

Mariposa County
Planning Department
P.O. Box 2039
Mariposa, CA 95338-2039

STATE OF CALIFORNIA
COUNTY OF MARIPOSA
PLANNING COMMISSION

Resolution

No. 2010-027

**A resolution denying Variance No. 2010-101 John O. Reynolds,
applicant. Assessor Parcel Number 006-030-009.**

WHEREAS an application for Variance No. 2010-101 was received on July 23, 2010 from John O. Reynolds for a property located at 9997 Incline Road in El Portal, also known as Assessor Parcel Number 006-030-009; and

WHEREAS Variance No. 2010-101 proposes a variance to the side yard setback standards to allow a previously existing garage that was non-conforming that was expanded to include a residential unit without a building permit to remain two (2) feet from the side yard property line; and

WHEREAS the Planning Department circulated the application among trustee and responsible agencies, interested public organizations, and others as appropriate; and

WHEREAS a duly noticed public hearing was scheduled for the December 3, 2010; and

WHEREAS a Staff Report was prepared pursuant to the California Government Code, Mariposa County Code, and local administrative procedures; and

WHEREAS the Planning Commission did hold a public hearing on the noticed date and considered all of the information in the public record, including the Staff Report, testimony presented by the public concerning the application, and the comments of the applicant,

NOW THEREFORE, BE IT RESOLVED THAT the Planning Commission of the County of Mariposa does hereby deny Variance Application No. 2010-101; and

BE IT THEREFORE BE IT FURTHER RESOLVED THAT the project is denied based upon the inability of the Commission to make all of the required findings required by State Law and County Code. The Commission's findings for denial are set forth in Exhibit 1 of this Resolution.


ON MOTION BY Commissioner Marsden, seconded by Commissioner Tucker, this resolution is duly passed and adopted this December 3, 2010 by the following vote:

AYES: Marsden, Tucker, Rudzik, and Francisco

NOES: None

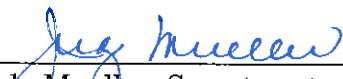
EXCUSED: Ross

ABSTAIN: None



Robert L. Rudzik, Chair
Mariposa County Planning Commission

Attest:



Judy Mueller, Secretary to the
Mariposa County Planning Commission

Exhibit 1 – Findings

1. **FINDING:** There are exceptional or extraordinary circumstances or conditions applicable to the property involved, or to the intended use of the property, that do not apply generally to the property or class of use in the same zone or vicinity. (§17.120.050.A, Mariposa County Zoning Code)

EVIDENCE: The subject property might be considered to have exceptional circumstances if the property based on its natural features were unable to meet development standards in order for a residence to be constructed. The parcel was already developed with a primary residence, prior to the expansion of the garage to include a residential unit. County Code does not allow the development of a secondary residence if development standards such as setbacks cannot be met. The parcel contains other reasonable locations to build a secondary residence that would meet setbacks. There is another existing garage that meets the required setbacks, which could have been expanded to include a residential unit while meeting all development standards. *This finding cannot be made.*

2. **FINDING:** The granting of such variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the zone or vicinity in which the property is located. (§17.120.050.B, Mariposa County Zoning Code)

EVIDENCE: The project, a variance to the setback standards in order to allow an existing structure, built without building permits to remain two feet from the side yard property line, may not be materially detrimental to the public welfare or the surrounding properties or surrounding improvements. The existing structure was built in the exact same footprint as a previously existing garage. However, the use of the structure was expanded to include a residential unit. Being located only two feet from the property makes it difficult to maintain adequate fire breaks around the structure and also reduces the amount of space that would serve as buffer between land uses on adjacent properties. *This finding cannot be made.*

3. **FINDING:** The granting of such variance will not adversely affect the comprehensive general plan. (§17.120.050.C, Mariposa County Zoning Code)

EVIDENCE: This property is located within the General Forest Zone and the Scenic Highway Overlay Zone. The applicant is proposing residential development consistent with the surrounding zone. The variance is a process that is permitted by

the county code, and state law, if appropriate as determined by specific physical characteristics of the site. The granting of a variance to the setback standards will typically not adversely affect the General Plan or the Zoning Ordinance if the Planning Commission finds that the individual site conditions warrant a deviation from the setback standards. However, the granting of this variance to build a secondary residence that does not meet side yard setbacks would not comply with Section 17.108.150, which states that "one (1) secondary residence shall be permitted on an established parcel of land in all zones except commercial and industrial..., provided that the residence conforms to all health, safety, setback, zoning and applicable building code requirements." *This finding cannot be made.*

4. **FINDING:** There are special circumstances applicable to the property in which the strict application of zoning ordinance regulations will deprive the property of privileges enjoyed by other property in the vicinity and under the identical zone. (§17.120.050.D, Mariposa County Zoning Code)

EVIDENCE: Admittedly, the subject property is dealing with a special circumstance in the fact that the variance is being requested for an already existing structure that was expanded and constructed without obtaining proper building permits. However, the site is not limited in its ability to construct a secondary residence that would meet the required setbacks. Additionally, the special circumstances are "self imposed." Had the property owner applied for the necessary building permit before constructing the "new structure", Planning staff would have had an opportunity to communicate the requirements of code regarding setbacks. *This finding cannot be made.*

5. **FINDING:** The granting of such variance will not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which such property is situated. (§17.120.050.E, Mariposa County Zoning Code)

EVIDENCE: Granting of this variance could be considered granting a special privilege to the property, since the structures use was rebuilt and expanded to include a residential unit without obtaining the proper permits or meeting the development standards required by County Code. While many properties in the county have received variances, typically these are granted to properties that are especially difficult to develop because of site conditions and variances are granted prior to construction. It could also be argued that other properties have been granted a variance for much smaller setbacks and that approving this variance would not necessarily grant a special privilege to this property, as long as the other required findings could be made.