

**BEFORE THE PLANNING COMMISSION OF THE CITY AND BOROUGH OF  
JUNEAU**

ERIC TWELKER and JANEANN TWELKER,

Appellants,

v.

CBJ COMMUNITY DEVELOPMENT  
DEPARTMENT,

Appellee,

KEITH COMSTOCK and SHARON  
COMSTOCK,

Intervenors.

Appeal 2013 0003 of:  
CDD Directors Decision in  
BLD2013 0302

**ORDER**

On December 3, 2013, the Planning Commission heard oral argument in this matter. Eric and Janeann Twelker were present as the appellants. Teri Camery and Benjamin Lyman were present for CDD as the appellees. Lastly, Mr. Spitzfaden was present and representing Keith and Sharon Comstock as the intervenors. After the hearing ended, the Planning Commission entered executive session and reviewed the data and what had been presented.

This appeal presents two issues which are somewhat interrelated in the appellant's briefing: (1) Whether under CBJ 49.05.130 the legality of the 2006 variance and 2006 final plat should be reassessed as it pertains to the legality of a 2013 building permit; and (2) Whether given the Gilbertos' lot shape due to the 2006 variance and 2006 plat the CDD properly calculated the side-yard setbacks.

As to these two issues, the Planning Commission finds the Twelkers did not meet their burden under CBJ 49.20.110(b). Therefore, the Twelker's appeal is denied and the director's

decision is confirmed. Consistent with the requirements under CBJ 49.20.110(b), the reason and basis for the Commission's decision is provided below.

## **I. Statement of the Case**

### **A. Procedural History**

On June 14, 2013, Building Permit BLLD2013 0302 for the Comstock's to build a garage 13 feet from a side-yard setback was approved.<sup>1</sup> On June 26, 2013, Eric and Janeann Twelker appealed the building permit.<sup>2</sup>

As outlined under CBJ 49.20.110(a), on August 13, 2013, the Planning Commission held an initial hearing to determine whether to hear the appeal.<sup>3</sup> The Planning Commission moved to hear the appeal and to hear it de novo.<sup>4</sup>

On September 10, 2013, the Planning Commission held a hearing to adopt certain dates to establish an appeal schedule.<sup>5</sup> At the hearing, Robert Spitzfaden appeared on behalf of the Comstocks and requested to intervene in the matter as the garage and property at issue was the Comstocks' property.<sup>6</sup> The Planning Commission implicitly granted the motion to intervene, with an order being granted at a later date.<sup>7</sup>

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<sup>1</sup> Record p.25 – 30.

<sup>2</sup> Record p.14 – 24.

<sup>3</sup> Final Planning Committee Meeting Minutes for August 15, 2013, p. 4-5 (accessed on December 19, 2013 at: [http://www.juneau.org/plancom/pdfs/Planning\\_Commission\\_Minutes-20130917012828.pdf](http://www.juneau.org/plancom/pdfs/Planning_Commission_Minutes-20130917012828.pdf)).

<sup>4</sup> *Id.*

<sup>5</sup> Final Planning Committee Special Meeting Minutes for September 10, 2013, p.1-8 (accessed on December 19, 2013 at: [http://www.juneau.org/plancom/pdfs/Planning\\_Commission\\_Minutes-20130925102518.pdf](http://www.juneau.org/plancom/pdfs/Planning_Commission_Minutes-20130925102518.pdf)).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

The Planning Commission also considered Mr. Twelker's filings for summary judgment and later proposed findings of fact and conclusions of law, finding such documents either constituted Mr. Twelker's brief – as he stated at the September 10, 2013 hearing – or they were not appropriate in the context of an appeal under CBJ 49.20.110(b).<sup>8</sup>

Consistent with the dates outlined at the September 10, 2013 hearing, CDD provided the appeal record on September 24, 2013.<sup>9</sup>

On October 1, 2013, the appellant filed his brief.<sup>10</sup> The appellee's and the intervenors' briefs were then filed on October 11, 2013<sup>11</sup> and October 15, 2013<sup>12</sup> respectively.

On October 7, 2013, appellant objected to portions of the record and then moved to supplement the record.<sup>13</sup> The appellee and intervenor responded to Mr. Twelker's objections to the record on October 8, 2013<sup>14</sup>, and October 11, 2013<sup>15</sup>.

For a variety of procedural reasons, on October 22, 2013 the Planning Commission appointed Dennis Watson as the presiding officer.<sup>16</sup> Mr. Twelker, in an October 22, 2013 letter, did not object to a presiding officer being appointed in this matter.

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<sup>8</sup> *Id.*, see also Appeal 2013 – 0302, Order Concerning Motion for Summary Judgment and Proposed Findings of Fact and Conclusions of Law (October 30, 2013).

<sup>9</sup> Record p.1.

<sup>10</sup> Opening Brief of Appellant's (October 1, 2013). Thus, his motion for summary judgment did not constitute his briefing.

<sup>11</sup> Community Development Department Appeal Brief (October 11, 2013).

<sup>12</sup> Intervenor's Brief (October 15, 2013).

<sup>13</sup> Appellant's Objections and Supplements to the Department's Proposed Administrative Record (October 7, 2013).

<sup>14</sup> Appellee's Response to Appellant's Objections to Department's Proposed Administrative Record (October 8, 2013).

<sup>15</sup> Comstocks' Response to Appellant's Objections and Supplementations to the Record (October 11, 2013).

Consistent with the briefing schedule, on October 25, 2013, Mr. Twelker filed his reply brief.<sup>17</sup> He also filed a motion to require testimony of Ben Lyman and Teri Camery.<sup>18</sup> The appellee opposed on October 28, 2013.<sup>19</sup> The intervenors opposed on October 29, 2013.<sup>20</sup> Mr. Twelker responded to those objections on October 31, 2013.<sup>21</sup>

As a result, Mr. Watson then issued the following orders: (1) on October 30, 2013, an official order granting the Comstock's motion to intervene<sup>22</sup>; (2) on October 30, 2013, an order concerning Mr. Twelker's September 10, 2013 motion for summary judgment and other civil trial filings<sup>23</sup>; (3) on November 4, 2013, a pre-hearing order consistent with the dates determined on September 10, 2013<sup>24</sup>; (4) on November 4, 2013 an order denying Mr. Twelker's motion to require the testimony of Teri Camery and Ben Lyman<sup>25</sup>; and (5) on November 4, 2013, a final

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<sup>16</sup> Final Planning Commission Special Meeting Minutes for October 22, 2013 (accessed on December 19, 2013 at: [http://www.juneau.org/plancom/pdfs/Planning\\_Commission\\_Minutes-20131114082941.pdf](http://www.juneau.org/plancom/pdfs/Planning_Commission_Minutes-20131114082941.pdf)).

<sup>17</sup> Reply Brief of Appellants (October 25, 2013).

<sup>18</sup> Appellants' Motion to Require Testimony of Ben Lyman and Teri Camery (October 25, 2013). As this order reveals, the testimony of Mr. Lyman or Ms. Camery would be irrelevant to the following appeal issues: (1) whether the appeal period has passed; (2) the policy of finality; and (3) the appropriate setback calculations of the final plat. Mr. Twelker during the appeal hearing referenced wanting to hear testimony from Mr. Lyman about the 2006 subdivision and variance process – ostensibly to question the legality of a decision resulting in Plat #2006-37 recorded more than seven years ago. Such testimony would have been irrelevant.

<sup>19</sup> Appellee Opposition to Appellant's Motion to Require Testimony of Ben Lyman and Teri Camery (October 28, 2013).

<sup>20</sup> Intervenor's Objection to Examination of Witnesses (October 29, 2013).

<sup>21</sup> Appellant's Reply to Objections to Motion to Examine Witnesses (October 31, 2013).

<sup>22</sup> Order Granting Motion to Intervene (October 30, 2013).

<sup>23</sup> Order Concerning Motion for Summary Judgment and Proposed Findings of Fact and Conclusions of Law (October 30, 2013).

<sup>24</sup> Pre-Hearing Order (November 4, 2013).

<sup>25</sup> Order Denying Eric Twelker's Motion to Require Testimony of City and Borough Planners Ben Lyman and Terry (sic.) Camery (November 4, 2013).

order as to the record was made and provided the parties an additional week for supplemental briefing.<sup>26</sup> Mr. Watson also granted Mr. Twelker's motion to have the evidence provided to the Planning Commissioners as soon as possible in advance of the hearing.<sup>27</sup>

On December 3, 2013 at 5:30 p.m., the Planning Commission heard oral argument in the matter.<sup>28</sup> Each side received thirty minutes to present their arguments.<sup>29</sup> After oral arguments concluded, the Planning Commission retired to executive session and discussed the issues, resulting in this written decision and findings as required under CBJ 49.20.110.<sup>30</sup>

## **B. Factual History**

The way the Comstock's lot reached its final shape requires a complete recitation of the entire variance process and the minor subdivision process as it pertains to this lot for the sake of clarity and reference.

The Fosters in September 2005 sought to subdivide their lot, USS 1115 TR A, into two substandard lots.<sup>31</sup> For the lot to be subdivided into two substandard lots the Fosters needed a variance. This resulted in VAR2006-00018.<sup>32</sup>

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<sup>26</sup> Order as to Motion to Supplement the Record, Objections to the Record, and Permitting Supplemental Briefing (November 4, 2013). None of the parties provided supplemental briefing with the concluded

<sup>27</sup> Motion for Immediate Submission of Briefs, Documents and Recordings to the Commission (November 1, 2013) [Despite title, it was an order granting Mr. Twelker's motion.].

<sup>28</sup> Draft Planning Commission Special Meeting Minutes (December 3, 2013), (accessed on December 19, 2013 at: [http://www.juneau.org/plancom/pdfs/Planning\\_Commission\\_Minutes-20131213123617.pdf](http://www.juneau.org/plancom/pdfs/Planning_Commission_Minutes-20131213123617.pdf)).

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> See INQ2005-00011, CDD Inquiry into "Subdividing USS 1155 TR A into two lots," (November 18, 2005), Record p.57 – 62. The recitation of the facts above aims to simplify the facts as much as possible and avoid needless complications. However, it should be noted there was some overlap in these processes. An investigation of the minor subdivision process started

CDD drafted a memorandum to the Board of Adjustment recommending approval of VAR2006-00018 which subdivided the Fosters' lot into two substandard lots. The memorandum was submitted to the Board of Adjustment on April 19, 2006.<sup>33</sup>

Regarding subdividing the lot, the memorandum noted "The subject lot cannot be subdivided as a panhandle subdivision due to the location of the existing residences, which would each be on their own lot after the completion of the subdivision."<sup>34</sup> The memorandum also noted

The exact lot line locations and/or other plat details may be required to be revised by staff of the Community Development Department, General Engineering Division, Streets Division, and/or Capital City Fire/Rescue during the subdivision plat review process, but the Variance discussed in this memorandum must be granted in order for the subdivision to be approved regardless of any other changes to the plat that may be required.<sup>35</sup>

Consistent with acknowledging the plat and lot line concerns due to the right-of-way, the memorandum then concluded recommending

... that the Board of Adjustment adopt the Director's analysis and findings on the requested Variance, VAR2006-00018. The Variance permit would allow for subdividing USS 1155 TR A into two lots of substandard width as proposed in the application materials, with any modifications required by CBJ staff during the subdivision plat review process for SUB2006-00017.

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in September 2005; resulting in a 2005 memorandum by Ben Lyman. *Id.* This memorandum stated a variance would be necessary to create two substandard lots. *Id.* The minor subdivision process, in title as SUB2006-00017, could not legally move forward until the Fosters obtained a variance permitting the property to be subdivided into two substandard lots. Therefore, not until the variance was obtained could the minor subdivision process actually reach fruition.

<sup>32</sup> VAR2006-0018, CDD Memorandum to Board of Adjustment "Variance to allow subdivision of USS 1115 TR A into two lots of substandard width," (April 19, 2006), Record p.51 – 56.

<sup>33</sup> *Id.*

<sup>34</sup> Record p. 52.

<sup>35</sup> *Id.*

The Board of Adjustment heard the matter on April 25, 2006.<sup>36</sup>

On April 26, 2006, the Board of Adjustment issued its decision granting VAR2006-00018.<sup>37</sup> The Board of Adjustment accepted all of CDD's recommendations and findings in its decision.<sup>38</sup> Consistent with 49.20.110(a), the appeal period for VAR2006-0018 ended on May 15, 2006.

After acquiring the variance, the minor subdivision process then started.<sup>39</sup> During the subdivision process as the right of way issue was completely resolved, the plat was changed.<sup>40</sup> Therefore, SUB2006-00017 resulted in the following final plat: Plat #2006-37.<sup>41</sup> Plat #2006-37 was recorded on July 10, 2006.<sup>42</sup> Again consistent with CBJ 49.20.110(a), the appeal period ended on or about July 30, 2006.

Both the variance and then minor subdivision process resulted in a final plat with one lot having a sort of "L-shape" and thus a 30 foot wide panhandle abutting the right of way.<sup>43</sup>

Eventually, this "L-shaped" lot would be bought and owned by the Comstocks.

On May 24, 2013, Mr. Comstock applied for a building permit to build a garage on his property.<sup>44</sup> The building permit BLLD20130302 was issued on June 14, 2013.<sup>45</sup> The Comstocks

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<sup>36</sup> Record p. 49.

<sup>37</sup> Record p.49 – 50.

<sup>38</sup> *Id.*

<sup>39</sup> Record p. 85 – 142.

<sup>40</sup> Record p. 134 – 142.

<sup>41</sup> Record p. 139 – 141; *see also* Record p. 85 – 90 [documenting changes to the plat and then the final recorded plat] and Record p.32 and Attachment A for the final, recorded plat.

<sup>42</sup> Record p. 85, 89.

<sup>43</sup> Record, p. 32 as well as Attachment A to this decision.

<sup>44</sup> Record p.29.

<sup>45</sup> *Id.*

were informed they could build their garage 13 feet from the side yard setback which abuts Mr. Twelker's property.<sup>46</sup>

Mr. Comstock built his garage consistent with building permit BLLD20130302.<sup>47</sup>

## **II. Standard of Review**

The Planning Commission agreed to hear this case de novo.<sup>48</sup> Black's Law Dictionary defines "hearing de novo" as "a reviewing court's decision of a matter anew, giving no deference to a lower court's findings." CBJ 49.20.110(b) implies such an interpretation as it contrasts a de novo appeal to an on the record appeal which gives deference to the director's decision.

Pursuant to a de novo appeal, CBJ 49.20.110(b) states

The burden of proof in the appeal shall be on the party challenging the decision of the director. In a hearing de novo, proof shall be established by a preponderance of the evidence.

Therefore, Mr. Twelker has the burden of proving his interpretation and analysis is correct by a preponderance of the evidence. Again, this differs from an on the record appeal, which grants significant deference to the director's decision.<sup>49</sup>

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<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> Final Planning Committee Meeting Minutes for August 15, 2013, p. 4-5 (accessed on December 19, 2013 at: [http://www.juneau.org/plancom/pdfs/Planning\\_Commission\\_Minutes-20130917012828.pdf](http://www.juneau.org/plancom/pdfs/Planning_Commission_Minutes-20130917012828.pdf)).

<sup>49</sup> *See* CBJ 49.20.110(b).



### III. Analysis

- A. The 2006 variance and 2006 subdivision plat were not the result of an illegal procedural process, are final, and cannot be reviewed, reconsidered, or examined because the appeal period has ended; furthermore the policy of finality bars re-litigating building determinations made more than seven years ago.**

Relying on an interpretation of CBJ 49.05.130<sup>50</sup>, Mr. Twelker contends -- while not wanting the 2006 plat or variance decisions to be reversed themselves -- the CDD's determination of setbacks is inappropriate because the CDD relies on a 2006 plat which violated the code. According to Mr. Twelker, the 2006 plat violates code because no second variance or decision exists which permitted the resulting L-shape lot. Both the CDD and the intervenors contend the appeal period for those determinations has ended. The intervenors, addressing Mr. Twelker's interpretation of CBJ 49.05.130, further outlined the policy concerns if prior decisions and resulting plats which are made or recorded seven years ago could be reconsidered at a later date; thus touching upon the policy concept of finality.

Concerning the plat, the minor subdivision process does not have the notice requirements or review like a major subdivision. CBJ 49.15.420 outlines the requirements for minor subdivisions, while CBJ 49.15.430 outlines the requirements for a major subdivision. For a major subdivision, there is "commission action" as well as "preliminary plat approval." Minor subdivisions do not include such requirements, instead having the following process:

- (1) The department shall, within ten working days of receipt of a complete application, approve the plat, disapprove the plat, inform

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<sup>50</sup> CBJ 49.05.130 states "No structure or land may be maintained, used or occupied, and no structure or part thereof may be erected, constructed, reconstructed, moved or structurally altered except in conformity with all of the requirements specified in this title." Mr. Twelker argues Plat #2006-37 and minor subdivision SUB2006-17 required an additional variance to obtain the lot shape indicated. By not doing so, Mr. Twelker contends the current building permit relies upon an illegal determination and thus the building permit must be rejected.

the applicant of the date when action on the plat may be expected, or approve the plat with conditions. Failure to take action in accordance with this subsection does not constitute plat approval.

- (2) Upon notification of plat approval, the applicant shall complete required surveying and monumentation, make corrections to the plat and submit a black line, mylar, reproducible plat of the subdivision on mylar, 18 by 24 inches, 22 by 36 inches, or 24 by 36 inches in size.
- (3) Prior to plat recording, the applicant shall construct, or provide a guarantee satisfactory in form to the city attorney and providing for the construction of, all required improvements.
- (4) The director may sign the plat upon a determination that the subdivision and plat meet all of the requirements of this chapter and title. The department shall retain a duplicate reproducible mylar copy of the plat furnished by the applicant or the City and Borough, as the director may determine. The original shall be recorded by the department.

Therefore, the planning commission does not review minor subdivisions. A final plat for a minor subdivision is reviewed by CDD and then recorded.

Given the variance and minor subdivision processes, the final plat did not require a subsequent variance to VAR2006-00018 for CDD staff's change in lot shape as the result of SUB2006-00017. Meaning, the Planning Commission does not find the 2006 variance and plat were procedurally illegal. VAR2006-00018 permitted the creation of two substandard lots. The report as to VAR2006-00018 noticed the right of way concerns and even stated the plat may need to be amended during the subdivision process (SUB2006-00017). During the April 25, 2006 hearing on the matter, the Planning Commission accepted CDD's recommendations that the CBJ would provide final approval of the final plat if adjustments were made before the plat was finalized.<sup>51</sup> Adjustments were made.<sup>52</sup> According to Mr. Twelker, despite acquiring

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<sup>51</sup> See Record, p. 81, where during the Board of Adjustment hearing on April 25, 2006 meeting,

VAR2006-00018, when the minor subdivision process slightly modified the plat and lot shape – which the 2006 variance provided authority for with CBJ approval – a second variance was required for this new plat shape. While this may have precluded this appeal, the variance to subdivide the lot into two substandard lots had been approved on April 28, 2006. The minor subdivision process does not require Planning Commission approval.<sup>53</sup> Furthermore, the VAR2006-00018 provided sufficient scope for such changes. Mr. Twelker’s legal analysis may utter what would be “liked” to prevent these kinds of disputes, but is not required by code. This reasoning entirely undermines Mr. Twelker’s argument about the application of CBJ 49.05.130 because it means the subdivision and variance process followed the code and resulted in a legal final plat.<sup>54</sup>

However assuming in *arguendo* Mr. Twelker’s contentions about illegality were accurate, the time to appeal VAR2006-00018 or Plat #2006-37 has ended. Regarding appealing to the Planning Commission, CBJ 49.20.110 states

Review by the commission of a decision of the director, may be requested by filing a notice of appeal stating with particularity the grounds therefor with the department within 20 days of the date of the decision appealed.

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the connection between the variance and relating plat and subdivision were clearly articulated. *See* also page 6 – 7 of this Order’s Statement of Facts which reveal the Board understood the plat would likely change after the right-of-way matter was resolved during the minor subdivision process.

<sup>52</sup> *Id.*, *see also* Attachment A.

<sup>53</sup> *See* CBJ 49.15.420.

<sup>54</sup> All of this evidence also reveals the 2006 variance could have been appealed and would have provided the proper mechanism for appealing the matter because the Board of Adjustment authorized a variance and authorized adjustments of the lot lines.

Therefore, under CBJ 49.20.110 an individual has twenty days to appeal a decision to the Planning Commission. In the case of a variance approved by the Planning Commission, an individual has twenty days to appeal to the Assembly under CBJ 1.50.030(c).

The appeal period for the variance and plat have both ended. Concerning the 2006 variance, more than twenty days has passed since those decisions became final. The 2006 variance provided a permit which lasted until October 25, 2007 and required obtaining a plat showing the final right of way and the new lots, which was complied with by July 10, 2006 when Plat #2006-37 was recorded. None of these documents indicate Mr. Twelker can still appeal and argue these prior determinations.

A policy underlies the code having these appeal periods: to ensure future variances and plat decisions are built upon prior non-appealable decisions. The Planning Commission will approve a variance. A future determination as to a lot, such as redrawing a plat or subdividing property, will often require relying on that prior variance and the determination therein. In fact the determination would be incorrect or potentially illegal if the variance and resulting plat was ignored. Therefore, the entire process of subdividing and building upon property includes these various foundational undergirding; of prior variances, subdivisions, or decisions. This reliance on prior decisions touches upon the policy concept of finality.

Here, the policy concept of finality undergirds the Planning Commission's decision. CDD in assessing plats and property for future projects must rely on plats, variances, and prior determinations. Future decisions are based on these prior decisions. Mr. Twelker's brief implicitly states under CBJ 49.05.130 variances, subdivisions, or plats are always open to reconsideration, as the legality of every prior decision must be considered as to each new building permit, subdivision, or variance. Mr. Twelker's argument implicitly suggests finality

would be impossible and almost any property owner may own property with some sort of legal title problem. Reading CBJ 49.05.130 as Mr. Twelker suggests would mean any prior decision by the Planning Commission could be reconsidered; essentially undercutting the very nature of the permitting and variance process where future decisions are based on prior decisions and plats created therein. Mr. Twelker's interpretation would also obviate the need for an appeal period, by allowing the re-examination of the legality of a prior decision. The Planning Commission refuses to read CBJ 49.05.130 so broadly to overcome the appeal process outlined in CBJ 49.20.110 and finds the policy of finality persuasive.

To conclude, there are two reasons the VAR2006-00018 and Plat #2006-37 should not be reconsidered: (1) the change in the lot shape was the legal result of a valid variance which allowed for the subdivision of the lot into two substandard lots along with plat changes as necessary during the non-public minor subdivision process; and (2) the appeal period has ended for the 2006 variance and plat thus the Planning Commission refuses to disturb the finality of those determinations. First, the Planning Commission finds the resulting L-shaped lot did not require a second variance. The resulting L-shaped lot was a plat modification related to the 2006 variance approved by the Planning Commission; a lot modification the 2006 variance decision expressly approved in its decision. Second, the appeal period for the 2006 variance and resulting 2006 plat has ended. To reconsider the legality of the 2006 plat, or to declare the setback determinations violate the code because of the genesis of the 2006 plat, turns title 49 on its head. If no finality existed for property owners all property owners would conceivably have concerns about their land and any approved permits for construction on their land. To even implicitly reconsider the legality of decisions made seven years ago in assessing the legality of a present

permit would undercut the very nature of the subdivision, variance, and interpretation process and render CBJ 49.20.110(a)'s appeal time limit otiose.

**B. Because Plat #2006-37 was the final plat, the CDD calculated the setbacks correctly.**

Before continuing, the Planning Commission wants to clarify that Plat #2006-37 is final and is the appropriate plat for calculating the setbacks. Mr. Twelker's calculations and lot line determinations throughout his briefing are based on analyzing the setbacks of a preliminary plat for the lot in question and not the final plat at the conclusion of the minor subdivision process. To the extent Mr. Twelker's entire argument relies on the preliminary plat, the Commission does not find the argument persuasive and Mr. Twelker did not meet his burden of proof in establishing this preliminary plat should be used for calculating the setbacks. As has been addressed in this order, Plat #2006-37 was a final, non-appealable plat and provides the appropriate starting point for calculating the setbacks as to the Comstock's lot.

As to calculating the setbacks, the issue turns on what constitutes the "front" of the lot.<sup>55</sup> Mr. Twelker contends the east boundary line, which abuts his property, constitutes the front.<sup>56</sup> CDD and the intervenor both argue the front is determined from the right of way; i.e. the lot's access point.

Therefore, the following outlines the process for determining the appropriate setbacks as to this lot: (1) what constitutes the front lot line; (2) based on the front lot line, what is the lot

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<sup>55</sup> To clarify, this arises from Mr. Twelker's contention as to the lot shape, the 2006 variance, and the legality of Plat #2006-37, again showing the interconnected nature of Mr. Twelker's arguments.

<sup>56</sup> Again, because Mr. Twelker relies on a plat other than Plat #2006-37 because of his original argument that Plat #2006-37 required a second variance, is illegal, and therefore under CBJ 49.05.130 the building permit is based on illegality and cannot be accepted.

width; and (3) upon knowing the lot width, whether the lot width is substandard; and (4) if it is a substandard lot width, what would be the appropriate setbacks.

CBJ 49.15.410(a) provides the controlling code provisions for calculating the setbacks as to this lot. The 2006 variance establishes the minor subdivision was not a panhandle subdivision.<sup>57</sup> This means CBJ 49.25.410(a) applies to the setback determination and not CBJ 49.15.420(h)(1)(A) which details setbacks for panhandle subdivisions. Therefore, when analyzing the appropriate setback determinations for this lot – despite its shape and the assumption it constitutes a panhandle subdivision -- CBJ 49.25.410(a) is controlling in this analysis.

In determining what constitutes the front and other lot lines of this lot, CBJ 49.80.120's definitions are dispositive. CBJ 49.80.120 defines the "lot line, front" as "The property line separating the lot from a street right-of-way, other than an alley." The front lot line has a minimum setback of 25 feet.<sup>58</sup> "Lot line, rear" is defined as "the property line opposite and most distant from a front lot line, except in the case of a corner lot."<sup>59</sup> "Lot line, side" is defined as "any property boundary line not a front or rear lot line."

Applying these definitions to the Comstocks' lot, the front of the lot is the top of the 30 foot wide "pan handle" and the rear lot line is the line which abuts Auke Bay. The 30 foot wide "pan handle" constitutes the front because it "separates the lot from a street right of way." No other line on the property meets the definition of front lot line. Therefore, there would be a 25 foot setback from this front lot line pursuant to CBJ 49.25.400. Next, the lot line which abuts or

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<sup>57</sup> Record p. 52.

<sup>58</sup> CBJ 49.25.400.

<sup>59</sup> CBJ 49.80.120.

touches Auke Bay constitutes the rear lot line because it is both opposite to the front lot line but also the most distant from the lot line.<sup>60</sup> Therefore, the remaining lot lines – in particular the line abutting Mr. Twelker's property – are side lot lines; and thus those side lot lines have a standard setback of 15 feet.<sup>61</sup>

After determining what constitutes the front, rear, and side lot lines, the lot width must be calculated before determining the appropriate side yard setback. Applying the code, for the lot at issue, the lot width is 30 feet. CBJ 49.25.410(a) defines lot width as

The horizontal distance between the side lines of a lot measured at right angles to its depth along a straight line parallel to the front lot line at the minimum required building setback line.

Calculating the lot width here, the front lot line is the front pan handle. The width of this handle is 30 feet. Therefore, applying these definitions, the lot width is 30 feet.

Lastly, a 30 feet wide lot is a substandard lot which means the side yard setback can be reduced by the ordinance's statutory maximum of fifty percent. First, CBJ 49.25.400 sets the side yard setbacks at 15 feet for the D-1 Zoning District; thus the lot line abutting Mr. Twelker's property has an initial setback of 15 feet. CBJ 49.25.430(4)(J) as to substandard lots states

If the lot width, lot depth, or both are less than required, the corresponding side or rear setbacks may be reduced to the same percentage that the lot width depth, or both, bear to the zoning district requirements except that in no case shall the side and rear yard setbacks be less than half those required by this chapter, or five feet, whichever is greater.

The lot width here is 30 feet. Under CBJ 49.25.400, the minimum lot width is supposed to be 150 feet for D-1 Zoning District. The lot being 30 feet wide triggers the maximum setback

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<sup>60</sup> This can also be named the tidewater lot line. Of note, though not of particular interest, this lot line is entitled to a zero setback because it is a tidewater lot line. See CBJ 49.25.430(4)(G) as to shoreline properties.

<sup>61</sup> CBJ 49.25.400.



reduction of 50 percent. Therefore, the Comstocks' 15 foot side yard setback, and at issue the side yard setback which abuts Mr. Twelker's property, can be reduced to 7.5 feet.

Mr. Twelker's analysis fails because his setback determination conflates what lot line qualifies as the front based on perceived illegalities concerning Plat #2006-37.<sup>62</sup> Mr. Twelker relies on the plat included with the 2006 variance, and thus where he determines the lot line abutting his property constitutes the front of the property. Because this lot line constitutes the front of the property – and according to Mr. Twelker is not a side lot line – the setback must be 25 feet pursuant to CBJ 49.25.400. But as already ruled upon above, Plat #2006-37 was recorded and is final. The handle on the lot constitutes the front of the property because it abuts a right of way. The CDD correctly calculated the setbacks based on Plat #2006-37, which revealed a side yard setback of 7.5 feet; i.e. 7.5 feet from the lot line abutting Mr. Twelker's property. Therefore, building permit BLLD20130302 allowing Mr. Comstock to build his garage 13 feet from the side lot line was appropriate; 13 feet being only 2 feet closer to the side lot line than the setback would be without a reduction. Based on all of these reasons, Mr. Twelker did not meet his burden of proof as to this second issue.

## **Conclusion**

Mr. Twelker had the burden to prove by a preponderance of the evidence his position was correct. He has not met his burden on either of the issues presented in his appeal.

As to the first issue, Mr. Twelker's appeal attempts to argue in assessing the 2013 building permit the legality of the 2006 variance and resulting 2006 plat should be considered. This

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<sup>62</sup> Mr. Twelker raises some tertiary arguments about how this lot violates the code in other ways. In general, the Planning Commission summarizes these arguments as Mr. Twelker contending Plat #2006-37 required a second variance and therefore the plat depth is illegal, the lot is illegal, so the garage cannot be built in the location. But as this decision has addressed, Plat #2006-37 is recorded and final.

argument fails for two reasons. First, the Planning Commission finds the Comstock's lot was the result of an appropriate variance and subdivision process. Second, the appeal period has passed as it applies to VAR2006-00018 and Plat #2006-37. The Planning Commission further finds the policy concept of finality persuasive as it bolsters the policy the appeal period has ended and serves as independent grounds to not deny a strained reading of CBJ 49.05.130 allowing the legality of a decision made seven years ago to be reconsidered as to its legality.

As to the second issue, Mr. Twelker's analysis of the setbacks relies upon: (1) a non-finalized plat of the lot; and (2) an inaccurate reading and application of CBJ 49.80.120's various definitions. Mr. Twelker, relying on his first appeal point and accepting another plat as determinative of the calculation, incorrectly determines what constitutes the front of the lot. Under his analysis, Mr. Twelker determines the lot line abutting his property constitutes the front of the property. By incorrectly determining the front of the lot, Mr. Twelker has incorrectly calculated the setback to be 25 feet. But such an exegesis runs counter to the Planning Commission finding Plat #2006-37 was the final plat and then a misapplication of the code's definition of "lot line, front," which establishes the lot line abutting the right of way constitutes the front of the lot for determining setbacks. Therefore, CDD calculated the setbacks correctly based on Plat #2006-37.

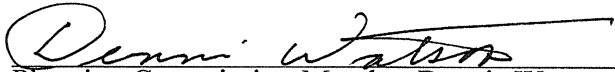
For the reasons outlined, the appeal is not granted and the Planning Commission confirms the director's decision.

Consistent with CBJ 49.20.120 and CBJ 1.50.020, the Twelkers have the right to appeal this matter to the Assembly. The Twelkers, consistent with CBJ 1.50.030(c), have twenty days from the date of this decision to appeal this matter to the Assembly.

IT IS SO ORDERED.

DATED this 13 day of January, 2014.

FOR THE PLANNING COMMISSION OF THE CITY AND BOROUGH  
OF JUNEAU, ALASKA

  
By: Planning Commission Member Dennis Watson  
Presiding Officer on Appeal

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