

# **Agenda**

## **Planning Commission - Title 49 Committee City and Borough of Juneau**

March 8, 2017  
Marine View Building, 4th Floor  
3:15 PM

- I. **ROLL CALL**
- II. **APPROVAL OF AGENDA**
- III. **AGENDA TOPICS**
  - A. Background Information and Discussion about Variances
- IV. **COMMITTEE MEMBER COMMENTS AND QUESTIONS**
- V. **ADJOURNMENT**



# Community Development

City & Borough of Juneau • Community Development

155 S. Seward Street • Juneau, AK 99801

**TO:** Title 49 Committee

**FROM:** Chrissy McNally, Planner II  
Community Development Department

**DATE:** June 8, 2016

**RE:** Variance criteria

## Attachments

- Attachment A: CBJ 49.20.250 Grounds for variances (adopted 1995)
- Attachment B: 1987 Grounds for variances
- Attachment C: pre-1987 Grounds for variances

## Background

Before a major code revision in 1987 “any standard requirement or regulation” of Title 49 could be varied. In 1987 Ordinance 87-49 specified the requirements and regulations that are variable. These standards included dimensional and design standards. Use of land or structures and construction standards were specifically identified as standards that could not be varied.

The current variance criteria found in Title 49 were established in 1995 with Ordinance 95-33. Ordinance 95-33 made several substantive changes to the variance section of Title 49. First, criterion 7 from Ordinance 87-49 was incorporated into the Grounds for Variances found in CBJ 49.20.250(b) which included density and lot coverage (see Attachment B). Next, it allowed for Director approval of minor setback infractions known as *de minimus* variances (see Attachment A). Additionally, the ordinance amended CBJ 49.25.430 *Yard setbacks* to allow for certain accessory structures to encroach into required yard setbacks in order to reduce the number of variances applied for and finally it added four sub criteria to criteria 5. These amendments were intended to allow greater flexibility.

Prior to the 1987 rewrite of Title 49, criterion 5 was limited to preventing the owner from using the property for a permissible principal use (see Attachment C). Ordinance 87-49 added difficulty and hardship concepts imposed on the property owner by the standards.

In order to allow for more proposals to meet criterion 5, four sub criteria were developed to identify additional reasons why compliance with the standards may be difficult for a property owner. The sub-criterion also allows for comparison of the proposal against development of neighboring properties.

In order to clarify the variance criteria staff is recommending amendments to CBJ 49.20.200(b). The existing criteria and proposed criteria are outlined below.

### **Existing Variance Criteria**

49.20.250(b) *Variances other than de minimis*. 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 this title, the board of adjustment may grant a variance in harmony with the general purpose and intent of this title. A variance may vary any requirement or regulation of this title concerning dimensional and other design standards, but not those concerning the use of land or structures, housing density, lot coverage, or those establishing construction standards. A variance may be granted after the prescribed hearing and after the board of adjustment has determined that:

- (1) *The relaxation applied for or a lesser relaxation specified by the board of adjustment would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners;*
- (2) *Relief can be granted in such a fashion that the intent of this title will be observed and the public safety and welfare preserved;*
- (3) *The authorization of the variance will not injure nearby property;*
- (4) *The variance does not authorize uses not allowed in the district involved;*
- (5) *Compliance with the existing standards would:*
  - (A) *Unreasonably prevent the owner from using the property for a permissible principal use;*
  - (B) *Unreasonably prevent the owner from using the property in a manner which is consistent as to scale, amenities, appearance or features, with existing development in the neighborhood of the subject property;*
  - (C) *Be unnecessarily burdensome because unique physical features of the property render compliance with the standards unreasonably expensive; or*
  - (D) *Because of preexisting nonconforming conditions on the subject parcel, the grant of the variance would not result in a net decrease in overall compliance with the land use code, title 49, or the building code, title 19, or both; and*
- (6) *A grant of the variance would result in more benefits than detriments to the neighborhood.*

### **Proposed Variance Criteria**

CBJ 49.20.200 Variances other than administrative. 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 this title, the board of adjustment may grant a variance in harmony with the general purpose and intent of this title. A variance may not be granted solely for financial hardship or inconvenience. The granting of a variance shall not increase an existing nonconformity with the building code, Title 19 or the land use code, Title 49.

A variance may vary dimensional 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 that:

- (1) Special conditions and circumstances exist that are peculiar to the land or structures involved and are not applicable to other lands and structures in the same district.*
- (2) That compliance with the existing standards would unreasonably prevent the owner from using the property for a permissible principal use.*
- (3) The deviation from the requirement of this title is no more than is necessary to permit a reasonable use of the property.*
- (4) Authorization of the Variance will not allow uses prohibited in the district*
- (5) Relief can be granted in such a fashion that the intent of this title found in CBJ 49.05.100 will be observed.*
- (6) The authorization of the variance will not injure nearby property.*

Presented by: The Manager  
Introduced: 09/25/95  
Drafted by: J.R.C.

**ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA**

**Serial No. 95-33**

**An Ordinance Amending the Land Use Code to Establish Standards, Procedures, and Fees for the Granting of De Minimis Variances, Broadening the Grounds for Other Variances, and Exempting Certain Structures from Yard Setback Requirements.**

WHEREAS, the Board of Adjustment is called upon to administer a continuing and significant caseload of requests for variances to address trivial dimensional infractions, and

WHEREAS, such minor infractions are an unavoidable result of hurried development, do-it-yourself projects, mistakes in the field, and other forms of ordinary human error, and

WHEREAS, the procedures for a variance for such infractions are the same deliberate and painstaking procedures required for more significant infractions, and

WHEREAS, the history of CBJ administration of the present and prior land use code with regard to setback variances and other categories of deviation indicates that the Board of Adjustment takes a broad view of the criteria against which variance applications are judged and that the Board applies those criteria in a flexible manner, and

WHEREAS, Criterion (5) of CBJ 49.20.250(b), as hitherto worded, is the strictest and most often cited criterion in staff recommendations against variance applications because use of a property for a primary permitted use which meets the standards, however small or inconsistent with neighborhood norms, automatically disqualifies the owner from receiving a variance, regardless of other reasons or extenuating circumstances, and

WHEREAS, a number of unheated accessory features and structures have been subjected to setback requirements because they meet the definition of the term "building" but which have also been routinely granted variances by the Board and which, due to local conditions, often have to be placed in otherwise mandatory setbacks, and

WHEREAS, the unheated accessories usually take up insignificant amounts of space within the setbacks and thus do not have a detrimental impact on the public need for light, air, open space and vegetative cover, and

WHEREAS, planning and zoning resources would be better conserved by establishing a class of variance to be known as "de minimis" and authorizing administration thereof by the Community Development Department staff, with appropriate safeguards to prevent abuse

of the convenience thereby provided to builders and owners;

NOW, THEREFORE, BE IT ENACTED BY THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU, ALASKA:

**Section 1. Classification.** This ordinance is of a general and permanent nature and shall become a part of the city and borough code.

**Section 2. Amendment of Section.** CBJ 49.20.210 is amended to read:

49.20.210 SUBMITTAL. Except as provided herein for de minimis variances, an application for a variance shall be submitted to the board of adjustment through the department.

**Section 3. Amendment of Section.** CBJ 49.20.220 is amended to read:

49.20.220 SCHEDULING AND FEE. (a) If the director determines that the variance applied for is de minimis, the application shall be administered by the department according to Section 49.20.230(a) and Section 49.20.250(a).

(b) If the director determines that the variance applied for is other than de minimis and the application is complete, it shall be scheduled for public hearing. If the application is filed in conjunction with a major development permit, a separate public notice and fee shall not be required. For separate variance applications a fee and public notice according to Section 49.20.230 shall be required.

**Section 4. Amendment of Section.** CBJ 49.20.230 is amended to read:

49.20.230 PUBLIC NOTICE. (a) Public notice according to CBJ 49.20.250(a)(1)(C) shall be required for consideration or issuance of a de minimis variance.

(b) For variances other than de minimis, public notice according to Section 49.15.230 shall be given prior to a hearing on the application by the board of adjustment, except that the placement of a sign on the subject lot is not required.

**Section 5. Amendment of Section.** CBJ 49.20.240 is amended to read:

49.20.240 BOARD OF ADJUSTMENT ACTION. The board of adjustment shall hear all variance requests other than those administered by the director as de minimis and shall either approve, conditionally approve, modify or deny the request based on the criteria in Section 49.20.250(b) of this chapter.

**Section 6. Amendment of Section.** CBJ 49.20.250 is amended to read:

49.20.250 GROUNDS FOR VARIANCES. (a) De Minimis Variances.

(1) Where a minor setback infraction could be corrected only at unreasonable expense or inconvenience the director may, after taking into account the views of the owners of adjoining property, and upon a finding that the infraction was not the result of a deliberate effort to evade the dimensional requirement, grant a de minimis variance in harmony with

the general purpose and intent of this title. A de minimis variance may be granted after it is shown that all the following conditions have been met.

(A) The variance is for one or more projections into yard setbacks, none of which extend beyond twenty-five percent of required setback distance.

(B) The de minimis variance would not aggravate an infraction previously granted a variance.

(C) The applicant submits on forms provided by the Department written statements from the owners of adjoining property, each acknowledging that the owner has been notified of the application. In lieu of statements provided by the applicant, the Department will provide at least five days notice by mail to each such owner.

(D) The applicant submits a certified as-built survey to scale showing all lot line locations, building dimensions, orientations, setbacks, and other distances and features relevant to the requested relief.

(b) Variances Other Than De Minimis. 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 this title, the board of adjustment may grant a variance in harmony with the general purpose and intent of this title. A variance may vary any requirement or regulation of this title concerning dimensional and other design standards, but not those concerning the use of land or structures, housing density, lot coverage, or those establishing construction standards. 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;

(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 preserved;

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

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

(5) That compliance with the existing standards would:

(A) unreasonably prevent the owner from using the property for a permissible principal use,

(B) unreasonably prevent the owner from using the property in a manner which is consistent as to scale, amenities, appearance or features, with existing development in the neighborhood of the subject property,

(C) be unnecessarily burdensome because unique physical features of the property render compliance with the standards unreasonably expensive, or

(D) because of preexisting nonconforming conditions on the subject parcel, the grant of the variance would not result in a net decrease in overall compliance with the land use code, CBJ Title 49, or the building code, CBJ Title 19, or both; and

(6) That a grant of the variance would result in more benefits than detriments to the neighborhood;

**Section 7. Amendment of Section.** CBJ 49.25.430(4)(B), relating to projections into required yards, is repealed and reenacted to read:

(B) The following structures, if unheated, shall be allowed in required yard setbacks:

(i) stairways, ramps, landings, catwalks, balconies and associated roofs, windbreaks, and covers providing access to and around the primary permitted use on the property may extend no more than 48 inches into the required setback;

(ii) arctic entries not exceeding 65 square feet gross floor area, and no closer than 5 feet to any property line;

(iii) enclosures for outdoor fuel tanks, storage sheds, refuse containers, woodsheds, if less than 4 feet high in front yards and 8 feet high in other yards, and encroaching no more than 40 square feet into a required yard setback;

(iv) devices with removable covers for winter storage of boats, provided that the cover is removed between April 15 and September 30;

(v) other enclosures, devices, structures or accessories deemed by the director to be similar to those listed in this subsection.

**Section 8. Amendment of Subsection.** CBJ 49.25.510(e)(2)(A), relating to dimensional standards for accessory apartments, is amended to read:

(A) The accessory apartment shall be a one bedroom or efficiency unit not exceeding 600 square feet in gross floor area, or such other area as may be approved through the procedure for variances other than de minimis.

**Section 9. Amendment of Section.** CBJ 49.45.310 is amended to read:

49.45.310 EXCEPTIONS FROM SIGN STANDARDS. The commission shall hear all applications for exceptions from the sign standards of this chapter using the procedure and criteria established for variances other than de minimis in Article II of CBJ Chapter 49.20, Variances.

**Section 10. Amendment of Subsection.** CBJ 49.85.100(9) is amended to read:

(9) Board of Adjustment.

(A) De minimis variance, one hundred dollars;

(B) Variance other than a de minimis variance, three hundred dollars;

(C) Appeal of administrative or design review board decision, one hundred dollars.

**Section 11. Effective Date.** This ordinance shall be effective thirty days after its adoption.

Adopted this 2nd day of October, 1995.

  
\_\_\_\_\_  
Mayor

Attest:

  
\_\_\_\_\_  
Clerk

appellant. If the appeal is on the record, the decision of the commission shall be upheld if there is substantial evidence in support thereof.

## Chapter 49.20

### APPEALS, VARIANCES, AND INTERPRETATIONS

#### Part II: Variances

49.20.200 VARIANCE. A variance is required to vary dimensions or design standards of this title.

49.20.210 SUBMITTAL. An application for a variance shall be submitted to the board of adjustment through the department.

49.20.220 SCHEDULING AND FEE. The director shall schedule the application for public hearing after determining the application is complete. If the application is filed in conjunction with a major development permit, a separate public notice and fee shall not be required. For separate variance applications a fee and public notice according to 49.20.230 shall be required.

49.20.230 PUBLIC NOTICE. Public notice according to Part I of Chapter 49.05 shall be given prior to a hearing on the application by the board of adjustments, except that the placement of a sign on the subject lot is not required.

49.20.240 BOARD OF ADJUSTMENT ACTION. The board of adjustment shall hear all variance requests and shall either approve, conditionally approve, modify, or deny the request based on the criteria in the following section.

49.20.250 GROUNDS FOR VARIANCES. (a) Where hardship and practical difficulties resulting 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 this title, the board of adjustment may grant a variance in harmony with the general purpose and intent of this title. A variance may vary any requirement or regulation of this title concerning dimensional and other design standards, but not those concerning the use of land or structures or those establishing construction standards. A variance may be granted after the prescribed hearing and after it is shown that all the following conditions have been met.

(b) In considering all variances the board of adjustment must determine:

(1) whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners;

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

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

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

(5) that compliance with the existing standards would unreasonably prevent the owner from using the property for a permissible principal use and would be unnecessarily burdensome because it would impose peculiar and practical difficulties to, or exceptional and undue hardship upon the developer of such property;

(6) that a grant of the variance would result in more benefits than detriments to the neighborhood; and

(7) that the variance would not violate housing density, gross nonresidential floor area, or building and lot coverage standards.

49.20.260 CONDITIONS OF APPROVAL. The board may attach to a variance conditions regarding the location, character, and other features of the proposed structures or uses as it finds necessary to carry out the intent of this ordinance and to protect the public interest.

49.20.170 EXPIRATION AND EXTENSIONS OF APPROVAL. Expiration and extensions of variances shall be governed by the procedures and standards established for development permits in Part II of Chapter 49.15.

## Chapter 49.20

### APPEALS, VARIANCES, AND INTERPRETATIONS

#### Part III: Interpretations

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

## ZONING REGULATIONS

(c) Variances. Where hardships and practical difficulties resulting from peculiarities of a specific property render it difficult to carry out the provisions of this chapter, the board may grant a variance in harmony with the general purpose and intent of this chapter. Such variance may vary any standard requirement or regulation of this chapter after the prescribed hearing and after it is shown that all of the foregoing conditions exist:

(1) Compliance with the strict letter of the restrictions would unreasonably prevent the owner from using the property for a permitted purpose or would render a conformity with such restrictions unnecessarily burdensome;

(2) That a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district;

(3) Whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners;

(4) That relief can be granted in such a fashion that the spirit of the ordinance will be observed and public safety and welfare secured;

(5) That the authorization of such variance will not be materially detrimental to the public welfare or injurious to nearby property;

(6) The variance does not allow the property to be used for uses not otherwise allowed in the district involved. In authorizing a variance, the board may attach thereto conditions regarding the location, character, and other features of the proposed structures or uses as it finds necessary to carry out the spirit and purposes of this ordinance and in the public interest. A variance so authorized shall become void after the expiration of one year if no building permit has been issued in accordance with the plans for which such variance was authorized, except that the board may extend the period of variance authorization

## ZONING REGULATIONS

without public hearing upon a finding that there has been no basic change in pertinent conditions surrounding the property at the time of the original approval.

(d) In exercising the foregoing powers, the board may, in conformity with the provisions hereof, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination as ought to be made, and to that end shall have all of the powers of the officer from whom the appeal is taken. The concurring vote of a majority of the membership of the board shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under the provisions of the zoning ordinance or any regulation promulgated thereunder. (Serial No. 72-37 § 3, 1972; GJB § 49.25.802).

49.25.803 STAY OF PROCEEDINGS. An appeal from the decision of any administrative officer under the provision of this chapter to the board of adjustment stays all proceedings in furtherance of the action appealed from unless the administrative official from whose decision the appeal is taken, certifies to the board after notice of appeal is filed, that by reason of facts stated in the certificate a stay would in his opinion cause imminent peril to life or property. (GJB § 49.25.803).

49.25.804 FILING APPLICATIONS. Requests for exceptions, appeals or variances may be filed with the board of adjustment by any aggrieved person or any government officer, department, board or bureau affected.

(a) Appeals and Exceptions. When a request for an exception or appeal has been properly filed, the building official shall transmit to the board all plans, specifications and papers pertaining to the request or appeal. The board shall consider



# Community Development

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City & Borough of Juneau • Community Development

155 S. Seward Street • Juneau, AK 99801

**TO:** Title 49 Subcommittee of the Planning Commission

**FROM:** Laura A. Boyce, AICP, Senior Planner  
Community Development Department

**DATE:** June 14, 2016

**RE:** Proposed changes to variances

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The Community Development Department (CDD) proposes changes to Title 49, the Land Use Code (Code), regarding variances. Variances have been used widely to vary or modify Code requirements during development and subdivision. A variance is intended to provide relief from Code requirements where *“hardship and practical difficulties result from an extraordinary situation or unique physical feature affecting only a specific parcel of property or structures ... and render it difficult to carry out the provisions of this title”* (CBJ 49.20.250(b)). Currently, the variance is the only tool available to modify Code requirements as they pertain to individual properties. Because of this, the variance process is used often and broadly. In many land use codes, the variance is used solely to vary dimensional standards, such as lot width and depth, height, and setbacks.

CDD would like input from the Title 49 Subcommittee of the Planning Commission regarding what Code requirements can be varied. CDD would also like input regarding the use of waivers and other modification tools for those sections of Code that would not be variable.

## **Background**

The Land Use Code, Title 49, states that a variance is required to vary “dimensions or design standards of this title” (CBJ 49.20.200). CBJ 49.20.250(b) further clarifies that:

*“A variance may vary any requirement or regulation of this title concerning dimensional and other design standards, but not those concerning the use of land or structures, housing density, lot coverage, or those establishing construction standards.”*

This has been interpreted broadly since the Land Use Code was updated in 1987. Since then, the following types of design and dimensional standards variances have been approved:

- lot width
- lot depth
- setbacks
- height
- fence height
- parking requirements -
  - reduction in required number of parking spaces

# Title 49 Committee

## Variance criteria

June 15, 2016

- o back out parking
  - o parking space and drive aisle dimensions
  - o off-site parking
- access requirements –
  - o subdivisions not fronting on a publicly maintained right-of-way
  - o lot access through private easement
  - o subdivision along an unbuilt platted right-of-way
  - o reduction to minimum 30 feet of frontage requirement
  - o allow common driveway rather than interior access street for subdivision along an arterial
  - o allow lots less than 36,000 sf (D-1 lot size requirement) when subdivision is proposed along an arterial
  - o allow subdivision for lots that won't have direct access to publicly maintained right-of-way
- Panhandle subdivision requirements –
  - o lot sizes
  - o use of separate driveways instead of shared common driveway
  - o more than two changes in direction
  - o panhandle portion width reduction
- Design Standards -
  - o Planned Unit Developments –
    - encroachment into required perimeter buffer
  - o Canopies –
    - canopy height increase
    - waiver of canopy requirement when one is required
  - o Mobile Home Parks –
    - reduction in size of required playground area
    - setback reductions
  - o Cottage Housing –
    - allow different floor area ratio than code specifies
  - o Accessory Apartments -
    - increase in apartment size
  - o Common wall
    - lot size requirement
  - o Historic District –
    - design requirements
- Flood zones –
  - o allow construction seaward of mean high water mark
- Lot area –
  - o lot area reductions (should not have been approved since they are technically density variances)
- Eagle Nest Trees –
  - o habitat setback encroachment
- Signs -
  - o historic district sign variances
  - o increase in maximum sign area
  - o allow signs closer than required to Egan Boulevard

Title 49 Committee  
Proposed Variance Changes  
June 15, 2016

- o sign placement
- Anadromous Stream/Water body setbacks –
  - o encroachments into “no disturbance” areas
  - o encroachments into “no development” areas
- Vegetative cover –
  - o reductions in minimum vegetative cover requirements



# Community Development

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City & Borough of Juneau • Community Development

155 S. Seward Street • Juneau, AK 99801

**TO:** Title 49 Committee

**FROM:** Chrissy McNally, Planner II  
Community Development Department

**DATE:** July 27, 2016

**RE:** Variance criteria

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Staff met with the Title 49 Committee on July 9 to discuss proposed changes to CBJ 49.20.250 Grounds for variances. In addition to changes in the criteria to be applied by the board of adjustment, the committee wanted a list of what code sections cannot be varied. The committee also wanted staff to propose what changes would be made to make the code more flexible to reduce the need for variances. The grounds for variances and variance criteria below reflect the changes requested by the committee.

## **Proposed variance grounds and criteria**

CBJ 49.20.200 Variances other than administrative. 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 this title, the board of adjustment may grant a variance in harmony with the general purpose and intent of this title. A variance may not be granted solely to prevent financial hardship or inconvenience. The granting of a variance shall not allow uses prohibited in the district.

A variance may not vary those standards concerning;

- use of land or structures
- housing density
- lot coverage
- PUD standards
- cottage housing standards
- common wall standards
- construction standards as found in CBJ 49.35
- accessory apartment standards
- vegetative cover
- financial responsibility
- mobile home park standards
- Historic District standards and guidelines

Title 49 Committee  
Variance criteria  
June 15, 2016

A variance may be granted after the prescribed hearing and after the board of adjustment has determined that:

- (1) *Special conditions and circumstances exist that are peculiar to the land or structures or use involved and are not applicable to other lands and structures in the same district.*
- (2) *That compliance with the existing standards would unreasonably limit the owner from using the property for a permissible principal use.*
- (3) *The deviation from the requirement of this title is no more than is necessary to permit a reasonable use of the property.*
- (4) *Relief can be granted in such a fashion that the intent of this title found in CBJ 49.05.100 will be observed.*
- (5) *The authorization of the variance will not injure nearby property.*

**Other Title 49 amendments**

The purpose of the proposed criteria amendments is to steer from using the variance process as a means to modify code requirements where no extraordinary situation exists. Staff is aware of the community's need for flexibility in some sections of code where requirements are outdated. Staff intends to offer recommendations for increased flexibility for several sections of code in order to rectify the practice of using the Variance as a catch all. The list below highlights what staff recommends should be variable, should not be variable and what sections of code would benefit from amendments. The code sections are based on what has historically been granted a variance to the respective standards.

| Variable                   | Not Variable                               | Code Amendment     |
|----------------------------|--------------------------------------------|--------------------|
| Setbacks                   | Use                                        | Eagle nest setback |
| Lot width                  | Density                                    | Streamside setback |
| Lot depth                  | Lot coverage                               | Lot access         |
| Lot frontage               | PUD standards                              | Parking            |
| Canopy height              | Cottage Housing standards                  | Vegetative Cover   |
| Sign dimensional standards | Bungalow lot/housing standards             | Height             |
| Eagle nest setback         | Common Wall standards                      | Canopy             |
| Streamside setback         | Accessory apartment standards              | Sign placement     |
|                            | Parking                                    |                    |
|                            | Vegetative Cover                           |                    |
|                            | Financial responsibility                   |                    |
|                            | Mobile Home Parks                          |                    |
|                            | Historic District standards and guidelines |                    |
|                            |                                            |                    |

Title 49 Committee

Variance criteria

June 15, 2016

In addition to this broad list, staff recommends expanding the exceptions to setbacks found in CBJ 49.25.430(4) *Projections into required yards* to include:

*Insulation to improve energy efficiency may encroach 6 inches into any required yard setback.*

Other exception examples include:

- parking waiver for legal lot that do not have direct and practical vehicular access from a right-of-way
- development proposals which provide for a net increase in habitat conditions may encroach into the required streamside setback
- reductions in parking stall size and circulation aisles
- parking exceptions for substandard lots



# Community Development

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City & Borough of Juneau • Community Development

155 S. Seward Street • Juneau, AK 99801

**TO:** Title 49 Subcommittee of the Planning Commission

**FROM:** Laura A. Boyce, AICP, Senior Planner  
Community Development Department

**DATE:** September 12, 2016

**RE:** Design Standard Variances

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The Land Use Code, Title 49, states that a variance is required to vary “*dimensions or designs standards (sic) of this title*” (CBJ 49.20.200). CBJ 49.20.250(b) further clarifies that:

*“A variance may vary any requirement or regulation of this title concerning dimensional and other design standards, but not those concerning the use of land or structures, housing density, lot coverage, or those establishing construction standards.”*

Lacking additional parameters regarding these categories, staff has applied these categories quite broadly. In fact, previous policy has been that almost any section of Code, other than a construction standard, use, or density, may be varied. The issue with varying design standards – those standards that result in how a project is designed – is that there usually isn’t a true hardship involved; the applicant usually wants greater flexibility than what is allowed. Allowing modifications during the project approval process might be a better tool to provide greater flexibility.

Since the Land Use Code was updated in 1987 with the design and dimensional standard categories for variances, applying it broadly has resulted in the following approval of design standards:

- parking requirements -
  - allowing back out parking where it isn’t allowed
  - modifying parking space sizes and drive aisle dimensions
  - allowing greater distance of off-site parking
  - reduction in the number of required parking spaces
- access requirements –
  - allowing subdivisions not fronting on a publicly maintained right-of-way
  - allowing lot access through private easement
  - allowing subdivision along an unbuilt platted right-of-way
  - reduction to minimum 30 feet of frontage requirement
  - allowing a common driveway rather than an interior access street for subdivisions along an arterial
  - allowing lots less than 36,000 sf (D-1 lot size requirement) when subdivision is proposed along an arterial

## Title 49 Committee

## Variable Items

September 12, 2016

- o allowing subdivision for lots that won't have direct access to publicly maintained right-of-way
- Panhandle subdivision requirements –
  - o reduction in lot sizes
  - o allowing separate driveways instead of shared common driveway
  - o allowing more than two changes in direction
  - o allowing a reduction in the panhandle portion width
- Planned Unit Developments –
  - o allowing encroachment into required perimeter buffer
- Canopies –
  - o allowing increases in canopy height
  - o approving a canopy waiver when one is required to be provided
- Mobile Home Parks –
  - o reduction in size of minimum required playground area
  - o allowing setback reductions
- Cottage Housing –
  - o allow different floor area ratio than code specifies
- Accessory Apartments -
  - o allowing an increase in apartment size
- Common wall
  - o allowing reduced lot sizes
- Vegetative cover –
  - o allowing reductions to the minimum vegetative cover requirements

Variances have been used widely to vary or modify Code requirements during development and subdivision. A variance is intended to provide relief from Code requirements where *“hardship and practical difficulties result from an extraordinary situation or unique physical feature affecting only a specific parcel of property or structures ... and render it difficult to carry out the provisions of this title”* (CBJ 49.20.250(b)). Currently, the variance is the only tool available to modify Code requirements as they pertain to individual properties. Because of this, the variance process has been used often and broadly. In many land use codes, the variance is used solely to vary dimensional standards, such as lot width and depth, height, and setbacks in cases of true hardship.

CDD proposes to amend Title 49 to remove design standards as something that can be varied. Instead of using the variance as a flexibility tool, CDD would like to amend the Code to allow for more design flexibility. For instance, existing processes may be amended to include modifications into the review. Conditional use permits, major subdivisions, and planned developments are all processes that require public input and Planning Commission approval. Minor modifications to code requirements could be reviewed and evaluated as part of the overall process. Criteria could be developed to evaluate modification requests and can include such findings as overall compliance with the general intent of the Land Use Code.

CDD requests input from the Title 49 Subcommittee of the Planning Commission regarding whether design standards should be varied.