


MEMORANDUM

CITY & BOROUGH OF JUNEAU

155 South Seward Street, Juneau, Alaska 99801

DATE: August 21, 2012

TO: Board of Adjustment

FROM: Crystal Hitchings, Planner
Community Development Department 

FILE NO.: VAR20120010

PROPOSAL: Variance request to allow an existing carport to remain located at zero feet from the west side property line

GENERAL INFORMATION

Applicant: Richard Lee

Property Owner: Richard Lee

Property Address: 17725 Pt. Lena Loop Road

Legal Description: USS 3055 Lot 5

Parcel Code Number: 8-B35-0-101-026-0

Site Size: 0.88 acres; 38,332 square feet

Zoning: D3

Utilities: Public water, private sewer

Access: Point Lena Loop Road

Existing Land Use: Single-family Residential

Surrounding Land Use: North—D-3, Lena Cove
South—D-3, Point Lena Loop Road, Residential
East—D-3, Residential
West—D-3, Residential



CITY & BOROUGH OF JUNEAU
ALASKA'S CAPITAL CITY

The southwest corner of the existing carport currently encroaches onto the neighboring property by approximately six (6) inches. This portion of the southwest corner of the carport roof will need to be removed so that the entire structure is located on the subject property. A variance is required to allow the carport to be located zero feet from the side yard setback.

BACKGROUND

The subject site is located at 17725 Lena Point Loop Road, on the north side of the road, adjacent to Lena Cove. The site is 38,332 square feet in size, and is developed with a single-family residence with an attached carport and a detached garage. The site is located within a D3, low density residential zone. The lot is sloped toward the water and the home sits on the northwest section. The driveway runs from Lena Loop on the northwest corner of the property along the property line to the house. According to the applicant, the driveway and parking area have been located in the same place since the original cabin was built in the 1950's.

The carport was constructed in its current location in 2006. The applicant states that, prior to construction, they hired an architect, engineer, and licensed contractor to handle the design, permitting, and construction of the carport. The applicant states they had requested that the contractor obtain all necessary building and zoning permits for the carport, and were under the assumption this had been properly completed.

Early last year the adjacent neighbor to the west (Keith and Tamara Criddle) removed the fence along the common side property line to do some work on their foundation, and had their lot surveyed. The survey revealed that the fence was not on the property line and that the carport had actually been constructed partially over the property line. Further research revealed that a building permit for the carport had never been applied for.

ANALYSIS

CBJ § 49.25.430(4) allows for some projections into required yards. CBJ § 49.25.430(4) (C)(iii) provides for certain unheated structures to be located in required yards, up to 3 feet from a side lot line. However, for these unheated structures to be within the required side yard they must be no higher than 10 feet. This carport is higher than 10 feet.

CBJ § 49.25.430(H) allows carports and garages to be located a minimum of five feet from any property line in all residential districts if all of the following conditions can be met:

- i. the topography of the lot makes construction a hardship;
- ii. the garage has a maximum height of 17 feet from the finished floor level;
- iii. sight distance is approved by the Director;
- iv. enclosed space under the garage is subject to the setback exception and no additional stories are allowed over the garage.

The proposal does not meet all four of the CBJ § 49.25.430(4) criteria in that the topography of the lot is not significant enough to make the construction a hardship. However, the carport is less than 17 feet in height, and is approximately 175 feet from the nearest ROW, so does not affect sight distance, and does not include enclosed space under the structure, and so consequently the structure meets the other three required criteria.

The above exception would have allowed the carport to be located up to five (5) feet from the side lot line rather than the required ten (10). However, the applicant's request is for the carport to be allowed at zero (0) feet from the side lot line.

Variance Requirements

Under CBJ §49.20.250 where hardship and practical difficulties result from an extraordinary situation or unique physical feature affecting only a specific parcel of property or structures lawfully existing thereon and render it difficult to carry out the provisions of Title 49, the Board of Adjustment may grant a Variance in harmony with the general purpose and intent of Title 49. A Variance may vary any requirement or regulation of Title 49 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. A Variance may be granted after the prescribed hearing and after the Board of Adjustment has determined:

- 1. That 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.***

NO. Staff finds that criterion 1 is not met. According to the applicant's statement, "*Cutting the roof back 6 inches can be done to remove the encroachment issues over the neighbors land. Other changes would prove more problematic. It might not be possible to move the footings. Prior to construction there was considerable discussion about where the footings would and could be placed to avoid disruption of the roots of several surrounding trees. The trees that stand between the two properties provide some protection against the north wind and some privacy screening. Most importantly they secure the hillside that is between the two homes. We were told it would not be a good idea to remove the trees. And, we were told construction would stop if putting in the footings disturbed the roots. If it is possible (considering the tree root issue) to move the footings in one foot, a car would still fit, but it would be very tight and there will be no room for error. The cost would be considerable. If the footings have to be moved more than one foot, then the carport will not be functional.*"

Both primary and accessory structures in the nearby neighborhood appear to be in compliance with required minimum setbacks. No variances have been granted to nearby properties for setback reductions. Observations from the street of development in the neighborhood reveal that only one nearby property, 17855 Point Lena Loop Road, appears to have structures that are located within the 10 foot side yard setback. This structure is a detached garage and open carport-like shed (see attachment F.)

Granting this variance would provide substantial relief to the property owners in that they would be spared the cost of removing the existing structure and relocating it to meet the required setbacks. However, this relaxation is not consistent with justice to other property owners, since the majority of the property owners in the area with similarly detached accessory structures appear to comply with required side yard setbacks, there is no evidence that the majority of neighboring properties enjoy covered parking adjacent to their front doors, and the lot does not contain prohibitively steep slopes.

2. *That relief can be granted in such a fashion that the intent of this title will be observed and the public safety and welfare be preserved.*

YES. Staff finds that criterion 2 is met. The intent of Title 49 is established in Section CBJ § 49.05.100 Purpose and Intent. The intent of Title 49 is to implement the policies of the comprehensive plan; to ensure that growth and development is in accord with the values of its residents; to secure the beneficial impacts of growth while minimizing the negative; to ensure that future growth is of the appropriate type; design, and location; to promote public health, safety, and general welfare; to provide adequate open space for light and air, and to ensure proper and beneficial use of land.

A carport adjacent to the main entrance of a home is appropriate development in a residential district and, when well constructed, provides greater amenities and thus value to the subject property. The carport is of an open construction type, is located below the level of and out of the main viewshed of the home on the neighboring property, and is located approximately 30 feet from the neighboring home at its closest point. Light and air on the neighboring property is not affected.

Comments from the Community Development Department Building Department (Attachment I) state that “any portion of the “carport” that is within 2ft of the property line must have a minimum fire rating of 1 hour applied to the underside of the roof structure... The fire rated design/materials must be submitted for review and approval along with the complete set of building plans.” The carport is located such that, once it is altered to be entirely on the subject property and altered to meet 1-hour fire ratings two (2) feet back from the property line, it does not negatively affect public health, safety, or general welfare.

The subject carport is a one-car structure attached to the home. The profile of the carport is woven into the roofline of the existing house, creating a structural relationship that is in keeping with other residential development in the neighborhood. The distance of approximately 30 feet between the carport and the neighboring home, along with the trees and other vegetation growing in that space, provides more than the minimum required separation of 20 feet, and well more than the required separation of 15 feet were the carport permitted via the exception allowed under CBJ § 49.25.430(H).

The applicant states that the carport adds value and increases the safety of the individual property “...because access to the house in the winter months can be extremely hazardous. During our first

winter and subsequent winters since, we discovered that ice and snow build up on our driveway is hazardous to the point of being dangerous. During inclement weather (including rain) getting my elderly mother (who was living with us) into and out of our home proved impossible. Add several harrowing slides down the driveway and the inability to enter our home after several orthopedic surgeries and falls (all of which resulted in the use of wheelchairs and/or a non weight bearing cast) led us to seek a solution.”

3. That the authorization of the Variance will not injure nearby property.

YES. Staff finds that criterion 3 is met. According to the applicant’s statement, *“The carport does not obstruct in any way the neighbors view or the use of their property. The carport sits (as does our home) down a slope from their home. It was designed to be an architecturally pleasing addition to our home and greatly adds to the value in terms of curb appeal, aesthetics and of course having a covered area that leads into our home. It is a substantial structure built with cedar posts and finished details. It sits directly over the place that has always been used for parking. The lighting is night sky rated so it does not affect the night sky viewing for neighbors as their house sits substantially higher than ours.”*

The applicant also states that *“Building the carport was done to resolve serious access issues that were adversely affecting our lives. Before signing off on the project we felt the architect, engineer and contractor knew all of the safety and zoning concerns required by the city and had met the requirements for building. It was never our intention to encroach on our neighbors’ property.”*

If approved to be located at zero feet from the property line, the eaves of this carport must be fire rated to the 1-hour rating required by CBJ Title 19 for a distance of two feet back from the property line (See Building Inspector review comments, Attachment I).

The adjacent neighbors, Keith and Tamara Criddle, did submit a letter stating that they *“strenuously object to the continued encroachment on (their) property and urge that the Planning Commission deny any request for variance to existing setback requirements.”* It is important to note that the encroachment over the property line cannot be permitted to remain per the 2006 International Residential Building Code (Attachment I). No evidence has been submitted at this time that shows that the carport, located at a zero (0) foot setback, would injure the Criddle’s property.

4. That the Variance does not authorize uses not allowed in the district involved.

YES. Staff finds that criterion 4 is met. The subject site is located in a residential district. Carports are typical accessory uses in residential zones.

5. That compliance with the existing standards would:

(A) Unreasonably prevent the owner from using the property for a permissible

principal use;

NO. Staff finds that criterion 5A is not met. The subject property is developed with a single-family home, and this application is for an accessory rather than a 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;***

NO. Staff finds that criterion 5B is not met. The nearby neighborhood is developed with single-family homes and most properties appear to contain attached and/or detached garages, carports, and other accessory structures. Some of these structures are nearer to the house and others are away from the house. Most appear to be located in compliance with the required setbacks.

The subject property is also developed with a detached garage located along the driveway between the house and the street. Many houses in the neighborhood are not clearly visible from the street and it is difficult to determine whether or not those homes consistently enjoy covered parking immediately adjacent to their front doors. However, many of the garages appear to be located near but not immediately adjacent to the homes.

(C) ***Be unnecessarily burdensome because unique physical features of the property render compliance with the standards unreasonably expensive;***

NO. Staff finds that criterion 5C is not met. The site is sloped, but not prohibitively, and does contain flatter buildable areas; this topography is typical to the neighborhood and is not unique to the subject site. According to the applicant, the eastern portion of the lot contains a marine outfall and drainfield, along with overhead utility lines which, according to the applicant, are of a height not conducive to driveway development.

According to the applicant's statement, they "*...looked at the house and the entire lot to see what could be done. It was determined that a carport that extended over a parking spot directly outside the front door was the most practical and effective solution. The only place where a car port that would meet our needs could be located is on the northwest side of the home where it was eventually built. The northeast side of the home would not work for two reasons. One, this is where the drain field and marine outfall are located. Secondly a power line that supplies power to the neighbors to the west of us (16795 Pt. Lena Loop) runs from the middle of our lot on the northeast quadrant across our entire property, including the driveway where it connects to another pole at the edge of our lot. From there it is connected to a transformer and the line runs underground to the neighbor's house. The location and height of the pole greatly impacts and limits access on that portion of our lot. Note: According to AELP moving the line (which our title*

company could not find a recorded easement for) would be at our expense regardless of the fact it supplied power to a different house.”

The house was originally constructed approximately 16 feet from the east side property line, with the main entrance deck and main entrance door on the eastern side of the house. It would be impossible to construct a carport between the home and the eastern property line that would meet the 10-foot setback requirement.

However, had the applicant actually known the location of their side lot line prior to initiating construction, it is possible that the carport could have been constructed on the southwest corner of the home rather than on the west side of the home, and a ramp could have been constructed to get to the main entry deck and door in a similar proximity to the house as the existing configuration.

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, CBJ Title 49, or the building code, CBJ Title 19, or both.

There are no pre-existing nonconformities on this lot. Therefore, this sub-criterion is not applicable.

NO. Staff finds that criterion 5 is met because none of the sub-criteria are met.

6. *That a grant of the Variance would result in more benefits than detriments to the neighborhood.*

NO. Staff finds criterion 6 is not met. No evidence has been presented that indicates that allowing the carport to remain in the side yard setback will have any beneficial effects on the neighborhood. However, neither has any evidence been submitted showing that there will be any detrimental effects on the neighborhood.

49.70.900-49.70.1097 COASTAL DEVELOPMENT, HABITAT, AND WETLANDS

ALASKA COASTAL MANAGEMENT PROGRAM (ACMP)

Not applicable. This project does not require a state-coordinated ACMP review.

FINDINGS

1. *Is the application for the requested Variance complete?*

Yes. The application contains all necessary information to conduct a full review of the proposed reduction. The application submitted by the applicant, included the appropriate fees, substantially conforming to the requirements of CBJ§49.20.

2. *Will the proposed development comply with the Alaska Coastal Management Program?*

Yes. As noted in the Coastal Management portion of the staff report the CMP does not apply to this variance request.

3. *Does the variance as requested, meet the criteria of Section 49.20.250, Grounds for Variances?*

No. Based on the analysis above, staff has determined that the applicant has not presented an argument that justifies the grounds for this variance.

Criteria 1, 5 and 6 are not met.

RECOMMENDATION

Staff recommends that the Board of Adjustment adopt the Director's analysis and findings and "decision" on the requested Variance, VAR20120010. The Variance permit would deny the request for the existing carport to remain at zero (0) feet from the west side property line.

The proposal does not meet the variance criteria; therefore, Staff recommends the Board of Adjustment adopt the Director's analysis and findings and deny the requested variance permit.

Should the Planning Commission decide to grant the variance, staff recommends the following two (2) Conditions of Approval:

1. The carport roof must be altered such that the entire structure is located entirely within the boundaries of the subject property; and
2. The applicant must apply for and obtain an after-the-fact building permit for the existing carport, including fire-rating for the portion of the roof that is located within two (2) feet from the property line.

VARIANCE APPLICATION

Project Number	Project Name (15 characters)	Case Number <i>V A R 12-010</i>	Date Received <i>5/9/12</i>
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TYPE OF VARIANCE REQUESTED:

- | | |
|--|--|
| <input type="checkbox"/> Variance to the Sign Standard (VSG) | <input type="checkbox"/> Variance to Dimensional Standards (VDS) |
| <input type="checkbox"/> Variance to Habitat Setbacks (VHB) | <input type="checkbox"/> Variance to Parking Requirements (VPK) |
| <input checked="" type="checkbox"/> Variance to Setback Requirements (VSB) | |

DESCRIPTION OF ACTIVITY WHICH REQUIRES A VARIANCE:

Car port

Previous Variance Applications? YES NO Date of Filing: _____

Previous Case Number(s): _____

Was the Variance Granted? YES NO

UNIQUE CHARACTERISTICS OF LAND OR BUILDING(S):

hillside (steep driveway)

UTILITIES AVAILABLE: WATER: Public On Site SEWER: Public On Site

WHY WOULD A VARIANCE BE NEEDED FOR THIS PROPERTY REGARDLESS OF THE OWNER?

The carport is within the 10 foot set back

WHAT HARDSHIP WOULD RESULT IF THE VARIANCE WERE NOT GRANTED?

Removal of carport would be a financial burden and access to our front driveway would be more of a problem. Owner has several operations on knee & shoulder and is safer not having to walk in ice & snow down hill

<p>For more information regarding the permitting process and the submittals required for a complete application, please see the reverse side.</p> <p>If you need any assistance filling out this form, please contact the Permit Center at 586-0770.</p>	<p>VARIANCE FEES</p> <table style="width: 100%;"> <thead> <tr> <th style="text-align: left;">Fees</th> <th>Check No.</th> <th>Receipt</th> <th>Date</th> </tr> </thead> <tbody> <tr> <td>Application Fees <i>\$ 800.00</i></td> <td>_____</td> <td>_____</td> <td>_____</td> </tr> <tr> <td>Adjustment <i>\$ _____</i></td> <td>_____</td> <td>_____</td> <td>_____</td> </tr> <tr> <td>Total Fee <i>\$ 800.00</i></td> <td><i>1784</i></td> <td><i>CDJ2677</i></td> <td><i>5/9/12</i></td> </tr> </tbody> </table>	Fees	Check No.	Receipt	Date	Application Fees <i>\$ 800.00</i>	_____	_____	_____	Adjustment <i>\$ _____</i>	_____	_____	_____	Total Fee <i>\$ 800.00</i>	<i>1784</i>	<i>CDJ2677</i>	<i>5/9/12</i>
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Total Fee <i>\$ 800.00</i>	<i>1784</i>	<i>CDJ2677</i>	<i>5/9/12</i>														

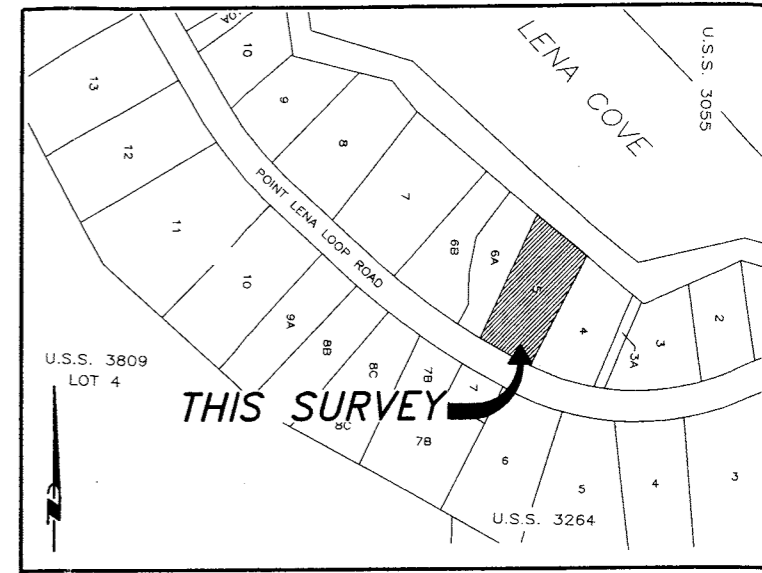
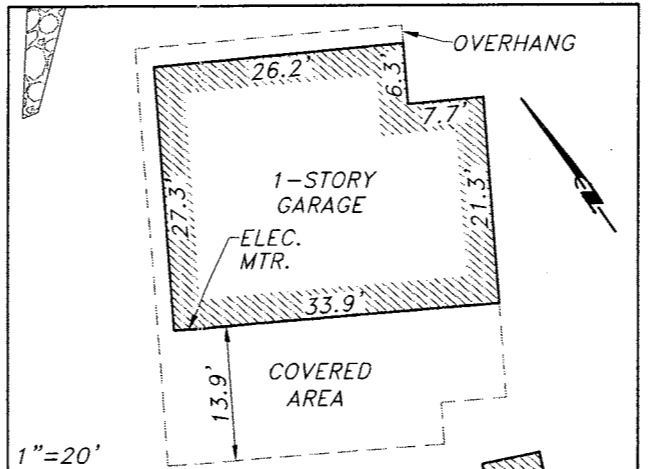
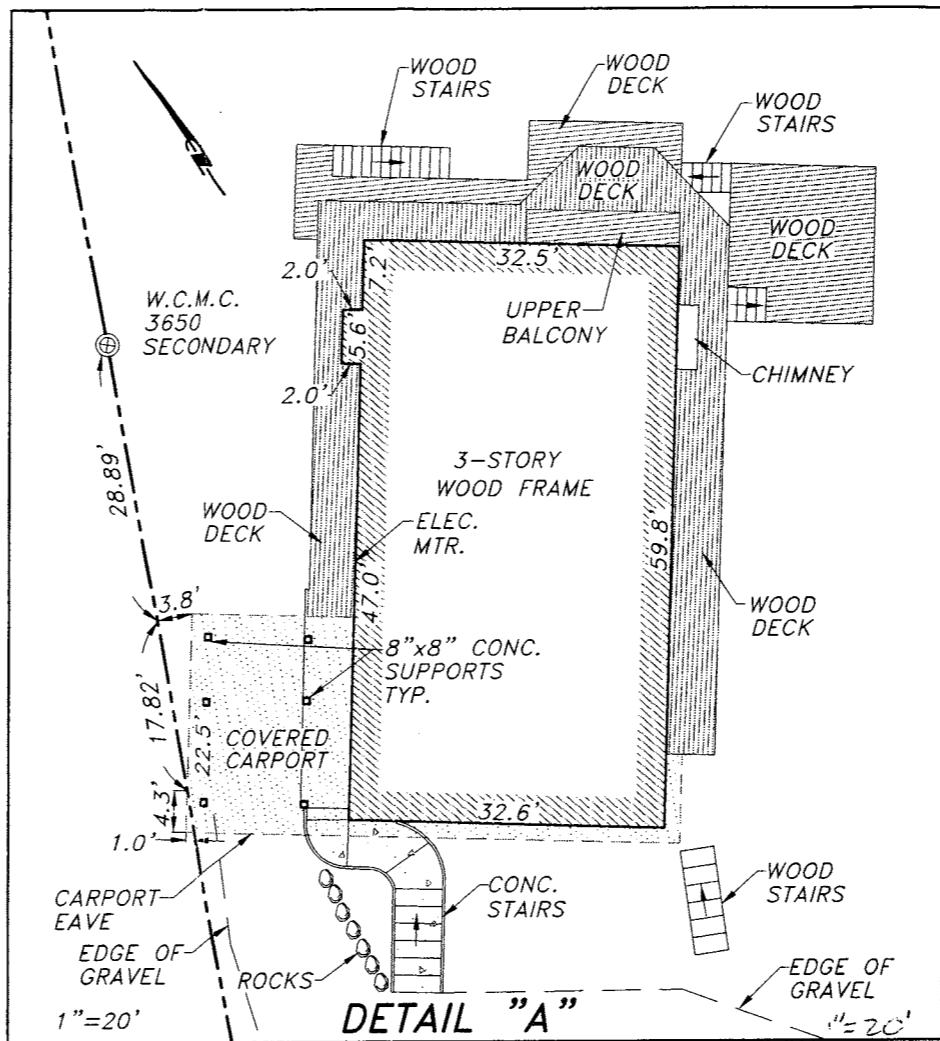
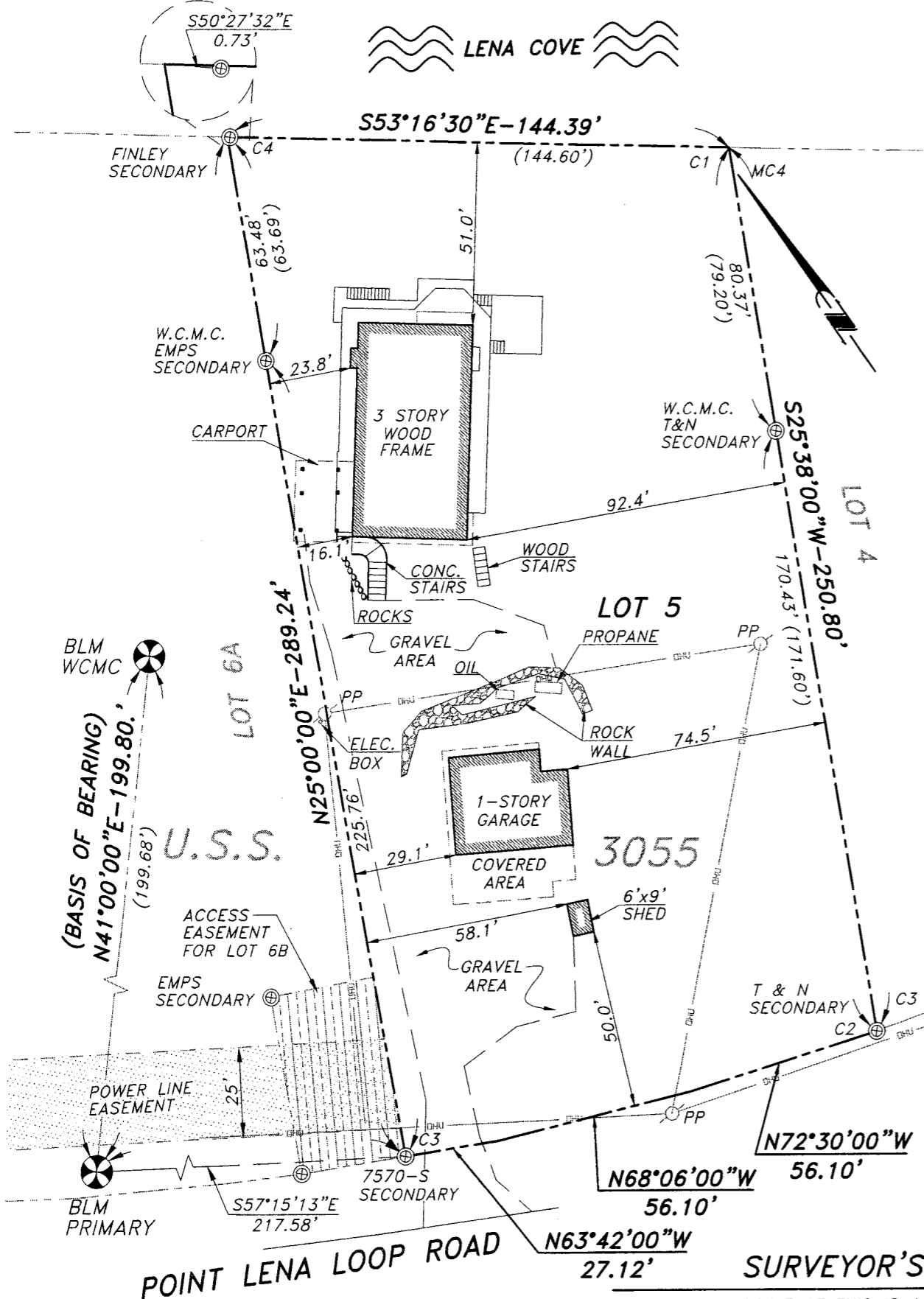
NOTE: MUST BE ACCOMPANIED BY DEVELOPMENT PERMIT APPLICATION FORM

DEVELOPMENT PERMIT APPLICATION

Project Number	CITY and BOROUGH of JUNEAU	Date Received: <u>5/9/12</u>
Project Name <small>(City Staff to Assign Name)</small>		

PROJECT / APPLICANT INFORMATION	Project Description <u>Variance request to allow a carport to remain off from side property line.</u>		
	PROPERTY LOCATION		
	Street Address <u>17925 Pt. Lena Loop Road</u>	City/Zip <u>Juneau AK</u>	
	Legal Description(s) of Parcel(s) (Subdivision, Survey, Block, Tract, Lot) <u>USS 2055 Lt 5</u>		
	Assessor's Parcel Number(s) <u>833501010260</u>		
	LANDOWNER/ LESSEE		
	Property Owner's Name <u>Richard C. Lee Trust & Cheva Lee</u>	Contact Person: <u>Richard Lee</u>	Work Phone: <u>586-1608</u>
	Mailing Address <u>Box 34621 Juneau, AK 99803</u>	Home Phone: <u>586-1608</u>	Fax Number: <u>586-1608</u>
	E-mail Address <u>rclinu@yahoo.com</u>	Other Contact Phone Number(s): <u>Cheva Lee 209-0801</u>	
	LANDOWNER/ LESSEE CONSENT <small>***Required for Planning Permits, not needed on Building/Engineering Permits***</small>		
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	<u>[Signature]</u> Landowner/Lessee Signature	<u>5/9/12</u> Date	
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 <small>If the same as OWNER, write "SAME" and sign and date at X below.</small>			
Applicant's Name <u>Richard Lee</u>	Contact Person:	Work Phone:	
Mailing Address <u>Box 34621</u>	Home Phone: <u>586-1608</u>	Fax Number:	
E-mail Address <u>rclinu@yahoo.com</u>	Other Contact Phone Number(s):		
X	<u>[Signature]</u> Applicant's Signature	_____ Date of Application	

STAFF APPROVALS	OFFICE USE ONLY BELOW THIS LINE				
	<input checked="" type="checkbox"/>	Permit Type Building/Grading Permit	[]	Date Received	Application Number(s)
		City/State Project Review and City Land Action	[]		
		Inquiry Case <small>(Fee in Lieu, Letter of ZC, Use Not Listed)</small>	[]		
		Mining Case <small>(Small, Large, Rural, Extraction, Exploration)</small>	[]		
		Sign Approval <small>(If more than one, fill in all applicable permit #'s)</small>	[]		
		Subdivision <small>(Minor, Major, PUD, St. Vacation, St. Name Change)</small>	[]		
		Use Approval <small>(Allowable, Conditional, Cottage Housing, Mobile Home Parks, Accessory Apartment)</small>	[]		
	X	Variance Case <small>(De Minimis and all other Variance case types)</small>	[]	<u>5/9/12</u>	<u>VAR 12010</u>
		Wetlands Permits	[]		
	Zone Change Application	[]			
	Other <small>(Describe)</small>	[]			
<small>***Public Notice Sign Form filled out and in the file.</small>					
Comments: <u>Double fees apply, this is after-the-fact variance.</u>				Permit Intake Initials <u>[Signature]</u>	



VICINITY MAP
SOURCE: C.B.J. BOROUGH ATLAS
NOT TO SCALE

GENERAL NOTES

1. THE BASIS OF BEARING FOR THIS SURVEY WAS BETWEEN RECOVERED BLM PRIMARY MONUMENTS FOR THE WEST LINE OF LOT 6B, AS DELINEATED ON PLAT 8-34, HAVING A RECORD BEARING OF N41°00'00"E.
2. RECORD INFORMATION DENOTED BY THIS PLAT WAS DERIVED FROM U.S. SURVEY NO 3055, LENA COVE 1, SMALL TRACT GROUP, PLAT 89-34, A SUBDIVISION OF LOT 6 OF U.S.S. 3055, AND PLAT 2011-33, RECORD OF SURVEY OF LOT 4, WITHIN U.S.S. 3055 ON FILE IN THE JUNEAU RECORDING DISTRICT OFFICE.
3. WHERE RECORD SURVEY COURSES (BEARINGS AND/OR DISTANCES) DIFFER FROM THAT OF ACTUAL MEASURED AND/OR COMPUTED SURVEY COURSES THE RECORD SURVEY COURSE IS SHOWN WITHIN PARENTHESIS WHILE THE ACTUAL MEASURED AND/OR COMPUTED SURVEY COURSE IS SHOWN WITHOUT PARENTHESIS.
4. WATER SERVICES PROVIDED BY THE CITY & BOROUGH OF JUNEAU PUBLIC UTILITIES. SEWER SERVICE IS ON LOT SEPTIC.
5. PROPERTY SUBJECT TO EASEMENTS OF RECORD DENOTED BY THIS SURVEY OR NOT.

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

I HEREBY CERTIFY THAT THIS IS A TRUE AND CORRECT PLAT OF LOT 5, U.S. SURVEY 3055, AND THAT ALL WALKS, ROADS, EASEMENTS AND IMPROVEMENTS APPEARING ON THE LAND ARE AS SHOWN, AND THERE ARE NO ENCROACHMENTS OR OVERLAPS OF IMPROVEMENTS THEREON, EXCEPT AS SHOWN.



SURVEYOR'S CERTIFICATE

AS-BUILT SURVEY
OF
LOT 5
WITHIN
U.S. SURVEY NO. 3055
LENA COVE NO. 1, SMALL TRACT GROUP
CITY AND BOROUGH OF JUNEAU, ALASKA
JUNEAU RECORDING DISTRICT

OWNER:
RICHARD LEE
17725 POINT LENA LOOP RD.
JUNEAU, ALASKA 99801
DATE: MAY 4, 2012

SURVEYOR:
MARK A. JOHNSON, L.S.
R&M ENGINEERING, INC.
6205 GLACIER HIGHWAY
JUNEAU, ALASKA 99801
R&M PROJ. No. 121739

SCALE: 1"=40'
SHEET 1 OF 1

ATTACHMENT B

Surveyed July 10, 2012

Home of Richard and Chava Lee – 17725 Pt. Lena Loop Juneau Alaska

We purchased our home at 17725 Pt. Lena Loop in 2002. The lot is steeply sloped and our home sits on the northwest section. The driveway runs from Lena Loop on the northwest corner of the property along the property line to the house. The driveway and parking area have been located in the same place since the original cabin was built in the 1950's.

Access to the house in the winter months can be extremely hazardous. During our first winter and subsequent winters since, we discovered that ice and snow build up on our driveway is hazardous to the point of being dangerous. During inclement weather (including rain) getting my elderly mother (who was living with us) into and out of our home proved impossible. Add several harrowing slides down the driveway and the inability to enter our home after several orthopedic surgeries and falls (all of which resulted in the use of wheelchairs and/or a non weight bearing cast) led us to seek a solution. We hired an architect to see if we could find a way to eliminate or at least minimize the problem.

We looked at the house and the entire lot to see what could be done. It was determined that a carport that extended over a parking spot directly outside the front door was the most practical and effective solution. The only place where a car port that would meet our needs could be located is on the northwest side of the home where it was eventually built. The northeast side of the home would not work for two reasons. One, this is where the drain field and marine outfall are located. Secondly a power line that supplies power to the neighbors to the west of us (16795 Pt. Lena Loop) runs from the middle of our lot on the northeast quadrant across our entire property, including the driveway where it connects to another pole at the edge of our lot. From there it is connected to a transformer and the line runs underground to the neighbors house. The location and height of the pole greatly impacts and limits access on that portion of our lot. Note: According to AELP moving the line (which our title company could not find a recorded easement for) would be at our expense regardless of the fact it supplied power to a different house.

In 2006 we hired an architect to design the carport; an engineer to make sure we complied with CBJ snow load requirements; and a licensed contractor to build the structure. We assumed that the architect and contractor were aware of all CBJ regulations and that our car port would meet and be in compliance with all of the applicable CBJ rules, regulations permits and set backs.

About three years ago the house at 17695 was sold and the new owners took possession. Early last year they asked if they could remove the fence between our houses to do some work on their foundation. The fence was removed. Since we moved into our home we had maintained, planted perennials and other plants and removed debris in the area up to the fence. At some point after removing the fence the neighbors had their lot surveyed and discovered the fence had in fact not been the property line. They said their survey showed our garage roof actually encroached on their property. We asked what they wanted us to do and were told we should have an easement in place in the event either of us wanted to sell and/or to just keep everything open and legal. We told them we would have an attorney draw up the paperwork and we would take care of it. I first called the CBJ planning and development department and explained the situation. It was at this time I discovered a permit had never been obtained by our contractor for the carport. Note: the original contractor was fired before completion for gross cost overruns and failure to supply us with any receipts or information. He has since moved out of state. We hired Lael Harrison of Faulkner Banfield to draw up the encroachment paperwork. We are working on the specifics and hope to have a final agreement soon.

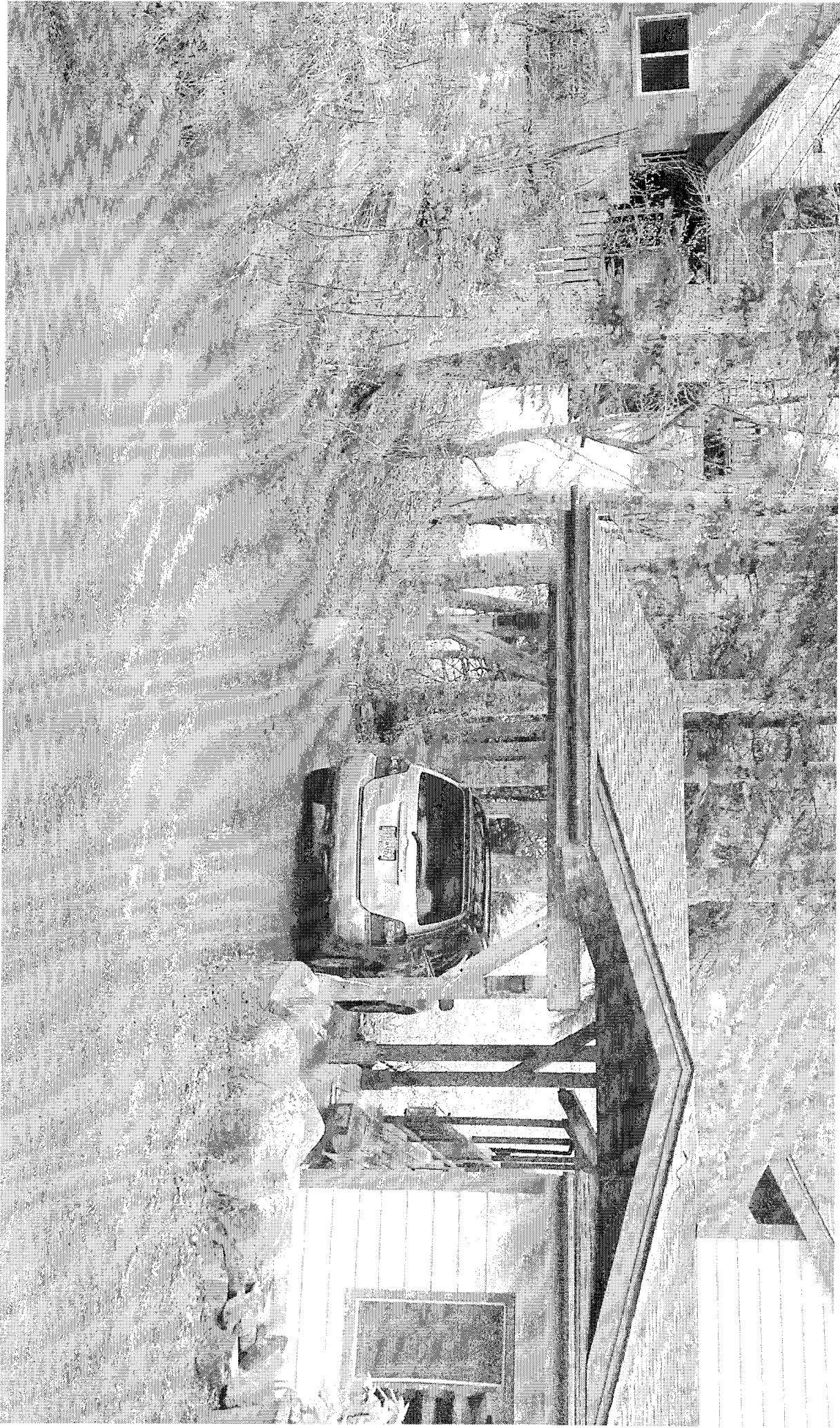
ATTACHMENT C

The car port as it stands now is used primarily as a single covered parking space and entrance to our home. In the winter months it allows us to be able to access our home without fear of falling and eliminates the previous fear of sliding down the driveway and over the edge of the cliff. During inclement weather we are able to stay dry. Again, being able to access our home from a wheelchair or on crutches has been monumental. During the time my elderly mother lived with us, the carport allowed us to move her into and out of our home with greater ease and without fear of her falling and/or many of the other weather associated problems.

The carport does not obstruct in any way the neighbors view or the use of their property. The carport sits (as does our home) down a slope from their home. It was designed to be an architecturally pleasing addition to our home and greatly adds to the value in terms of curb appeal, aesthetics and of course having a covered area that leads into our home. It is a substantial structure built with cedar posts and finished details. It sits directly over the place that has always been used for parking. The lighting is night sky rated so it does not affect the night sky viewing for neighbors as their house sits substantially higher than ours.

Cutting the roof back 6 inches can be done to remove the encroachment issues over the neighbors land. Other changes would prove more problematic. It might not be possible to move the footings. Prior to construction there was considerable discussion about where the footings would and could be placed to avoid disruption of the roots of several surrounding trees. The trees that stand between the two properties provide some protection against the north wind and some privacy screening. Most importantly they secure the hillside that is between the two homes. We were told it would not be a good idea to remove the trees. And, we were told construction would stop if putting in the footings disturbed the roots. If it is possible (considering the tree root issue) to move the footings in one foot, a car would still fit, but it would be very tight and there will be no room for error. The cost would be considerable. If the footings have to be moved more than one foot, then the carport will not be functional.

Building the carport was done to resolve serious access issues that were adversely affecting our lives. Before signing off on the project we felt the architect, engineer and contractor knew all of the safety and zoning concerns required by the city and had met the requirements for building. It was never our intention to encroach on our neighbors property.

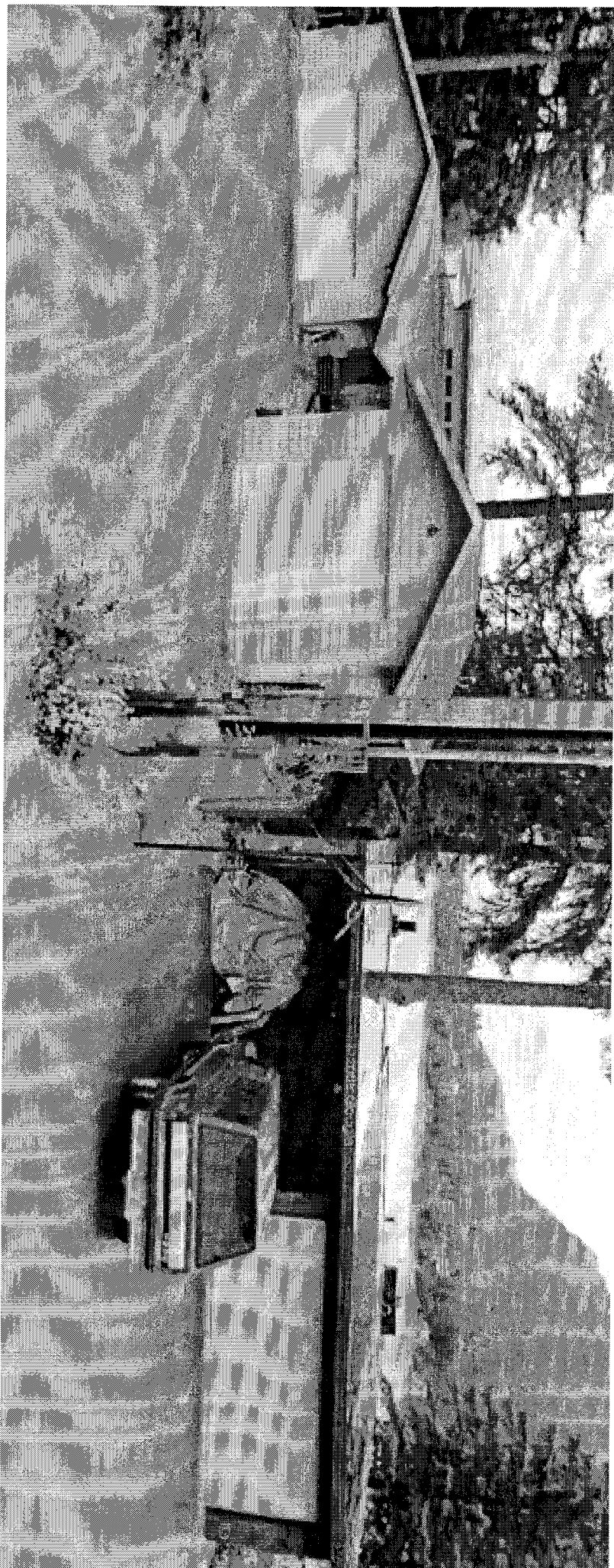


ATTACHMENT D









Crystal Hitchings

From: Keith Criddle [kcriddle@alaska.edu]
Sent: Saturday, August 11, 2012 7:09 AM
To: Crystal Hitchings
Subject: RE: encroachment into setbacks and your property

Dear Ms. Hitchings,

The Lees have agreed to meet with us next Saturday. They indicate a willingness to address our concerns. If that proves to be the case, we will not oppose their request for waiver of the setback requirements. Sincerely,

Keith & Tamara Criddle

From: Crystal Hitchings [mailto:Crystal_Hitchings@ci.juneau.ak.us]
Sent: Friday, August 03, 2012 10:48 AM
To: kcriddle@sfos.uaf.edu
Subject: RE: encroachment into setbacks and your property

Dear Mr. and Mrs. Criddle,

Thank you for your response to the variance request proposed by the Lee's. I appreciate your previous efforts to work with your neighbors to resolve the issue and potentially even allow the carport to remain over the property line.

I understand from your email that it is no longer likely that you and the Lee's will enter into an encroachment easement to allow the carport to remain as it is. My understanding from the Lee's is that they haven't removed the encroaching portion of the carport because they are waiting to finalize this easement with you, and waiting to find out if the Commissioners would grant the variance. They are aware that if you do not finalize an easement with them, they will have to immediately remove the encroaching portion of the carport roof.

It is still possible that the Commissioners would grant the variance to allow the carport to remain at zero feet from the property line, with the removal of that portion that encroaches onto your property. I also understand from your email that you object to the allowance of the carport to remain at zero feet, even with the removal of the portion over your property.

Please confirm if my understanding on these issues is correct, as this will be critical to the staff review. I welcome you to call me directly if you would prefer that to an email, however, an email can be entered into the official record as your written statement.

Crystal Hitchings, Planner
 Community Development Department
 City and Borough of Juneau
 155 South Seward
 Juneau, AK
 907-586-0756

From: Keith Criddle [mailto:kcriddle@alaska.edu]
Sent: Friday, August 03, 2012 8:30 AM
To: Crystal Hitchings
Subject: RE: encroachment into setbacks and your property

Dear Ms. Hitchings,

8/21/2012

ATTACHMENT G

The summer building season is coming to an end and the Lees have not yet corrected the encroachment on our property. Several months ago, through our attorneys, Baxter Bruce & Sullivan, we proposed an encroachment agreement to the Lees. The Lees have rejected that agreement. We now feel that we have exhausted every means to resolve this matter amicably. We strenuously object to the continued encroachment on our property and urge that the Planning Commission deny any request for variance to existing setback requirements.

Sincerely, Keith and Tamara Criddle

From: Crystal Hitchings [mailto:Crystal_Hitchings@ci.juneau.ak.us]
Sent: Tuesday, May 22, 2012 9:59 AM
To: kcriddle@alaska.edu
Subject: encroachment into setbacks and your property

Good morning Mr. Criddle,

Your request for information from the Community Development Department regarding a carport encroachment over your property line and into the setbacks was forwarded to me. Your neighbors, Richard and Chava Lee, recently submitted an application for a variance to allow the carport to be located at a zero foot setback, with the removal of the portion that encroaches onto your property. I am the planner assigned to process this variance request.

At this point their application materials are not sufficient to process the application, and their application is in waiting until additional materials are supplied. Missing materials include a narrative addressing their request and providing supporting statements showing how the request meets the variance approval criteria, and a site plan showing the carport, setbacks, encroachments, etc. Once these materials are submitted, I will review the request against the approval criteria, and prepare a staff report. At some point during that process, the variance will be scheduled to be reviewed by the Planning Commission, and the neighborhood, including yourself, will be given a 14-day notification of the hearing and encouraged to submit written comments.

The Lees were encouraged to speak with their neighbors about the request prior to submitting an application. And I strongly encourage you to submit comments to me regarding this request, especially considering your property will be the one most affected by the proposal. Attached are the variance standards and approval criteria (see section 49.20.250(b), Variances other than de minimus) so that you may consider how you would like to address them. E-mailed submissions are acceptable.

Sincerely,

Crystal Hitchings, Planner
Community Development Department
907-586-0756

Crystal Hitchings

From: Jay Srader
Sent: Tuesday, August 07, 2012 11:41 AM
To: Crystal Hitchings
Subject: RE: VAR20120010 request for comments

As far as the building code is concerned the property line would need to be adjusted or the carport reduced in size so it is on the correct parcel. There are no listed exceptions in our adopted codes that I could find.

Jay Srader

Building Inspector IV
Community Development
Phone: 586-0768 Fax: 586-3365
E-mail: jay_srader@ci.juneau.ak.us

"How you handle mistakes is a much better judgment of character than any award or citation"

From: Crystal Hitchings
Sent: Tuesday, August 07, 2012 11:37 AM
To: Jay Srader
Subject: RE: VAR20120010 request for comments

What would the building code do with a building that crossed the property line through an encroachment easement with the neighboring property owner? Does the code have some exception for that? Would a variance be required and could one be obtained if there were an agreement between property owners?

Crystal Hitchings, Planner
 Community Development Department
 City and Borough of Juneau
 155 South Seward
 Juneau, AK
 907-586-0756

From: Jay Srader
Sent: Tuesday, August 07, 2012 11:35 AM
To: Crystal Hitchings
Cc: Charlie Ford
Subject: RE: VAR20120010 request for comments

That structure requires an issued building permit, the permit will require any portion of the "carport" that is within 2ft of the property line must have a minimum fire rating of 1 hour applied to the underside of the roof structure, this is in accordance with 2006 International Residential code table R302.1 The fire rated design/materials must be submitted for review and approval along with the complete set of building plans. The building codes do not allow any portion of a structure to cross property lines.

Jay Srader

Building Inspector IV
Community Development

Phone: 586-0768 Fax: 586-3365

E-mail: jay_srader@ci.juneau.ak.us

"How you handle mistakes is a much better judgment of character than any award or citation"

From: Crystal Hitchings

Sent: Monday, August 06, 2012 3:30 PM

To: Dan Jager; Charlie Ford; Jay Srader

Subject: VAR20120010 request for comments

Please provide me with any comments or concerns you may have regarding this existing carport. The carport is currently located 6 inches over the property line. Either an easement allowing this encroachment will be obtained or the encroaching portion of the carport roof (about 6 inches of the sw corner) will be removed. With a variance approval, the carport will be allowed to remain within zero feet from the side property line.

Please let me know what fire-proofing or fire-safety concerns may exist with a zero-foot setback. The neighboring home appears to be approximately 30 feet away at its nearest point.

17725 Point Lena Loop Road
8B3501010260

Thank you,

Crystal Hitchings, Planner
Community Development Department
City and Borough of Juneau
155 South Seward
Juneau, AK
907-586-0756

Crystal Hitchings

From: Greg Chaney
Sent: Tuesday, August 21, 2012 12:47 PM
To: Community Development
Subject: Comments concerning a variance request from the Lee household
 Does this E-mail make sense to someone?

From: Heather Marlow
Sent: Tuesday, August 21, 2012 9:54 AM
To: Greg Chaney
Subject: FW: note for lands committee

Greg,
 Please forward as appropriate.
 Thanks,
 Heather

From: Tim Tullis [mailto:timitullis@yahoo.com]
Sent: Tuesday, August 21, 2012 9:53 AM
To: Heather Marlow
Subject: note for lands committee

Heather, I see you as the liaison to this committee, can you pass this on to the necessary group? thanks, timi

Memo:
 To: Lands Committee
 FR: Tullis'~ 17800 Lena Loop
 RE: Lee Residence Variance
 DT: Aug. 21, 2012

We received notice about a variance request from the Lee household. We have no problems with this variance and so no real issues that it may cause. When nice homes add value by car ports and such it adds value to our neighborhood. This particular car port is almost not visible from the road and in turn does not cause any issues of unsightliness.

Thanks for letting us know when things like this are occurring in our neighborhood.

ATTACHMENT I

Home of Richard and Chava Lee – 17725 Pt. Lena Loop Juneau Alaska

We purchased our home at 17725 Pt. Lena Loop in 2002. The lot is steeply sloped and our home sits on the northwest section. The driveway runs from Lena Loop on the northwest corner of the property along the property line to the house. The driveway and parking area have been located in the same place since the original cabin was built in the 1950's.

Access to the house in the winter months can be extremely hazardous. During our first winter and subsequent winters since, we discovered the ice and snow build up on our driveway is hazardous to the point of being dangerous. Prior to building our carport, inclement weather (including rain) made getting my elderly mother (who was living with us) into and out of our home impossible to the point that she could no longer live with or even visit us. Both of us experienced several serious falls on the driveway, two that resulted in injuries requiring surgery. Mobility, age, and limitations to access led us to seek a solution. We hired an architect to see if we could find a way to eliminate or at least minimize the problem.

We looked at the house and the entire lot to see what could be done. It was determined that a carport that extended over a parking spot directly outside the front door was the most practical and effective solution. The only place where a car port that would meet our needs could be located is on the northwest side of the home where it was eventually built. The northeast side of the home would not work for two reasons. One, this is where the drain field and marine outfall are located. Secondly a power line that supplies power to the neighbors to the west of us (16795 Pt. Lena Loop) runs from the middle of our lot on the northeast quadrant across our entire property, including the driveway, where it connects to another pole at the edge of our lot. From there it is connected to a transformer and the line runs underground to the neighbors house. The location and height of the pole greatly impacts and limits access on that portion of our lot. Note: According to AELP moving the line (which our title company could not find a recorded easement for) would be at our expense regardless of the fact it supplied power to a different house. . The southern section of the house has bed rock that begins less than a foot away from the foundation and rises four feet above the main level of the house. Putting the carport here was explored but would have resulted in the loss of three bedrooms (as they would not have had egress), elimination of all afternoon and early evening sun and natural light, a complete relocation of existing plumbing and electrical wiring, and an extreme expense in going through bedrock to put in the foundation. There is a garage between the house and the street. The garage is separated from the house by two steep slopes (the slopes sit on two separate formations of bedrock) which makes access in winter even more difficult than from the lower level. Even in summer this is not a place where you would want to start heading down or going up if you were in a wheelchair, on crutches, or had other types of mobility issues.

In 2006 we hired an architect to design the carport; an engineer to make sure we complied with CBJ snow load and other structural requirements; and a licensed contractor to build the structure. After numerous discussions about the proposed project, we felt the architect and contractor were aware of all CBJ regulations and that our car port would meet and be in compliance with all of the applicable CBJ permits, rules, regulations, and setbacks.

About three years ago the house at 17695 was sold and the new owners took possession. Early last year they asked if they could remove the fence between our houses (which we thought was on the property line) to do some work on their foundation. The fence was removed. Since we moved into our home we

had maintained, planted perennials and other plants and removed debris in the area up to the fence. At some point after removing the fence the neighbors had their lot surveyed and discovered the fence had in fact not been the property line. They said their survey showed a 6" portion of a foot of our garage roof actually encroached on their property. We asked what they wanted us to do and were told we should have an easement in place in the event either of us wanted to sell and/or to just keep everything open and legal. I immediately contacted the CBJ planning and development department and explained the situation. I was told the easiest thing to do was to get a easement agreement with the neighbors and then contact them again to get the necessary permits. I also learned a permit had never been obtained by our contractor for the carport. Note: the original contractor was fired before completion for starting the project months after he had been hired and while we were out of state; for gross cost overruns, and failure to supply us with any receipts or information. He has since moved out of state. We told our neighbors we would get an attorney to draw up the paperwork. We hired Lael Harrison of Faulkner Banfield to draw up the agreement; had a series of discussions with CBJ, and began the process for getting permits. We learned last week we would not be able to encroach on our neighbors property (even if they agreed).

The car port as it stands now is used primarily as a single covered parking space and entrance to our home. In the winter months it allows us to be able to access our home without fear of falling and eliminates the previous fear of sliding in a car down the driveway and over the edge of the cliff. During inclement weather we are able to stay dry. Again, being able to access our home from a wheelchair or on crutches has been monumental. During the time my elderly mother lived with us, we could not get her safely into our home when the weather was bad. With the carport we could move her (and her friends) into and out of our home with greater ease and without fear of her falling and/or many of the other weather associated problems. The steepness of the driveway combined with the ice buildup makes the driveway treacherous for a person of any age. Certainly the fear of falling and suffering an injury controlled our enjoyment of our home. Though we both lead active lifestyles and don't necessarily like to consider ourselves "old", we are in our 60's and do hope to grow older still. Both of us have suffered serious injuries from falls prior to building the car port. All of this very much affected the use of our home and the lifestyle we wish to live and could live and hope to live. Being able to get into and out of a home is a requirement that we (and others our age and older) would view as a necessary consideration to living in a home. Interestingly, you can drive up and down the driveway if you have studded tires and four wheel drive when you cannot walk up or down it.

The carport does not obstruct in any way the neighbors view or the use of their property. The carport sits (as does our home) down a slope from their home. It was designed to be an architecturally pleasing addition to our home and greatly adds to the value in terms of curb appeal, aesthetics and of course having a covered area that leads into our home. It is a substantial structure built with cedar posts and finished details. It sits directly over the place that has always been used for parking. The lighting is night sky rated so it does not affect the night sky viewing for any neighbors. In terms of real-estate value and the affect on the neighborhood as a whole, any increase in value of our home (or any neighboring home) that any of us would enjoy, would also increase the value of other homes in the area. Because the driveway and carport are a considerable distance from the other neighbor (with the exception of our neighbors at 17695), our carport should have no affect on the use and enjoyment of their properties.

Although cutting the roof back 6 inches can be done to remove the encroachment issues over the neighbors land, other changes would prove more problematic. It might be possible to move one or two footings, but moving the front footing would in effect remove the ability to use the carport. Prior to construction there was considerable discussion about where the footings would and could be placed to avoid disruption of the roots of several surrounding trees. The trees that stand between the two properties provide some protection against the north wind and some privacy screening. Most importantly they secure the land on the hillside that is between the two homes. We were told it would be a bad idea to remove the trees and that construction would stop if putting in the footings disturbed the roots. If it is possible (considering the tree root issue) to move the footings in one foot, a car would still fit, but it would be very tight and there will be no room for error. The cost would be considerable. If the footings have to be moved more than one foot, then the carport be nonfunctional.

Building the carport was done to resolve serious access issues that were adversely affecting our lives. Before signing off on the project we trusted the architect, engineer and contractor knew all of the safety and zoning concerns required by the city and had met the requirements for building including getting a permit. It was never our intention to encroach on our neighbor's property. Granting the variance would provide substantial relief to us. Having to remove the carport would result in tens of thousands of dollars worth of cost. Moving the carport to another portion of our land would provide us with no value and return us to the time when access was severely limited. Most of the neighbors in our immediate vicinity have garages that either lead directly into their homes and/or the walk to the home from the garage (or even parking space) is mostly flat and does not pose the same problems as our home does. To us, at our age (and to our friends and peers who have visited or would like to visit) and certainly to the generation older than us, the slope is prohibitively steep and frankly scary when it is icy. While the ability walk safely up and down a slope may be a matter of perception to people of different ages, we feel the slope and the vagaries of weather on this particular section of the driveway, make it impassable during certain times of the year. The ability to live in a home as you age has a lot to do with how accessible the home is. The current carport location makes this home very accessible to older people, people with mobility problems, and frankly anyone who wants to walk safely up and down a slope.