

5-10-23

To the members of the Title 49 committee as well as all of the current members of the Planning Commission,

First of all let me thank you for volunteering your time to be a Planning Commissioner for the City and Borough of Juneau. I know how much time it takes away from your families but I hope that the benefit your service brings to the community will bring you satisfaction in knowing your time on the Commission helped many Juneau residents.

Background;

My name is Dan Miller and I am the owner of Building PROS Inc., I moved to Juneau in 1995 and have literally built hundreds of new houses and done countless small jobs improving the homes of many residents of Juneau. While conducting business I did get to come in front of the planning commission a few times and because of these experiences I decided to apply to become a planning commissioner. I ended up spending 11 years on the commission and am proud of the work we did as a commission for the CBJ. I am still working full time and Building PROS is busier than ever. A couple of years ago I met a young man who was starting his own construction company, his name is Joony Munoz, he with his wife Yvonne, owns Munoz Construction. He and I share common work ethics and the desire to bring our clients the most quality and value for their projects. This resulted in working on some of our jobs together. Sometimes I'd work for him, sometimes he'd work for me. As a mentor, I helped Joony with a subdivision on a lot he lives on off of the Backloop. He had never gone through the process of subdividing before and I was glad to help. It took a year to get the subdivision done (we had to wait for code to change, I will come back to this point later) and the bungalow started, but in 2022 Joony was off and running. Per my recommendation Joony had construction stakes set by a licensed surveyor so that we could lay out the building on the lot, also per my recommendation, we set the building at least one foot extra away from the setback lines "just to be sure". I helped lay out the building initially for excavation. Joony laid out the building for the foundation and the CBJ Inspector checked the foundation placement for the foundation setback form. Let me just say that the staking was sufficiently believable that it fooled all of us. The bungalow house was built and it wasn't until the as-built was done that we discovered that the building is set too far back, being at 20.77 feet from the rear property line instead of the required 25 feet. I obviously did not do a thorough enough job of mentoring my friend, which is why I am presenting this issue to you on his behalf.

The Problem;

The bungalow house is built. It achieved the affordability goal that the Bungalow ordinance set out to achieve. The contractor, Munoz construction, has completed the home, he has a buyer for the home but because of the setback issue CBJ can not issue a Certificate of Occupancy. He is still paying construction loan interest on a home that is completely ready to occupy. The current construction loan interest rate is 9.5%, so saying that time is of the essence is an understatement. Juneau needs Munoz construction and can not afford to put him out of business. If you don't believe me, just try calling around for a contractor to install a window, door, or even tougher, a new kitchen or addition....

The Meeting with CBJ;

Joony and I met with Jill Mclean, Charlie Ford and Scott Cambior all of CBJ CDD to discuss this difficult situation. In a nut shell we were told that the only real way forward was to buy a strip of land from the neighbor. Joony asked the neighbors and they don't want to sell. He's not a government so its not like he can force them to sell with an imminent domain tool. The proverbial saying...between a rock and a hard place....that is this situation.

With my planning commission experience I asked about trying for a variance, Jill was upfront and let us know that it would be difficult if not impossible to meet the criteria. We haggled over this for awhile and I admit I regressed about why the variance ordinance had changed. So instead of being able to get a variance for just about anything, the current philosophy is to change code. For instance, on the subdivision of this bungalow lot (mentioned above), the original lot lines had been skewed at a bit of an angle and were plotted at 100 feet long. But if you make the lines perpendicular, the lot lines were only 98 feet long. So instead of being able to ask for a variance we had to wait for the code to change. And I have to admit, this code change will help many people now and in the future.

Grasping for a solution, knowing that a variance would be a long shot (according to Jill), I asked about possible code changes that might benefit us, but really be an improvement to Title 49 and be a benefit to others in the future as well. We did a bit of brainstorming and I believe there are 2 possible changes that could be made that were more or less received favorably by those in the meeting. This letter is meant to address these possible solutions. The first possible code change could be changing the setback requirements of a bungalow lot. The second could be a minor rewrite of the administrative variance. And the third possible solution is just applying for a non-administrative variance. (I believe I have findings that are real and relevant)

The 3 possible solutions;

- 1) *Change the setback requirements for Bungalow Lots.* Bungalow Lots were intentioned to be in-fill and to help boost density without the full impact of a normally size house. To accomplish this the code was written and in the Table of Dimensional Standards, a Bungalalot lot is allowed to be one half of the lot size of the undlying zone and one half of the width. For example in a D-3 zone, a regular lot has to be 12000 sqft and 100 feet wide, whereas a bungalow lot can be half of those or 6000 sqft and 50' wide. Perhaps we can expand these one half rules to the setbacks. So I would propose that *one half of the setbacks can be reduced to one half of the setback requirement for that zone, but no less than 3 feet.* So as an example, in a D-3 zone, instead of a front setback of 25 feet, side setbacks of 10 feet and a rear set back of 25 feet, a person could choose to reduce one of the sides to 5' and either the front or the back to 12.5 feet. Some relaxing of these setbacks on Bungalow lots would surely allow more development of this affordable housing option and would provide the relief my friend and colleague Joony Munoz needs.
- 2) *Change the administrative variance language.* Per Title 49:

“an administrative variance may be granted to allow projections not to exceed 25 percent of the yard setback requirements of this title or two feet, whichever is less, upon the director determining the following:

A) Enforcement of the ordinance would create an undue hardship resulting from the unusual or special conditions of the property;

(B) The unusual or special conditions of the property are not caused by the person seeking the variance;

(C) The grant of the variance is not detrimental to public health, safety, or welfare; and

(D) The grant of the variance is narrowly tailored to relieve the hardship.”

If the first sentence of the above code was re-written to exclude the “or two feet, whichever is less”.

OR

instead of deleting the 2 feet or less, it could be changed to apply to for side yard setbacks. And for front or rear yard setback a 5 feet or less restriction could be added. Either way, these changes seem reasonable to me and I believe the director would be able to have findings in favor for this situation.

3) *Submit a Non Administrative variance application.* Interestingly enough, the same conditions for an administrative variance is required for a non administrative variance. I believe that B, C and D are pretty easy for the planning commission or the director to have suitable findings for. It is criteria A, that seems a little tougher so I will go into it more here. I believe that people tend to get hung up on unusual or special “conditions” of the property. I believe that people may tend to define the condition of the property as its physical characteristics, such as the land being very steep or being adjacent to an important anadromous stream and I too believe that those are examples of conditions. But conditions are also the specific processes of the property that occur during a project. Synonyms for conditions using “Microsoft Word” are “ circumstances, situations, settings, environments and surroundings.” So certainly, the physical characteristics of a property are conditions or environments or surroundings but so too are all of the events and processes that occur on a property, these being the circumstances or the situations. In all the years I have been building with hundreds of opportunities to mess it up, I have had only one situation where a setback encroachment occurred, in that case it required a “diminimus variance” (basically similar to today’s administrative variance).

This Bungalow setback issue is an unprecedented request for me. I really believe that what we did to make sure of the house placement was the responsible thing to do. We did NOT just wing it. We purposefully hired a reputable professional surveyor and he provided us with staking to set the house by. We do not know if a stake ended up getting moved or removed or if it was in the wrong place. We don’t know if we misunderstood what exactly was staked, but as I’ve said above, what we believed to be accurate was sufficiently authentic that 3 professionals (me, Joony Munoz and the CBJ inspector) all believed in its accuracy. This circumstance, or situation or condition of this property does NOT get any more unusual or unprecedented than this.

Therefore, the Findings could be as follows (please note that these findings could be the same for either an administrative variance decided by the director or for a non-administrative variance decided by the Planning Commission):

- A) *Enforcement of the ordinance would create an undue hardship resulting from the unusual or special conditions of the property;*

The unfortunate events that led to incorrect placing of the bungalow building are completely unusual such that special consideration is necessary to alleviate the undue hardship. The situation that the builder and CBJ are in are due to circumstances that are unexplainable, completely inadvertent, and accidental. There is NO benefit the owner would gain by purposefully encroaching into the setback only hardship, uncertainty and financial duress. Therefore, the condition of this requirement is met.

- B) *The unusual or special conditions of the property are not caused by the person seeking the variance;*

In reality, I submitted the building permit and a professional surveyor did the staking, so it wasn't Joony Munoz who caused the special conditions of the property. (this distinction was pointed out by CDD director Jill Mclean during our solution finding meeting) There is NO benefit the owner would gain by purposefully encroaching into the setback only hardship, uncertainty and financial duress. This condition is met.

- C) *The grant of the variance is not detrimental to public health, safety, or welfare;*

Granting a rear setback of 20.77 feet instead of 25 feet is not detrimental to the public health, safety and welfare. This condition is met.

- D) *And; The grant of the variance is narrowly tailored to relieve the hardship;*

It doesn't get any narrower than one hundredth of a foot, granting the 20.77 feet setback is narrowly tailoring the variance to relieve the hardship. This condition is met.

Of the three possible solutions we just want whichever one is going to stop the financial hemorrhaging the soonest. As some of you know, at the end of the project is when you have all of that money out and you're just hanging on for the Certificate of Occupancy, so you can get out from under the construction loan. With today's rates it's a huge deal. At the meeting with CBJ, Scott and Jill spent a bit of time looking at schedules for upcoming meetings and it was thought that the bungalow setback change might be the fastest. Although deleting or changing a couple of words in the administrative variance code sounds quick too. That all said, I believe my variance findings are sound and I hope you do as well, in case this is the path we must take.

Thank you again for your service to our community and for your time in considering this issue,

Sincerely,

Dan Miller

Building Pros Inc