



# NOTICE OF APPEAL OF DIRECTOR'S DETERMINATION

See reverse side for more information regarding the permitting process and the materials required for a complete application.

## APPELLANT'S CONTACT INFORMATION

Lisa + Thomas Daugherty lisamaybehere@yahoo.com 419-5763  
Appellant's Name (please print) E-mail Address Phone  
9223 N. Douglas Hwy Juneau AK 99801  
Mailing Address City State Zip  
X Lisa Daugherty  
Appellant's Signature

## DECISION THAT IS BEING APPEALED\*

The denial of an administrative variance request to reduce a street-side yard setback from 17 feet to 16.2 feet.

Date of Director's Determination 7/19/19

Attach a copy of the Director's Decision (E-mail, Notice of Decision, Letter, etc.).

\* Notice must be submitted within 20 days of the date of the decision being appealed.

## APPEAL SPECIFICS (please fill in all that apply)

Parcel Number 6D1001030130 Zoning District D1  
Case Number VDM2019 0004 Title 49 Code Section \_\_\_\_\_  
Current Use of Land or Buildings 1 lot, 1 home  
Proposed Use of Land or Buildings 2 lots, 2 homes  
Other \_\_\_\_\_

## ALL REQUIRED MATERIALS ATTACHED

- ☐ Complete Application  
☐ Appeal Decision  
☐ Narrative including:  
☐ Grounds for Appeal  
☐ Specific questions you would like the Planning Commission to address

-----DEPARTMENT USE ONLY BELOW THIS LINE-----

APPEAL FEES	Fees	Check No.	Receipt	Date
Notice Fees	\$ _____			
Refund (Yes/No)	\$ _____			
Total Fee	\$ <u>200</u>			

This form and all documents associated with it are public record once submitted.

**INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED**

For assistance filling out this form, contact the Permit Center at 586-0770.

Case Number	Date Received
<u>APL20190007</u>	<u>7/22/19</u>



(907) 586-0715  
CDD\_Admin@juneau.org  
www.juneau.org/CDD  
155 S. Seward Street • Juneau, AK 99801

**COMMUNITY DEVELOPMENT DEPARTMENT  
NOTICE OF DECISION**

DATE: July 9, 2019  
FILE NO.: VDM2019 0004

Lisa & Atlin Daugherty  
9223 N Douglas Highway  
Juneau, AK 99801

Proposal: An Administrative Variance request to reduce a street-side yard setback from 17 feet to 16.2 feet for a proposed panhandle subdivision

Property Address: 9223 N Douglas Highway

Legal Description: USS 3544 Lot 182

Parcel Code No.: 6D1001030130

The Director of Community Development, based on the analysis and findings of the attached memorandum, dated July 9, 2019, **DENIED** your request for an Administrative Variance request to reduce a street-side yard setback from 17 feet to 16.2 feet for a proposed panhandle subdivision.

Attachment: July 9, 2019, memorandum from Laurel Christian, Community Development, regarding VDM2019 0004.

This Notice of Decision does not authorize any construction activity. Prior to starting any development project, it is the applicant's responsibility to obtain the required building permits.

Effective Date: The Variance is effective on the date of the Director's, or her designee's, signature below.

This Notice of Decision constitutes a final decision of the CDD Director. Appeals must be brought to the Planning Commission in accordance with CBJ 49.20.110. Appeals must be filed by 4:30 p.m. on the day, twenty days from the date the decision is signed by the Director, in accordance with section 49.15.239(b). Any action by the applicant in reliance on the decision of the Director shall be at the risk that the decision may be reversed on appeal (CBJ 49.20.110).

RECEIVED

JUL 22 2019

PERMIT CENTER/CDD

Lisa & Atlin Daugherty

VDM2019 0004

July 9, 2019

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If you have any questions regarding your project or anticipate any changes to your plans, please contact, Laurel Christian at the Community Development Department at 586-0761.

Director:

  
Jill Maclean, Director  
Community Development Department

07/10/2019

Date

cc: Plan Review  
Bldg. File



JUL 22 2019

PERMIT CENTER/CDB

## Appeal Narrative

This Notice of Appeal of Director's Determination concerns case VDM2019 0004, which was an Administrative Variance request to reduce a street-side yard setback from 17 feet to 16.2 feet for a proposed panhandle subdivision. Our appeal was denied based on the memorandum's finding that we do not meet the criterion of having a hardship. The definition of "hardship" seems to be extremely subjective. My grounds for appeal are that the Planner presented an unrealistic notion of hardship, that she failed to acknowledge the value of keeping our highly vegetated lot vegetated, and that she stated that we have multiple paths forward though all of those paths include hardship in themselves. I would like for the Planning Commission to address these issues and assess whether a hardship exists or not based on the Administration Variance application narrative and the additional details in this narrative.

In the Planner's memorandum, for the Variance Standard A, *Enforcement of the setback ordinance would result in an unreasonable hardship*, the planner said we did not meet the criterion.

*"The applicant has multiple paths forward....The applicant has the ability to move the panhandle to the opposite side of the lot, move the mobile home on the parcel, request a temporary structure permit for the mobile home, or have two single-family dwellings on one lot, provided a lot line adjustment is completed so that the parcel exceeds 72,000 square feet. Additionally, staff finds that there are no unique characteristics of the subject parcel, which would create an unreasonable hardship if the setback standard is enforced."*

To shed light on these "paths" briefly and individually:

***Move the panhandle to the opposite side of the lot.***

Moving the panhandle and driveway to the opposite (west) side of the lot would require clear cutting old-growth forest. This area is valuable as a wildlife corridor, as a neighborhood buffer for four parcels, and for the intrinsic value that naturally vegetated habitat has and the peace and joy it creates. This parcel is not merely a paved or vacant lot; it is alive and has character. The natural flow and openness of the east side make the best option for a panhandle and driveway to the rear of the proposed new lot. The east side already has a driveway, which we would just extend if variance was granted. We would need to cut down approximately 15 trees. (See Photos 1 and 2). In contrast, a driveway on the west side would require cutting down approximately 47 trees. (See Photo 3). When working with dirt workers and building contractors for this project, all have noted the extreme beauty of the property. It was called a "trophy lot" by people in the trade of developing property because of its natural features and vegetation, not because of its dimensions. The variance memorandum only seems to acknowledge dimensions. The hardship here is the undue plunder of old-growth forest, which is of value to at least four families in the neighborhood, as well as wildlife. To cultivate a similar habitat on the East side of the property would take *generations*. In



other words, Juneau would likely just lose another neighborhood piece of old growth, never to be replaced.

***Move the mobile home on the parcel.***

The mobile home is not mobile. Four hundred square feet of it were mobile from 1961-1970. An addition, likely made in 1970, doubled the size of the house. There are no wheels, hitches, or skids. How is moving an entire home not a hardship? (See Photo 4).

***Request a temporary structure permit for the mobile home.***

We do not need a temporary structure permit for the mobile home since our D1 lot allows for two single-family dwellings. This suggestion is completely irrelevant. The subdivision we are seeking is required by the bank, not by CBJ code. Per the lending requirements of ALL BANKS, a mobile home may not remain on the lot of a new construction. We have confirmation that no bank in the state will do a mortgage loan in this situation. The banks had no other loan programs that could make the situation work without subdividing or demolishing the mobile home. This is the only reason we are seeking a subdivision in the first place. We have no intent to sell either of the proposed parcels.

***Two single-family dwellings on one lot.***

As noted above, banks will not loan in this situation when one of the dwellings is a mobile home. Building a home without a loan is a hardship. Who can build a home without a loan? We were quoted at \$100,000 for dirt work and water/sewer installation. We were quoted at \$349,000 for a basic two bedroom home on top of a garage. That is \$449,000 of a home, not including the value of the land. To expect us (or anyone) to forego a loan and be able to pay \$449,000 cash is a very blatant hardship.

Below is more detailed information pertaining to the above as well as additional items found in the planner's Variance memorandum.

I think the first thing to keep in perspective here is that we are talking about 9 inches for a 20 foot section the setback. A variance of this size would seem to fall under the Variance Standard Section C. of CBJ 49.20.250(a), which asks if the variance is "narrowly tailored." The second thing to consider is that our neighbors would not be the ones abutting the property line with a variance to the setback. The property line in contention here would be our parcel A abutting our parcel B.

The misrepresentations and shortcomings in the memorandum include:

*"Table of Dimensional Standards, a lot in the D1 zoning district that is 72,000 square feet can house two detached single-family dwellings. As the applicant proceeded to purchase land from CBJ, as approved under CSP2018 0007, their lot exceeds this requirement and two single-family dwellings is allowed. This would require a lot line adjustment, and no variance would be required."*

While according to CBJ code our parcel does not require a lot line adjustment in order to have a second single-family dwelling, in reality that is not the case. In order to build a home, most people need a bank loan. A bank will not loan to build a home on a parcel that has a mobile home on it. So according to the CBJ code, only people who are independently wealthy and don't need a loan can build a second home on a D1 lot if the first home is a mobile home. If one is independently wealthy they are unlikely to live in a mobile home in the first place. So the cycle here is that anyone currently in a mobile home on their own lot will not be able to build a new single-family dwelling without either demolishing the mobile home, subdividing their lot, or finding a person (rather than a bank) to give them a loan. I consider this unfair in that it discriminates against mobile home owners, and people in low- and middle-income brackets.

According to the *CBJ Housing Needs Assessment* of November 2010, there are 1,200 mobile homes in Juneau, and mobile homes represent 9% of all Juneau housing units. There are 240 mobile homes in lots in Juneau. This variance issue is not just about us. What are all the other mobile home owners going to do when they want to build a second home? This reality needs to be acknowledged and integrated into CBJ code in a way that meshes with the requirements of banks. A bank's solution to the mobile home issue is to subdivide. The CBJ's solution to the mobile home issue is to not subdivide. It is a cycle of dead ends to have these two entities at odds with each other. Property owners need to be able to work with both the banks and the CBJ in order to achieve their housing goals, and in the process the CBJ can achieve its goal of creating more housing. The *Housing Needs Assessment* report states in its Recommendations section, "The data are pretty conclusive that the City and Borough of Juneau has multiple stresses on its rental market. The creation of more one and two-bedroom units is necessary, either through creation or acquisition/rehabilitation of units" (54).

*"The applicant states in the narrative that additions have occurred over the years, yet no other building permits are on record for other additions."*

Our application stated that the mobile home has been added on to. We did not claim to know who, when, or how many additions were done. They were likely done before my husband and I were born. All we intended to express is that the "mobile home" is not mobile. A small portion of that home was mobile at some point. Then, someone at some time or times added on to it and built a false roof over the entire thing. The fact that CBJ personnel keeps suggesting that we can simply move our home the 9 inches is ridiculous. We can't just pick it up with a crane and move it. The entire thing would crumble. How would moving an entire, fragile 1961 home not be classified as a hardship?

*"In the applicant's narrative, they discuss the hardship of creating a second driveway (see Attachment A). Specifically, tearing down old growth trees, which removes the vegetated buffer between the applicant's lot and the neighboring lots. According to the applicant, removing this vegetated buffer for a second driveway would expose the applicant's parcel to three lots that are located on Ski Street. However, these legally platted non-conforming lots were permitted to be smaller than the required minimum lot size in the D1 zoning district, with setbacks that are less than those required in the D1 zoning district (see Attachment C)."*

This comment implies that we want to keep the heavily vegetated buffer between our parcel and the three neighbors on Ski Street merely for our own benefit. In reality the benefit extends to those three families who live on those lots. Their parcels are all cleared right up to our property line,

so there would be no vegetated cover between our driveway and all three of their parcels. Clearly, this is not just about us. It is also not just about people. Our old growth strip of forest is home or passageway to many animals that are wild and free on Douglas. We regularly see bear, deer, ermine, many species of feeding and nesting birds, and we also see wolf and rabbit scat. Strips of land such as these are called wildlife corridors. They link larger areas of habitat that are otherwise fragmented by development, and they are critical for the maintenance of ecological processes and the continuation of viable populations.

*"Conversely, the applicant's proposed location for the driveway to the proposed panhandle lot is adjacent to a conforming lot with a single-family dwelling built to the south of the applicant's property that was platted and constructed to the D1 zoning district standards."*

The neighboring lot referenced here is actually east, not the south, of our property. That neighbor would be abutting the panhandled lot, not the lot requiring the variance. That is, our conforming Lot A would be adjacent to our neighbor's conforming lot. Our non-conforming Lot B would be adjacent to our conforming Lot A. A driveway through this east side panhandle would require only minimal tree cutting. This route is also ideal because the neighbor's lot has a highly-vegetated buffer between our lot and their house and driveway. We are currently buffered from each other's view, and that would remain the case if we are able to extend the driveway.

If the panhandle was located on the west side, as the Planner suggests, we would need to add a second driveway onto North Douglas Hwy. She states:

*"The existing lot has a curb cut off North Douglas Highway for the driveway to the existing dwelling. A second curb cut would be required, and a driveway permit would be needed from the Alaska Department of Transportation (DOT). During review of the proposed subdivision, staff consulted DOT and it was determined that DOT would not see any issues with the addition of a second driveway for the new panhandle lot (Attachment E)."*

While DOT does not have issues with the addition of a second driveway for the west panhandle the Planner suggests, the CBJ's *Comprehensive Plan* notes that North Douglas Highway is "a local access residential street with over 500 private driveways accessing directly to the road. This creates dangers to the local users and those passing through to recreation destinations" (190). This indicates the the city believes there are enough or too many driveways already as it is. Why should CBJ force us to put in an additional driveway when we do not want it and the *Comprehensive Plan* finds the number of existing driveways to already be a potential hazard? Also of concern with the driveway on this side is the fact that two of the three abutting properties drain onto ours via pipe at this junction. It is likely that this could create icy conditions in the winter.

*"Alternatively, the applicant could perform no subdivision and no lot line adjustment, and apply for a building permit for a second single-family dwelling with a condition that the mobile home be used as a temporary structure during construction. CBJ 49.65.300(1) allows a mobile home to be used as a temporary structure during construction of a dwelling on a lot. This option would not require a variance, lot line adjustment, or subdivision, as long as the mobile home was decommissioned prior to the issuance of a Certificate of Occupancy for the dwelling. "*



This implies that we are asking for a variance so that we can live in the mobile home while we construct the second home. We are not. We are asking for a variance so that when we move into the new home we can keep the mobile home in place as a rental housing unit. The statement indicates we do not need a variance, lot line adjustment, or subdivision simply because decommissioning the home is a viable option. Why does the CBJ consider this a viable or desirable option? Why is the CBJ encouraging the decommissioning of homes when we have a housing shortage? Why is decommissioning our future rental unit not considered a hardship to both us *and* the community? The CBJ should be encouraging affordable housing by letting people keep their mobile homes. The CBJ actually GIVES homeowners money in order to create new housing opportunities through its Accessory Apartment Incentive Grant, as cited on the Community Development Department's web page:

"The CBJ Assembly has appropriated \$480,000 to continue this incentive program, providing \$6,000 in grant funding to homeowners that add an accessory apartment to their home. This is intended to further one of the goals of the Juneau Housing Action Plan - to create new housing opportunities for the workforce, seniors and families in the community."

We would be creating a new single-family housing rental, for which we are seeking no grant money, but CBJ will not allow it. What are the true priorities of CBJ, semantics and a bulldog attitude about code, or creating more housing?

*"Further, prior to the issuance of a Certificate of Occupancy, the mobile home could be altered in size or moved so that it is no longer constructed in the setback, if the applicant proceeded with a panhandle subdivision, with the handle located in the location of the existing driveway."*

And

*"If the applicant prefers to continue with the proposed subdivision, the mobile home on the parcel could be relocated in order to meet the required setbacks from the panhandle, or a portion of the mobile home could be removed, so that the structure meets the required street-side yard setback from the panhandle. The applicant has stated in their narrative that this may be difficult, because the mobile home has had additions over the years and is no longer mobile; CDD has record of one permit for an addition to the mobile home in 1970."*

Again, the house cannot be moved as it is not mobile. I did not indicate in the narrative that the mobile home "may be difficult" to move. It would be beyond difficult and completely impractical, if not impossible. Are we supposed to cut it into pieces and reassemble it 9 inches away? That would be an incredible hardship. As for altering the home so that it is not in the setback, I invite you into my small home to see if taking 9 inches off the side of my home, including my 9.5'x 8.5' kitchen, seems feasible. Nine inches less would mean that I would need to have my kitchen completely remodeled and would likely not have room for a full sized range for cooking. That would be an everyday cooking hardship. Investing tens of thousands of dollars into renovating a 60-year-old mobile that is only worth tens of thousand of dollars is a hardship that is not at all practical.

One idea our contractor brought up is that the mobile home will likely see the end of its useful life in the next decade. Couldn't there be some sort of variance to accommodate the 9 inch setback shortfall with the stipulation that any future structure must adhere to the full 17 foot setback? Why could this not be a contingency to the variance being granted? To me, this is the most logical path forward. It can satisfy the current needs of housing. It can keep the old-growth wildlife corridor and neighborhood buffer intact. It can let us acknowledge the natural flow of the parcel so that we can develop it in a way that accentuates its vegetative and intrinsic value. It would allow for one less driveway cutting in to North Douglas Hwy. It would value the resources that currently exist and build upon them, rather than require that completely new developments (completely new clear-cut and a completely new driveway) be made. We and CBJ are dealing with a living parcel, not a concrete rectangle. We should be able to develop a piece of property in a way that enhances its features, not degrades them. The memorandum in the Variance Application failed to acknowledge these things.

To be clear, if our appeal is denied our one and only option for building a new home will be to subdivide with a panhandle down this West side of the property. That will require and entail:

- An additional driveway cut to North Douglas Highway,
- A clear-cut of old growth forest,
- 33--66% more fill material to make a completely new driveway versus extending the current one,
- The loss of vegetative buffer for us as well as three other parcels,
- A potentially icy driveway due to two west side neighbor's property draining onto ours
- Us considering abandoning the entire project to seek refuge in a less rigid community.

I think it is imperative to consider the city's *Comprehensive Plan*, which is the guiding document for how it determines community goals and aspirations in terms of community development. The Vision and Guiding Principles are as follows: *The City and Borough of Juneau is a vibrant State Capital that values the diversity and quality of its natural and built environments, creates a safe and satisfying quality of life for its diverse population, provides quality education and employment for its workers, encourages resident participation in community decisions and provides an environment to foster state-wide leadership.*"

To achieve this vision, the CBJ followed principles in formulating its *Comprehensive Plan*. The principle concerning housing is as follows: "**Neighborhood livability and housing. Maintain the identity and vitality of our neighborhoods.**" Below are policies that directly pertain to the development of our property, our subdivision request, and our Administrative Variance application and denial.

**"POLICY 10.2. TO ALLOW FLEXIBILITY AND A WIDE RANGE OF CREATIVE SOLUTIONS IN RESIDENTIAL AND MIXED USE LAND DEVELOPMENT WITHIN THE URBAN SERVICE AREA.**

Seek the adoption of state and/or CBJ ordinances, regulations and operating procedures necessary to facilitate the redevelopment of underdeveloped properties, obsolete or substandard developments, or otherwise constrained or blighted lands located within the UrbanService Area for higher-density housing or mixed use projects,

particularly those lands located within transit corridors that could provide affordable housing.

POLICY 10.3. TO FACILITATE RESIDENTIAL DEVELOPMENTS OF VARIOUS TYPES AND DENSITIES THAT ARE APPROPRIATELY LOCATED IN RELATION TO SITE CONDITIONS, SURROUNDING LAND USES, AND CAPACITY OF PUBLIC FACILITIES AND TRANSPORTATION SYSTEMS."

I believe rigid rules that cannot acknowledge real life situations undermine common sense and the overall livability of Juneau. Please consider whether the interpretations of the Planner are unbiased, honest, and fair, and if they are reflections the city's true goals. I believe that they are not. The "alternative options" suggested to us are not actually options except for moving the panhandle to the other side, which we see as morally wrong. We have been working with various people from various entities of CBJ for over a year to develop the parcel that we bought as a young family 11 years ago. We bought it because we loved the parcel. We were living within our financial means by buying a mobile home that was 47 years old. Our intent was to pay it off then build a home on the rear portion and rent out the mobile home. Here we are, willing, ready, and just shy of able because of this subdivision hiccup. I ask you to put yourselves in our shoes. Imagine this is your lot. Imagine they are your 300-year-old trees. Imagine it is your home that is 9 inches too close to an arbitrary setback. Imagine your family is growing and needs more than 800 square feet to live in. Imagine you have had a loan secured and house plan drawn, and you have been waiting a year for the city to let you build on your own land. Imagine you have spent dozens of hours in meetings with Planners, Land Managers, and surveyors, made scores of phone calls, written stacks of letters, and sat through Assembly meetings about it all. Imagine that when the city employees made suggestions for paths forward, those suggestions were always shot down by other employees in the system. Imagine the Assembly members and the City Manager said, "you just need a variance." And imagine that no matter what, despite all the logic and aesthetics you present, the people in the Community Development Department keep saying "No." Would you believe that the CDD is following the Vision and Guiding Principles of the community's *Comprehensive Plan*? Would you feel like it was a fair assessment and conclusion? Would you feel like you were in a welcoming community that values its residents?

Thank you for your time and consideration,

Lisa Daugherty  
9223 N Douglas Hwy  
419-5763

Photo 1



Old-growth on the west side of parcel. This is where the Planner is suggesting we put the panhandle and driveway. To do this would require cutting approximately 47 trees and would completely remove the buffer between our driveway and lot and three neighboring, open yards.

Photo 2



The lower part of the east side proposed driveway. This area has historically been the “path of traffic” to reach the middle and back portions of the lot where we raise fruits, vegetables, and livestock.

Photo 3



The upper portion of the east side proposed driveway. This is mostly blueberry shrubs and portions of the garden.

Photo 4



The mobile home. The portion in the black box is the original 1961 mobile home, which was approximately 400 sq ft. The home as it is now is approximately 800 square feet. There are not separate parts to be divided. This side of the house projects 9 inches into the 17 foot setback from the edge of the panhandle, which itself is 20 feet wide, as required by code. This portion of the home includes our entryway and our kitchen.