CITY/BOROUGH OF JUNEAU
ALASKA'S CAPITAL CITY

BOARD OF ADJUSTMENT
NOTICE OF RECOMMENDATION
Date: June 14, 2012
File No.: TMI2012 0003

Dr. Len Ceder
Ceder Revocable Trust
15332 S. Highland Road
Oregon City, OR 97045

Application For:	Text Interpretation of whether a proposed variance would result in a variance to housing density
Legal Description:	Sunshine Lot 51B (Lena Cove Units 3 & 4)
Parcel Code No.:	8-B-34-0-102-001-3 & 4
Hearing Date:	June 12, 2012

The Board of Adjustment, at its regular public meeting, considered a request for an interpretation of the Land Use Code regarding whether the proposed variance, VAR2012 0005, would result in a variance to housing density, which is not within the power of the Board of Adjustment to grant.

The Board of Adjustment, after reviewing the staff report in the attached memorandum, dated June 6, 2012, hearing public testimony, and deliberation, accepted the Director's analysis and findings and recommendations that VAR2012 0005, if granted, would result in a variance to housing density and therefore the variance request could not be considered by the Board of Adjustment.

Attachments: June 6, 2012, memorandum from Beth McKibben, AICP, Senior Planner, and Laura A. Boyce, AICP, Planner, Community Development, to the CBJ Planning Commission regarding TMI2012 0003.

This Notice of Decision constitutes a final decision of the CBJ Planning Commission. Appeals must be brought to the CBJ Assembly in accordance with CBJ §01.50.030. Appeals must be filed by 4:30 P.M. on the day twenty days from the date the decision is filed with the City Clerk, pursuant to CBJ §01.50.030 (c). Any action by the applicant in reliance on the decision of the Planning Commission shall be at the risk that the decision may be reversed on appeal (CBJ §49.20.120).

Project Planner: Laura A Boyce

Laura A. Boyce, AICP, Planner
Community Development Department

Michael Satre, Chair
Planning Commission

Laurie J Sica — 6/15/2012

Filed With City Clerk — Date

MEMORANDUM

CITY & BOROUGH OF JUNEAU
155 South Seward Street, Juneau, Alaska 99801

DATE: June 6, 2012

TO: Board of Adjustment

FROM: Beth McKibben, AICP, Senior Planner BMc
Laura A. Boyce, AICP, Planner
Community Development Department

FILE NO.: TMI2012 0003

PROPOSAL: Text interpretation of whether a proposed variance would result in a variance to housing density

GENERAL INFORMATION

Applicant:	Len Ceder, Ceder Revocable Trust
Property Owner:	Ceder Revocable Trust
Property Address:	17105 & 17125 Glacier Highway
Legal Description:	Sunshine Lot 51B (Lena Cove Units 3 & 4)
Parcel Code Numbers:	8-B-34-0-102-001-3 & 8-B34-0-102-001-4
Site Size:	10,471 square feet
Zoning:	D-1
Utilities:	City Water & Marine Outfall (wastewater)
Access:	Glacier Highway
Existing Land Use:	Two residential homes
Surrounding Land Use:	North - D-1, Glacier Highway, Duplex & Single Family Residential
	South - D-1, Single-Family Residential, Favorite Channel
	East - D-1, Glacier Highway, Single-Family Residential
	West - Favorite Channel

ATTACHMENTS

Attachment A Location Map
Attachment B Application Materials
Attachment C Letters in Support of the Variance Request

CBJ §49.20.300 authorizes the Board of Adjustment to interpret the Land Use Code text.

> *"The board of adjustment is authorized to interpret the zoning map and the text of this title and to pass upon questions of lot lines or district boundary lines and similar questions presented by the department or a property owner directly concerned."*

CBJ §49.20.250(b) states that the Board of Adjustment cannot grant variances in these instances: *"A variance may vary any requirement or regulation of this title concerning dimensional and other design standards,* ***but not those concerning*** *the use of land or structures,* ***housing density****, lot coverage, or those establishing construction standards".* (emphasis added)

The Community Development Department has received an application for a variance that may increase density. The property involved has two single-family homes on a nonconforming 10,471 square foot lot. D-1 zoning was applied to the property in 1987, making this lot nonconforming to D-1 standards in density, and lot size. The D-1 zone district requires a minimum of 72,000 square foot lot in order to have two-single family homes on the property. The applicant wishes to subdivide so that each home would be located on its own lot.

The Director of Community Development is requesting that the Board of Adjustment determine if the variance, as requested, would constitute a variance to housing density which is specifically not within the Board's power to grant.

PROJECT DESCRIPTION

The applicant requests a variance to lot width, depth, and area requirements in the D-1 zone district in order to subdivide Sunshine Subdivision Lot 51B into two lots along Glacier Highway in Lena Cove. There are two existing homes on the parcel. The applicant wishes to subdivide so that each home would be located on its own lot. Subdivision of the property would allow for each of the two homes to be individually owned in fee-simple ownership.

BACKGROUND

When this lot was created in 1969, the property was zoned R-12 which required a minimum 12,000 square foot lot. Principal uses permitted include single family and duplex dwelling units. Accessory uses permitted include a guest house. Dimensional standards include a 12,000 square foot minimum lot, 110 feet in width and 100 feet in depth.

In 1969, Variance case VR-5-69 was approved. This was a variance request for a reduction in the R-12 zoning standards to permit the subdivision of two existing lots (lots 51 and 52, U.S.S. 3267) into

a three lot subdivision. The specific variance requests were as follows:

- To reduce the 12,000 minimum lot size to 9,860.19 square feet for Lot 51A and to 10,470.96 for Lot 51B (the subject parcel of this application); and
- To reduce the minimum 100 foot lot depth to 87 feet for Lot 52A, 82 feet for Lot 51A, and 65 feet for Lot 51B (the subject parcel of this application).

In 1974, Variance case VR-18-74 was approved. This was a variance request to reduce the required front yard setback of 25 feet in the R-12 zone district to 15 feet for a swimming pool addition (a separate structure from the main dwelling unit).

The pool building was built in 1974 and converted to a single-family residence in 1976, according to the staff report for VR-14-90 (detailed further below). Accessory guest houses were allowed in the R-12 zone district during this time period and staff speculates that this structure was allowed as a guest house at that time. Guest houses could not include a kitchen, but could have as many as two bedrooms. These were not meant as separate dwelling units. For some reason, this second dwelling unit received a Certificate of Occupancy in 1978 recognizing it as a single-family residence.

In 1987, the property was rezoned to D-1 from R-12, increasing the minimum lot size from 12,000 square feet to 36,000 square feet. When this change took place the lot area became nonconforming because the Table of Permissible Uses requires 72,000 square feet of lot area to have two dwelling units in a D-1 zone. Title 49 allows for legally nonconforming situations to continue - CBJ49§30.100 states:

> *Unless otherwise specifically provided in this chapter and subject to the restrictions and qualifications set forth in sections 49.30.200-49.30.700, nonconforming situations that were otherwise lawful on the effective date of the ordinance codified in this chapter may be continued.*

In 1990, Variance case VR-14-90 was approved. This was a variance request to reduce the front yard setback in the D-1 zone district from 25 feet to 16 feet to allow the construction of a 789 square foot second-story addition to the main residential dwelling.

Currently, this parcel is considered nonconforming in size. Two single-family homes in the D-1 zone district require a minimum of a 72,000 square foot lot. The current lot size of 10,471 square feet is 14.5% of the lot size that is required for these two homes. CBJ §49.30.500 states in part:

> *"...if a building is damaged by any change so that cost of renewal of the damaged parts exceeds 75% of the cost of replacement of the entire building...then such a building shall not be rebuilt, unless the building and its intended use comply with this title."* (emphasis added)

In the event one or both of these houses is damaged to the point the code prohibits reconstruction the property will be required to come into conformance with current Code requirements (one dwelling

unit on this lot). Because of this, it is the Director's Determination that subdivision of the property in to two lots would legalize the second unit which would therefore be an increase in housing density.

ANALYSIS

The applicant proposes to create two lots of 5,235.5 square feet each from the existing 10,471 square foot subject parcel. A variance is requested because the minimum lot size in the D-1 zone district requires a minimum of 36,000 square feet.. The requested lot sizes of 5,235.5 square feet would be 14.5% of the D-1 minimum lot size if the variance is granted. If one considers the number of dwelling units per acre allowed in the D-1 zoning district, 1.2 units per acre is permitted with the required lot size of 36,000 square feet. If the lots are subdivided this will result in a density equal to 8.3 units per acre.

According to the current Land Use Code, the nonconforming situation can continue (CBJ§ 49.30.100), but the nonconformity cannot be aggravated (CBJ§49.30.400). Additionally, CBJ§ 49.30.500 limits reconstruction of nonconforming buildings in the event of excessive damage. Nonconformities can be discontinued in different ways. In the case of damage to a nonconforming structure, when damage exceeds 75% of the cost of replacement of the building, reconstruction may not occur. These are methods that the Land Use Code uses in order to eliminate nonconforming situations. Long term continuance of a nonconformity is clearly not envisioned.

As applied to the subject parcel, CBJ§ 49.30.500(a) states that if one or both of the two homes on the subject parcel are damaged in any way that exceeds 75 percent of the cost of replacement of the building, only one of the structures can be rebuilt; this would result in the property coming into compliance with the current zoning standards allowing only one single-family home on this lot due to its small size. However, if the property were subdivided, resulting in one house on each lot, and if damage were to occur to the buildings, both homes could be rebuilt. This would result in permanently approving nonconforming housing density that, under current regulations, without subdividing the lot, would return to compliance if one of the buildings were destroyed. Because of this, it is the Director's determination that this variance would, in the long term, result in an increase in housing density.

CBJ§ 49.20.250(b) states that the Board of Adjustment cannot grant variances in these instances: *"A variance may vary any requirement or regulation of this title concerning dimensional and other design standards,* ***but not those concerning*** *the use of land or structures,* ***housing density****, lot coverage, or those establishing construction standards".* (emphasis added)

The Board of Adjustment is authorized by CBJ 49.20.300 to interpret the text of the Land Use Code.

> *"The board of adjustment is authorized to interpret the zoning map and the text of this title and to pass upon questions of lot lines or district boundary lines and similar questions presented by the department or a property owner directly concerned."*

Therefore, the Director of Community Development is requesting that the Board of Adjustment determine if the variance, as requested, would constitute a variance to housing density which is specifically not within the Board's power to grant.

If the Board of Adjustment decides that the variance request, if approved, would result in an increase in housing density, then staff will withdraw the variance request as the Board of Adjustment cannot grant requests that result in variances to housing density.

FINDINGS

Based upon the above analysis, the Director finds that:

This variance, if granted, would result in a variance to housing density as it would legalize two dwelling units on the property in perpetuity.

RECOMMENDATION

Director's Recommendation

Staff recommends that the Board of Adjustment determine that this variance, if granted, would result in a variance to housing density.

Subdivision Review Committee Recommendation

The Subdivision Review Committee (SRC) met on Thursday, May 31, 2012, to review this text interpretation request. Three of the four members were in attendance, which constitutes a quorum. The SRC unanimously agreed to recommend to the Board of Adjustment that this variance, if granted, would not result in a variance to housing density. They made the following findings:

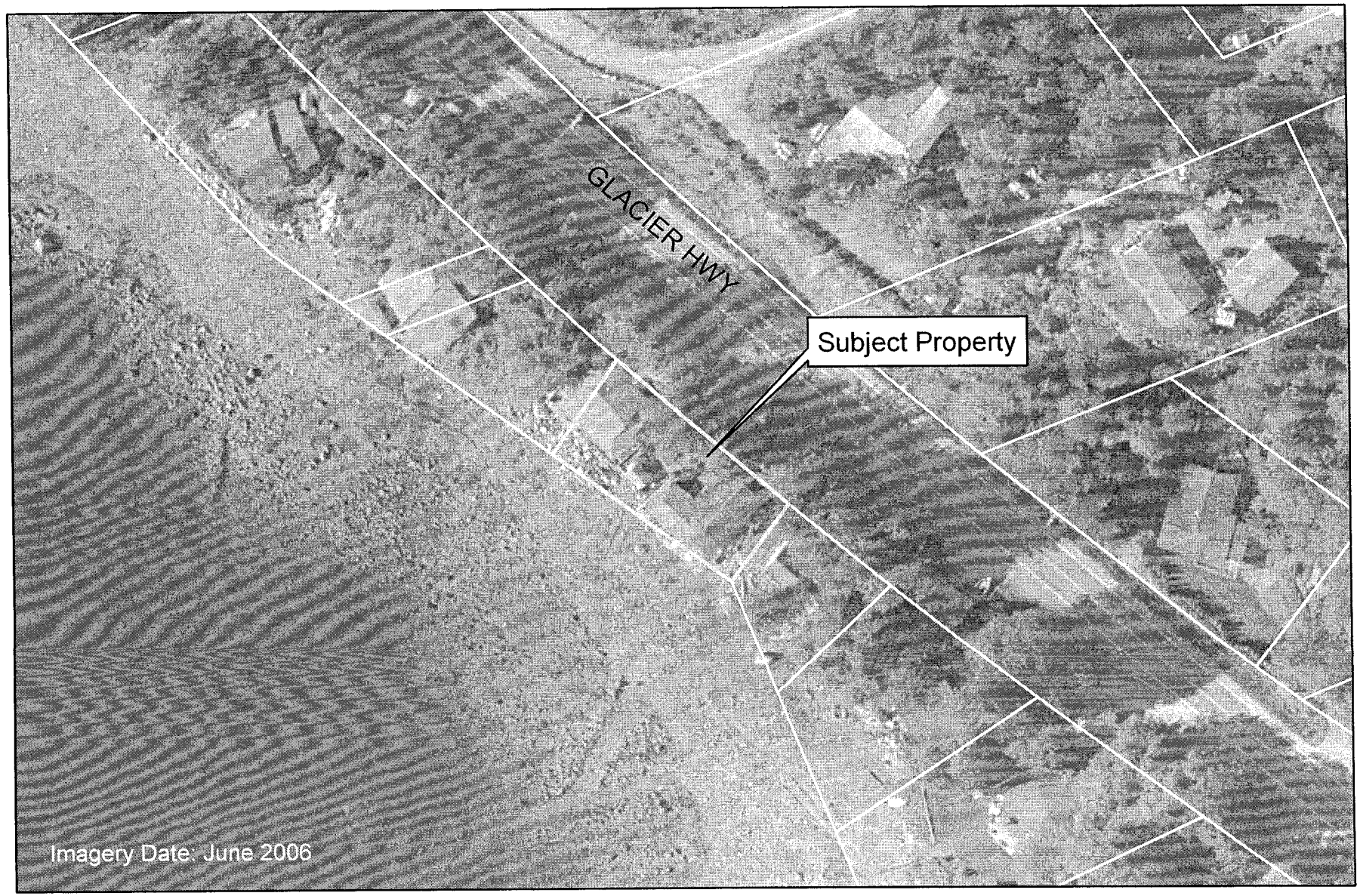
1. With subdivision of the property, density will not increase as new units aren't being created. However, there should be a condition that no accessory apartments be permitted on these parcels in the future.
2. The present situation is similar to most of the housing in the area. The proposal will not be a change for the character of the neighborhood.
3. If one of the existing housing units is destroyed, reconstruction will not change density because the housing unit is already present. Moreover, if the variance is denied and one of the dwellings is destroyed, the prohibition on reconstruction would actually result in a reduction of density.

Staff provides two potential alternative motions for Board of Adjustment consideration.

- Accept the Director's analysis and findings and recommendation that this variance, if granted, would result in a variance to housing density and therefore the variance request can not be considered by the Planning Commission.

- Accept the Subdivision Review Committee findings and recommendation and hear the variance application.

ATTACHMENT A



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0 75 150 300 Feet

This is not a survey quality representation.
Property lines are approximate.

DEVELOPMENT PERMIT APPLICATION

Project Number	CITY and BOROUGH of JUNEAU	Date Received: 3/16/12
Project Name (City Staff to Assign Name)		

PROJECT / APPLICANT INFORMATION

Project Description: Subdivision of lot with two existing homes

PROPERTY LOCATION

Street Address: 1705 Glacier Hwy | City/Zip: Juneau, AK 99045

Legal Description(s) of Parcel(s) (Subdivision, Survey, Block, Tract, Lot):

Assessor's Parcel Number(s): 8B3401020014

LANDOWNER/ LESSEE

Property Owner's Name	Contact Person:	Work Phone:
Lenart C. Ceder Rev. Trust	Ken Ceder	
Mailing Address: 15332 S Highland Rd. Oregon City, Oregon 97045	Home Phone:	Fax Number:
E-mail Address: kceder@gmail.com	Other Contact Phone Number(s): (503) 720-2742	

LANDOWNER/ LESSEE CONSENT (**Required for Planning Permits, not needed on Building/Engineering Permits**)

I am (we are) the owner(s)or lessee(s) of the property subject to this application and I (we) consent as follows:

A. This application for a land use or activity review for development on my (our) property is made with my complete understanding and permission.

B. I (we) grant permission for officials and employees of the City and Borough of Juneau to inspect my property as needed for purposes of this application.

X _____ Landowner/Lessee Signature — Date: 2-29-12

X _____ Landowner/Lessee Signature — Date: _____

NOTICE: The City and Borough of Juneau staff may need access to the subject property during regular business hours and will attempt to contact the landowner in addition to the formal consent given above. Further, members of the Planning Commission may visit the property before the scheduled public hearing date.

APPLICANT (If same as OWNER, write "SAME" and sign and date as below)

Applicant's Name	Contact Person:	Work Phone:
SAME		
Mailing Address	Home Phone:	Fax Number:
E-mail Address	Other Contact Phone Number(s):	

X _____ Applicant's Signature — Date of Application: 2-29-12

---OFFICE USE ONLY BELOW THIS LINE---

STAFF APPROVALS

✔	Permit Type	Fee	Date Received	Application Number(s)
	Building/Grading Permit			
	City/State Project Review and City Land Action			
	Inquiry Case (Fee In Lieu, Letter of ZC, Use Not Listed)			
	Mining Case (Small, Large, Rural, Extraction, Exploration)			
	Sign Approval (if more than one, fill in all applicable permit #'s)			
	Subdivision (Minor, Major, PUD, St. Vacation, St. Name Change)			
	Use Approval (Allowable, Conditional, Cottage Housing, Mobile Home Parks, Accessory Apartment)			
X	Variance Case (De Minimis and all other Variance case types)		3/16/12	VAR20120005
	Wetlands Permits			
	Zone Change Application			
	Other (Describe)			

***Public Notice Sign Form filled out and in the file.

Comments:

Permit Intake Initials

NOTE: DEVELOPMENT PERMIT APPLICATION FORMS MUST ACCOMPANY ALL OTHER COMMUNITY DE

ATTACHMENT B

Variance Approval Criteria

A variance may be granted after the prescribed hearing and after the Board of Adjustment has determined the following criteria are met. Include in your project narrative a detailed description about how your proposal meets each of the criteria listed below:

(1) The relaxation applied for or a lesser relaxation specified by the board of adjustment would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners;

(2) Relief can be granted in such a fashion that the intent of this title will be observed and the public safety and welfare preserved;

(3) The authorization of the variance will not injure nearby property;

(4) The variance does not authorize uses not allowed in the district involved;

(5) Compliance with the existing standards would:

- *(A) Unreasonably prevent the owner from using the property for a permissible principal use;*
- *(B) Unreasonably prevent the owner from using the property in a manner which is consistent as to scale, amenities, appearance or features, with existing development in the neighborhood of the subject property;*
- *(C) Be unnecessarily burdensome because unique physical features of the property render compliance with the standards unreasonably expensive; or*
- *(D) Because of preexisting nonconforming conditions on the subject parcel, the grant of the variance would not result in a net decrease in overall compliance with the land use code, title 49, or the building code, title 19, or both; and*

(6) A grant of the variance would result in more benefits than detriments to the neighborhood.

PLEASE NOTE: As provided by CBJ Land Use code section on Variances (CBJ§49.20.200), a Variance may vary any requirement or regulation of this title concerning dimensional and other design standards, but NOT those concerning the use of land or structures, housing density, lot coverage, or those establishing construction standards.

INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED

1. Unit 4, Lena Cove Residential Condominium Apartments according to the Declaration beginning at Book 179, Page 539 dated May 8, 1981 and Plat #81-33 as amended by that certain Amendment to Declaration dated September 9, 1981, and recorded at Book 190, Page 753-754, Juneau Recording District, First Judicial District, State of Alaska.

2. Unit 3, Lena Cove Residential Condominium Apartments according to Declaration recorded May 14, 1981 in Book 179 at Page 573, as amended by instruments recorded January 8, 1982 in Book 190 at Page 753 and July 16, 1982 in Book 198 at Page 627, and Plat 81-33, Juneau Recording District, First Judicial District, State of Alaska, together with an undivided 57% interest in the common areas.

WORKSTATION 255 - USER TLU - tlu

Wed May 12 16:14:19 2010

AS314 Real Property Inquiry
Last Update: CURRENT Property Information DATE: 05/12/10

PARCEL NUMBER:	8B3401020013	* ROAD/NR:	001
CURR OWNER:	CEDER LENART TRUST	* WATER AVAI:	001
C/O:		* WATER SYS:	000
MAIL ADDR:	17105 GLACIER HWY	* SEWER AVAI:	002
CITY/STATE:	JUNEAU AK ZIP: 99801	* SEWER SYS:	000
STREET NAME:	GLACIER*HWY********* HOUSE NUMBER:	17125*	
LEGAL DESCRPTN:	LENA COVE CONDO #3		
		LOT SIZE:	10471.00
PREV OWNER:	CEDAR LEN & PATRICIA	* AREA UNIT:	001
LAST TRANSFER:	96/12 (YY/MM)	TOTAL SQFT:	2348
TAX YEAR:	2010 * USE CODE: 001		
SITE VALUE:	155,800.00 * ZONING: 001	BSMNT SQFT:	0
BLDG VALUE:	208,600.00 NO UNITS: 1		
TOTAL VALUE:	364,400.00 YR BUILT: 1970	* ATTIC TYPE:	000
* EXEMPT CODE:	000 * STYLE: 004	ATTIC SQFT:	0
EXMP TYPE 1:	0.00 BEDROOMS: 4		
EXMP TYPE 2:	0.00 BATHS: 2.00	* GARAGE DESC:	000
EXMP TOT:	0.00 TOT ROOMS: 11	GARAGE SQFT:	0

(En)Find (2/18)First/Last (4)Prior (5)Next (6/22)List/Search (7)Change Key
(8)Prev Yr (10)Inquiry (11)Names (13)Taxes (14)Utility (15)Print (16)Exit


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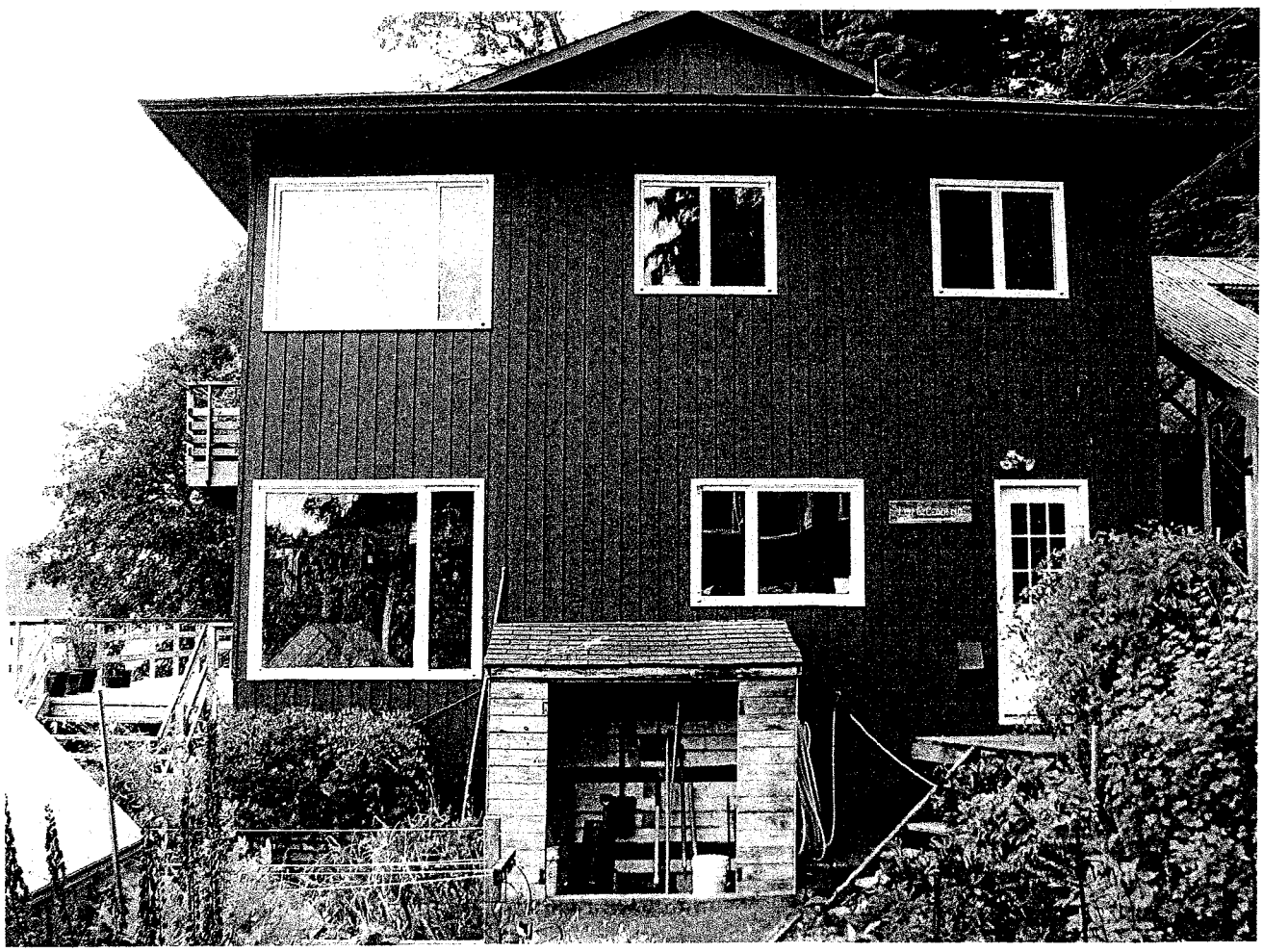
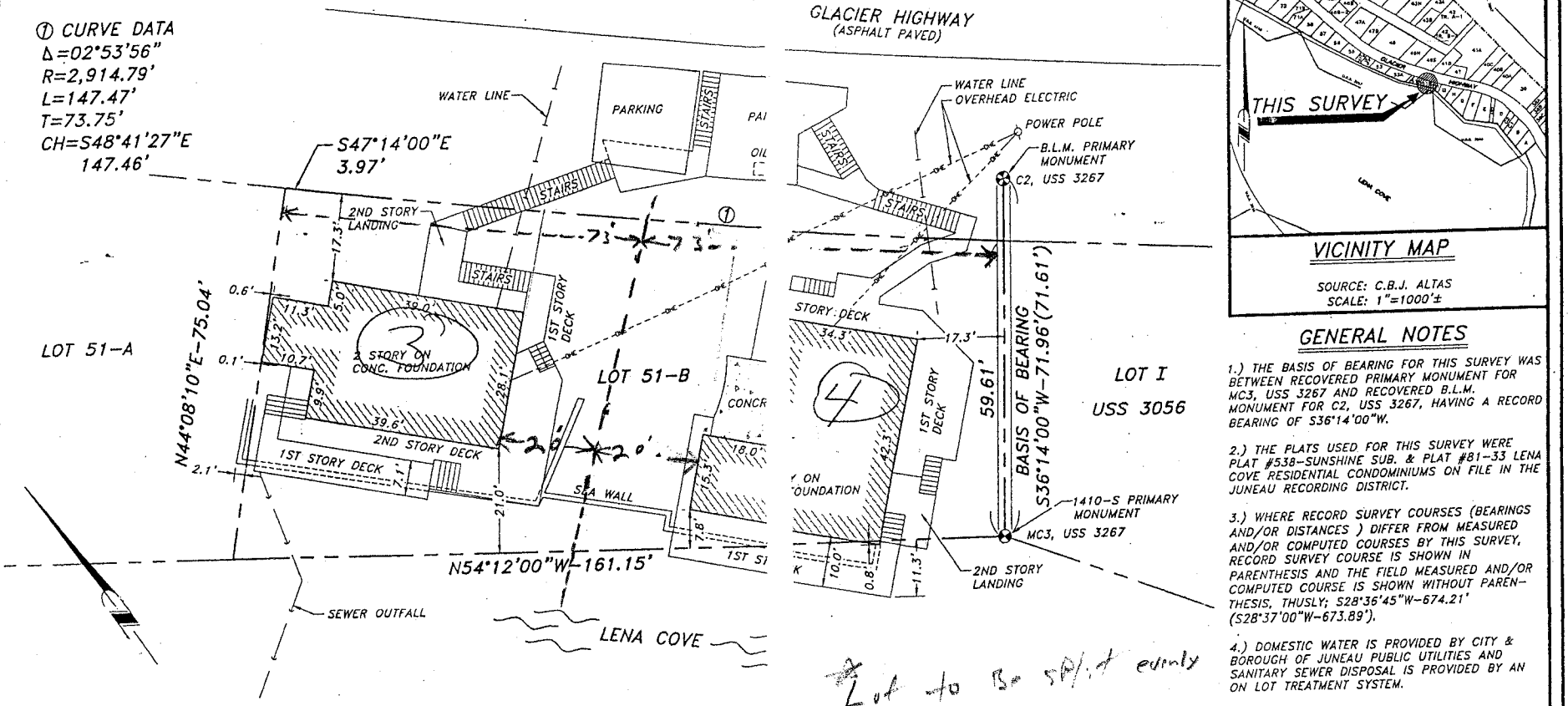
4WD



R & M ENGINEERING, INC.



VICINITY MAP

SOURCE: C.B.J. ALTAS
SCALE: 1"=1000'±

GENERAL NOTES

1.) THE BASIS OF BEARING FOR THIS SURVEY WAS BETWEEN RECOVERED PRIMARY MONUMENT FOR MC3, USS 3267 AND RECOVERED B.L.M. MONUMENT FOR C2, USS 3267, HAVING A RECORD BEARING OF S36°14'00"W.

2.) THE PLATS USED FOR THIS SURVEY WERE PLAT #538-SUNSHINE SUB. & PLAT #81-33 LENA COVE RESIDENTIAL CONDOMINIUMS ON FILE IN THE JUNEAU RECORDING DISTRICT.

3.) WHERE RECORD SURVEY COURSES (BEARINGS AND/OR DISTANCES) DIFFER FROM MEASURED AND/OR COMPUTED COURSES BY THIS SURVEY, RECORD SURVEY COURSE IS SHOWN IN PARENTHESIS AND THE FIELD MEASURED AND/OR COMPUTED COURSE IS SHOWN WITHOUT PARENTHESIS, THUSLY; S28°36'45"W-674.21' (S28°37'00"W-673.89').

4.) DOMESTIC WATER IS PROVIDED BY CITY & BOROUGH OF JUNEAU PUBLIC UTILITIES AND SANITARY SEWER DISPOSAL IS PROVIDED BY AN ON LOT TREATMENT SYSTEM.

Lot to be split evenly

NOTE:
UNDER NO CIRCUMSTANCES SHOULD ANY DATA HEREON BE USED FOR CONSTRUCTION OR FOR ESTABLISHING BOUNDARY OR FENCE LINES.

SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY THAT THIS IS A TRUE AND CORRECT PLAT OF LOT 51-B, U.S. SURVEY 3267, AND THAT ALL WALKS, ROADS, EASEMENTS AND IMPROVEMENTS APPEARING ON THE LAND ARE AS SHOWN, AND THERE ARE NO ENCROACHMENTS OR OVERLAPS OF IMPROVEMENTS EXCEPT AS SHOWN.

STATE OF ALASKA
49TH
MARK A. JOHNSON
LS 7570
REGISTERED PROFESSIONAL LAND SURVEYOR
5-8-09

Lot size = 10,471

Proposed Subdivision → halve lot into two

AN AS-BUILT SURVEY
PLAT OF
LOT 51B
WITHIN
U.S. SURVEY 3267
CITY AND BOROUGH OF JUNEAU, ALASKA

DATE	SCALE	DRAWN BY	CHECKED BY	PROJECT NO.	DRAWING NO.
4/24/2009	1"= 20'	M.L.L.	C.C.	091731	1-1

FIELD SURVEY DATE: 4-16-09

Mike and Astrid Bethers
PO Box 210003
Auke Bay, Ak 99821
May 14,2012

City and Borough of Juneau
Planning Commission
155 S Seward
Juneau, Ak 99801

Dear Planning Commission; SUBJ: Comments for file
VAR2012-0005, Len Ceder
17105 Glacier Hwy

We live at 17085 Glacier Hwy, near the Ceder property. We have no problem with this small parcel being subdivided and the houses being sold separately, pending that they are both sold and operated as single family homes. This way there would be no change in traffic, parking, etc.

Thank you for the opportunity to comment.

Respectfully,

ATTACHMENT C

May 22, 2012

Keith and Jolene Cox
17105 Glacier Highway
Juneau, Alaska
(907) 790-4304

City and Borough of Juneau
Planning Commission
Chair: Michal Satre
Meeting date: May 22, 2012

The purpose of this letter is to support the variance request to lot width, depth, and area, as well as density, to allow for a minor subdivision for the properties located at 17105 and 17125 Glacier Hwy. As tenants of the property, we feel that the property which contains two houses would benefit by re-platting. Both houses are currently occupied and have been for many years. Re-platting would not change the population density of the area but would rather allow two home owners the opportunity to live on waterfront property rather than one homeowner and one house renter, or two house renters. If re-platted, each house could be managed independently thus reducing the constrictions of having to become a dual house owner/manager. Subsequent owners would benefit by looking forward to neighbors that are also home owners without the hindrance of overseeing rental properties. The City and Borough would also benefit as it would allow two new homeowners (instead of one homeowner plus one renter) the possibility of owning waterfront property in Juneau.

We currently rent the house located at 17105 Glacier Hwy from Len Ceder and have found that the property and the proximity of the two houses located would be better suited to be re-platted rather than remain connected as two houses on a single plat.

Sincerely,

Keith Cox Jolene

Keith and Jolene Cox