August 2, 2022

City and Borough of Sitka Community Planning Dept.
Sitka, Alaska

To Whom It May Concern,

Re: V 22-14

Our father, Larry T Calvin is the owner of 4 neighboring properties to 1415 Davidoff St, These are known as property numbers 210, 1410, 214 and 1409 bordered by Davidoff St., Neva St. and Mt. Edgecumbe Drive. Our father is unable to adequately represent himself in this matter due to mental and health related difficulties.

We believe the proposed setback variance V 22-14 application, if granted, would have a materially detrimental and injurious effect on our father's properties, other neighboring properties and public safety.

The City is under no legal or social obligation to change code requirements that would make a difficult lot less difficult at the expense of neighbors and the general public. Setback and code requirements were not imposed retroactively on this property investor/developer. The cost to comply with code requirements is not a legitimate rational to waive or dismiss the purpose for which they were originally established. There is also a concern in setting a precedent in compensating a speculative investor via a code variance, especially when it comes at a cost to others.

Code interpretations state that a "variance may not be granted solely to relieve financial hardship or inconvenience." And yet applicant states the variance is "required" in order to make "the construction of the house safer and affordable".

As a family of contractors and builders, we know all about construction safety. Construction safety is mandated by OSHA and merely requires additional effort and expense to comply with safety standards. A precipitous job site is only unsafe if proper protections are not followed. Proper protections can be expensive but they are achievable even on the most treacherous of job sites.

This is not a job site to attempt to build "affordable housing" Affordable housing in Sitka does not have or require commanding views of Sitka Sound.

A key rational for recommending this application be approved by staff was due to the fact that "the topography is challenging". Many construction projects are challenging but with the application of enough resources, challenges are almost always resolved. The "challenge" on this project is an aversion to commit resources, NOT the topography.

Any development on this property increases the risk to the public due to soil disturbance and long-term erosion in an already unstable and notorious landslide zone. Encouraging development through the use of set back waivers on the face of this landslide-prone area may expose the City to costly litigation.

With no setback to provide for adequate separation between street and structure, and the likelihood that Davidoff will remain an uncompleted thorough street, street parking will definitely become a burden on neighboring properties. A zero lot line variance will mean vehicles will most certainly not be parked in front of the proposed structure. Rather, they will end up being parked along neighboring properties that have not been given the benefit of a zero lot line variance.

A variance from the code required 14' setback would result in a structure that is much higher relative to a fixed elevation point. See attached illustration. Code standard allows for a maximum building height of 35' above "Average Finished Grade". On a steeply sloped hillside the average grade measurement point will almost certainly be lower if the measurement control points were required to start at 14' off the street lot line. Conversely, a zero lot line structure would allow for a retaining wall and back fill that could raise the down slope grade measurement point as high as street level, allowing for a structure that is 35' above street level. Please see attached illustration.

Any variance to the 14' setback logically results in a structure with an absolute elevation higher than what would occur through cost-benefit application of current code. Therefore a variance to the setback creates an significant adverse affect on several neighboring properties, especially those owned by Larry Calvin. Water views are highly valued . Obstructed views have less value. If the set-back waiver by default results in a structure with a higher absolute elevation than would be rationally built under existing code, neighboring properties would in fact be injuriously affected.

We strongly recommend that variance application V22-14 be denied.

Respectfully submitted,

Kris Calvin
Eric Calvin
Leif Calvin
Karen Calvin-Woodard

on behalf of Larry T Calvin

August 15, 2022

City of Sitka Planning Dept.
Sitka, AK 99835

Re: Appeal of Planning Commission approval of Case VAR 22-14

Appellant: Larry T. Calvin and Family
214 Neva St.
Sitka, Alaska 99835

Interests in matter: Larry Calvin owns four upland properties from applicant's property which would be unreasonably impacted by a structure that is allowed to be built significantly higher than if applicable codes were followed without a set-back variance. An appeal of the City of Sitka Planning commission decision relating to Case VAR 22-14 is warranted due to incomplete plans submitted and commissions failure to recognize the injurious effect on neighboring properties, especially as it relates to structure height. Furthermore, approval was largely based on relieving financial hardship and inconvenience, without regard for Required Findings for Major Variances.

Municipal Code 22.30.160(D)(1) Before any variance is granted, it shall be shown:

c. That the "granting of such a variance will not be materially detrimental to the public welfare **or injurious to** the property, **nearby parcels** or public infrastructure." (bold added)

Alaska Statute 29.40.040(b)(3) states that " a variance may not be granted solely to relieve financial hardship or inconvenience..." Staff notes that "The topography of the lot in this case does warrant special consideration given the **limitations on building space it creates**." (bold added)

Discussion:

Staff recommended the variance be approved in part because of the "limitations on building space it creates." And yet, as you will see below, this is not in any way accurate. Applicant himself acknowledges that the lot is build-able without the variance—the only real limitation being his personal preferences.

Commission discussion focused on the issue of building footprint and size of structure, paying virtually no attention to the fact that granting the zero lot line variance would allow the structure to be much higher than would otherwise be built with 14' setback as specified in the code.

Key Fact: Allowing a structure to be built closer to the crest of a hillside increases the elevation of the measurement point (average finished grade) for structure height of 35' as specified in the code. Planning commissioners failed to recognize, discuss or appreciate that in granting a zero lot line variance they were in effect also creating a variance on the structure's overall height. Why was this not addressed by any commissioners, despite the fact it was a key point of contention in our letter to them?

Raising the “average finished grade” on a steep hillside via a retaining wall and back fill can be prohibitively costly. Applicant has stated a desire to make the project “affordable”. The fact is, it is often much more cost effective and structurally stable to construct a stepped foundation—which follows the natural slope and by definition results in a lower average finished grade measurement point. Without a variance, a more sensible hillside-hugging stepped foundation is almost inevitable for this property—and would likely result a one-story, not two-story, street-facing project elevation due to applicable code height restrictions and applicants oft-stated goal of project “affordability”.

Commission members briefly mentioned and elevation sketches provided show a two-story street-facing elevation. No discussion was made of what the actual height (in feet) above street this structure would be between the two contrasting scenarios. Rudimentary images submitted did not provide a section view of the existing property topography which would make this point abundantly clear. Commissioner's own comments below illustrate the lack of plan detail that accompanied this application.

Key quotes from planning commission hearing extracted verbatim from city audio recording:

Applicant: “Keep project safe and affordable” ... “It can be built with proper setbacks but will limit the ability to build the house I am looking to build. And the further toward the highway you go, the steeper it gets. A local engineer agreed that moving it toward Davidoff would be the best option for construct-ability”.

Comment: Engineers report was not included in application packet. Do the local and state code provisions cited above provide allowances for “best option for “construct-ability”?

Planning Director: “Applicant has conducted studies and concluded that keeping the structure to the front of the lot is the best and safest option for construction”.

Comment: None of these studies were provided in the application packet.

Commissioner: “Does the applicant have an elevation map of this lot?”

Planning Director: “No. I don't have a more detailed elevation map.”

Commissioner: “The thing that I'm really torn on is that we are being asked for a variance and we do not have a plan. We have a maybe. In the past we have two plans. Now we are being asked to give a variance and we don't even know for sure what he is going to build.”

Commissioner: “I would second that—lack of plans. What's concerning me is the inconvenience part, with Alaska statute saying that variances can't be granted solely for conveniences. But applicant asserts he can build this house without a variance. It seems like an inconvenience and we're not really allowed to give variances for inconveniences.”

Comment: Brilliant.

Commissioner: "This is a 6,000 sf house."...." One of my thoughts when thinking about a variance for such a large house, if it were just a very small house that needed a variance to be built on the lot at all, but it seems that perhaps a variance to build a very large house on a compromised lot, I'm struggling with that just a little bit with that."

Planning Director: "Looks to be like a fairly standard-size single-family home—for some on the larger size".

Applicant: "It is not 6,000 square feet".....

Commissioner: "The plans shown here add up to about that don't they? I've done the math."

Applicant: "It is possible, I haven't even looked at it."..... "This is all very preliminary in terms of design. My wife has not gotten involved yet so this isn't even close to what it is going to be. Eventually we will figure it out." ….. "This is just a starting point for me. This could be a whole different structure."

Commissioner: "Applicant has stated that if he go further into the lot he would have to go wider."

Comment: The foundation lines as drawn with the zero lot line variance indicate the house to be already encroaching on an angled side property line setback to the south. With the house "further into the lot" at a narrower area of the property, and the north side setback established to provide code-required off-street parking, how exactly can the house "go wider"? No commissioners addressed this obvious discrepancy in testimony and submitted drawings.

Commissioner: "The applicant would be doing the uphill property owners a favor by punching in more road to access their own lot. So I see that as a positive for the uphill neighbors. I don't see a reason to deny it because they are doing... that's the way I see it."

Comment: The existing road was "punched in" by Larry Calvin about 30 years ago to provide access to storage on his property. The applicant is not doing the upland property owners any favors by claiming to construct a road that he already built and by proposing a structure much higher than what code and site realities would allow without the set-back variance.

Furthermore, the phrasing "I don't see a reason to deny it.." indicates a bias toward changing the code rather than preserving well-established code standards. The more appropriate question for a planning commission charged with upholding the development code is, "What compelling evidence is there in this application that would justify a variance to code standard that is also consistent with state and municipal rules addressing code variances. " None of that was provided in testimony, commissioner discussion or engineering reports.

Commissioner: "I could see with zero set back variance, Davidoff St. could easily become that property's personal private parking."

Comment: No rebuttals or discussion was forthcoming on this relevant observation.

Summary comments:

This application for a zero set-back variance was made to increase the convenience, lower the cost of construction and capitalize on hill-crest commanding views of Sitka Sound at the expense of neighboring property owners. While these reasons may "make sense" to some commissioners, they are specifically disallowed by local code and state statute.

Planning commissioners acknowledged that submitted plans were remarkably deficient, but yet still moved forward with approval, without addressing or even understanding the harm done to neighboring properties. To simplify and provide a visual understanding of the difference between zero setback and 14' setback, a zero setback would allow for at least a two-story house at the crest of the steep hillside—which we believe is the applicant's primary hidden agenda in applying for this code variance. A 14' code-specified setback would, given the slope of the hillside and the applicants fixation on affordability, result in a one-story street facade with multiple levels allowed below--an outcome which is much more palatable to neighbors and more cost-conforming to the natural slope of the hillside, but perhaps not "the house (he is) looking to build."

Engineering could and should be done to tie the foundation into bedrock as stated by the applicant under both scenarios. Applicant testifies a house could be built with or without the set-back variance. It is however, more convenient and less expensive for "construct-ability" to do this further up the hillside which coincidentally also improves his ocean views. None of these justifications are allowed by code or statute. Real harm is being done to neighboring properties by providing code exceptions that allow for a two-story street side facade, when only a one-story street-side facade would be built if code provisions were adhered to. Providing exceptions so that an applicant can "build the house I am looking to build." is both illegal and wrong. The lack of a plan detail showing hillside topography in cross-section, and the proposed alternative building profiles on that hillside cross-section is inexcusable. Cross-section topography drawings are required for engineering regardless of a pending variance. Lack of plan detail provided was intentional as it would show the great height differential between the two options, which would increase the chances of legitimate public scrutiny and criticism.

The correct action is to reverse the planning commission's decision and reinstate a 14' code-required setback. However, should the assembly uncover actual compelling reasons to justify a zero set-back variance, compliant with code and statute, then the applicant should be constrained to build a structure no higher than that which would be built without the variance. Applicant should be obligated to have a proper slope survey conducted and following reasonable interpretations of the building height code, a maximum roof peak height above street level would be established. Street level should not be controlled by the applicant, as Larry Calvin has already "punched in" the existing roadway to a very functional height.

Respectfully submitted,

Kris Calvin
Eric Calvin
Leif Calvin
Karen Calvin-Woodard

on behalf of Larry T. Calvin

Date: 9-15-22

RE: Appeal of V22-14, Variance Application by Sam Smith, Hardrock Construction LLC

Variance Application V22-14, application by Sam Smith of Hardrock Construction, should be denied due to violation of the standards outlined in ***Corkery v. Municipality of Anchorage*, 426 P.3d 1078 (2018)**, as the Commission:

1) FAILED TO MAKE FINDINGS ON EACH OF THE VARIANCE STANDARDS OF THE APPLICATION; and

2) FAILED TO MAKE FINDINGS BASED ON SUBSTANTIAL EVIDENCE OR ARE AMBIGUOUS TO THEIR SIGNIFICANCE.

Corkery v. Municipality of Anchorage – Requisite Findings

The Alaska Supreme Court case of *Corkery v. Municipality of Anchorage*, 426 P.3d 1078, (2018), holds that municipal codes governing variances require property owners to substantially satisfy *each one* of its standards to obtain a zoning variance (emphasis added). *Id. at 1087.* Corkery mandates that the Board then "shall conduct an inquiry designed to find whether *all the standards* for issuance of the variance have been *substantially* met." Id.

Corkery further discussed the issue that many applicants have significant legal grounding for successful appeal, should the municipality fail to make these findings. This is exactly the circumstance that occurred with the above variance application.

The Sitka Municipal Code: 22.30.160(D)(1), findings for Variances, are as follows:

a. That there are special circumstances to the intended use that do not apply generally to the other properties;

b. The variance is necessary for the preservation and enjoyment of a substantial property right or use possessed by other properties but are denied to this parcel;

c. That the granting of such a variance will not be materially detrimental to the public welfare or injurious to the property, nearby parcels or public infrastructure; and

d. That the granting of such a variance will not adversely affect the comprehensive plan (see AS 29.40.040(b)(3) – that such application is not based solely to relieve economic hardship or inconvenience).

The record of the Commission's approval of the above variance shows **no evidence that the Commission made any findings at all**, but merely discussed a few of the above standards and accepted the applicant's ambiguous application at face value. The Commission failed to evaluate the evidence presented and give or reject its weight as to circumstances, necessity, detriment or the statutory findings regarding economic hardship or mere inconvenience. The

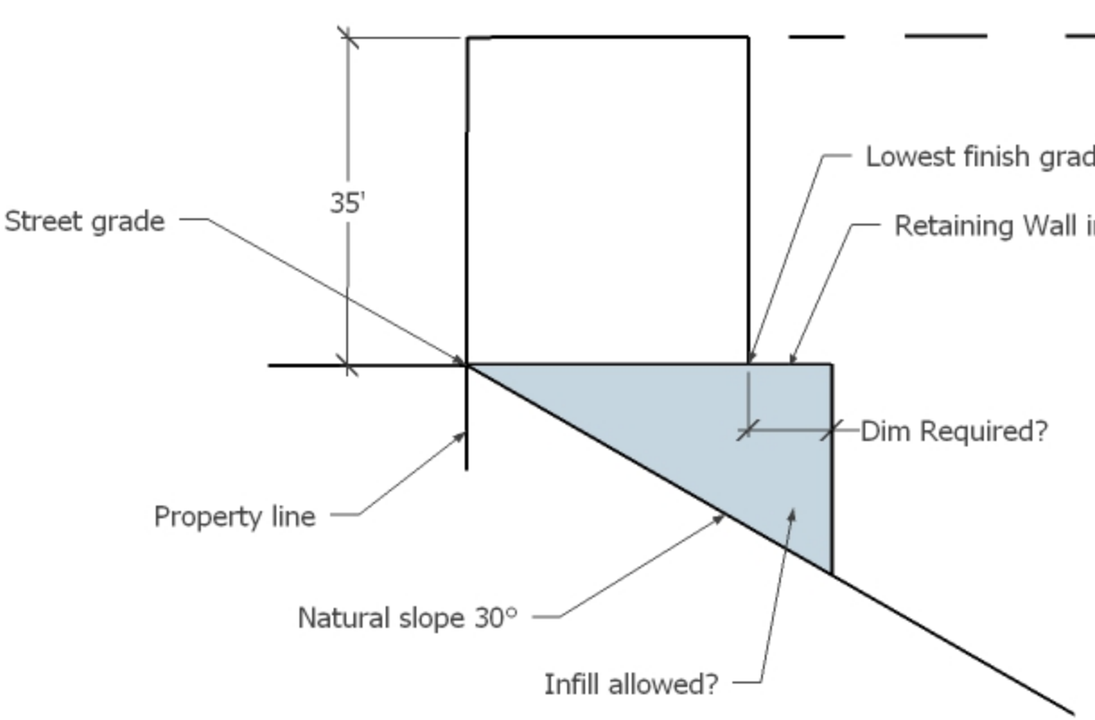
Commission **lacked any substantial evidence and was vague in the evidentiary process,** and appears merely approved the application after a cursory discussion of the application and the applicant's vague assertions.

Additional Relevant Variance Caselaw:

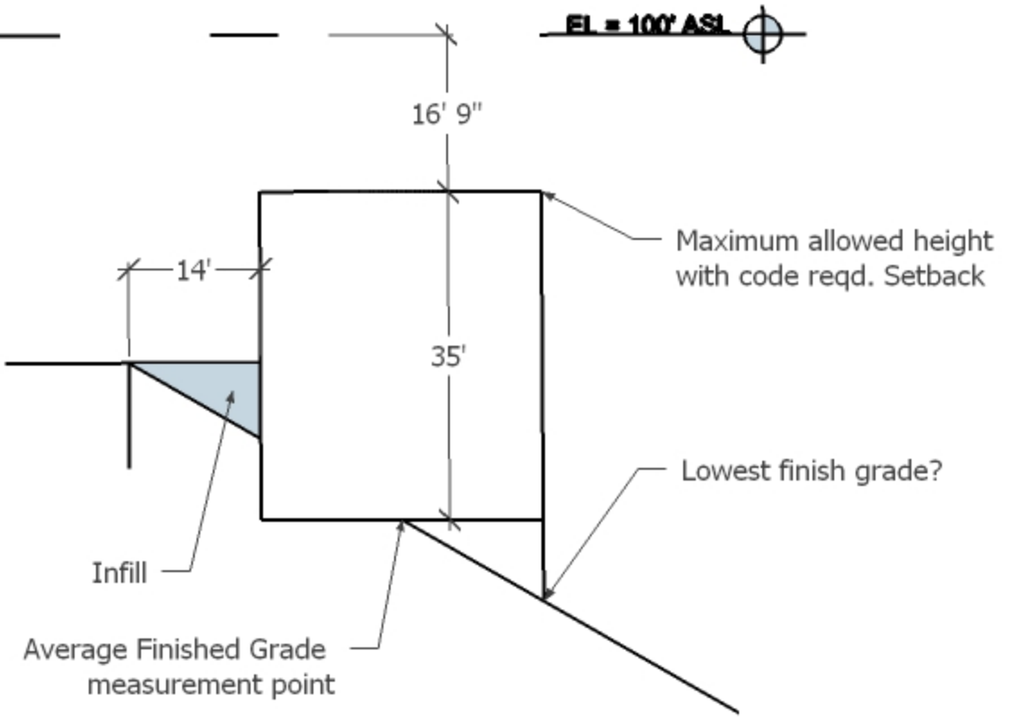
City and Borough of Juneau v. Thibodeau, 595 P.2d 626 (Alaska 1979) – overturned on other grounds - More profitable use of land is not a basis for a variance, and **findings required for variance approval.** This case also holds that applicants must show **the denial of the variance would leave them with no other reasonable use** of the property and that no reasonable return could be made on the property.

E&F v. Zoning Board of Appeals of the Town of Fairfield 320 Conn. 9 (Connecticut 2015) (bad measurement put building addition into the setback) – Cited by Alaska courts and board of Adjustments for the premise that artificial or self-created hardship is not enough (See ITMO Appeal of Thomas Wagner v. City of Kenai, BA-16-01). "Financial considerations are relevant only if the application of the regulation or ordinance practically destroys the value of the property for any use to which it may be put and the regulation or ordinance as applied to the subject property bears little relationship to the purpose of the zoning plan". Courts have stated that a "zoning regulation that prevents land from being used for its greatest economic potential does not create the exceptions kind of financial hardship" that Courts have deemed to have a "confiscatory or arbitrary effect". Several courts have stated "hardship alone is not sufficient" and **variances** from the terms of the zoning ordinance **should be permitted** "**only under peculiar and exceptional circumstances**."

And finally, *Fields v. Kodiak City Council,* 628 P.2d 927, 931, (Alaska 1981) holding that the **burden is on the Applicant to prove the requirements are met**, not the Board with its own inquiry or information, the City itself, or any other party.



Zero Setback



14' Code Setback