Location
- B. Topographic
- C. Aerial Map
- D. Plot Plan
- E. North Wall
- F. South Wall
- G. Zoning
- H. General Plan
- I. Adjacent Parcels
- J. Fire Hazard Zones
- K. Williamson Act