

Agenda

Planning Commission - Title 49 Committee City and Borough of Juneau

September 21, 2016
Marine View Building 4th Floor Conference Room
3:00 PM

- I. **ROLL CALL**
- II. **APPROVAL OF AGENDA**
- III. **AGENDA TOPICS**
 - A. Proposed revisions to CBJ Code regarding stream and lakeside setbacks
 - B. AME2016 0013 Text Amendment to Title 49 regarding parking requirements for downtown Douglas
 - C. Proposed Revisions to CBJ Code regarding Eagle Nest Setbacks
 - D. Design Standard Variances
- IV. **COMMITTEE MEMBER COMMENTS AND QUESTIONS**
- V. **ADJOURNMENT**



Community Development

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DATE: September 14, 2016

TO: Title 49 Committee

FROM: Teri Camery, Senior Planner
Community Development Department

SUBJECT: Proposed Revisions to CBJ Code 49.70.310 and 49.70.950(f), stream and lakeside setbacks

Background

The 50-foot no-development and 25-foot no-disturbance setbacks from anadromous streams and lakes are listed in two sections of code, 49.70.310 and 49.70.950(f). These code sections and related definitions and policies are included at the end of this memo.

Though CDD has intended to revise this ordinance for a long time, the revision has new urgency because the current interpretation of the code does not allow variances to the setback. The inability to address variances to the setback for benign uses such as restoration, as well as higher impact uses, has led to increasing public concern and a need to expedite the revision process.

In addition to the basic need to allow for a variance process, the stream and lakeside setback ordinance has many other issues that need to be addressed. Following is a partial list:

- The setback is listed in two sections, with different requirements in each section.
- The setback in 49.70.310 is tied to the definition of development, which was written separately for general planning issues that are not specific to the streamside setback. A literal application of the definition of development to stream setbacks would allow an unlimited number of buildings that are 120 square feet or less, and would prohibit placement of a sign or development of a subdivision, among other problems.
- The setback in 49.70.950(f) measures the setback from the Ordinary High Water Mark, while 49.70.310 measures the setback from the top of the bank.
- 49.70.950(f) lists exception criteria; 49.70.310 does not.
- 49.70.310 lists the 25-foot no-disturbance zone. 49.70.950(f) does not.
- The CBJ Land Use Code has one definition of Ordinary High Water, which is problematic with application of the setback to tidally-influenced sections of streams. The better definition, adapted from the Alaska Department of Fish and Game, is in the Comprehensive Plan, however this does not have the force of regulation. The Comprehensive Plan definition needs to be adopted into the land use code.
- Neither code section identifies when the mouth of a salmon stream ceases to be a stream and becomes tidewater. This is important because CBJ does not have a setback from tidewater.

Review

CDD's general approach to the setback revision is to allow for flexibility and a simple departmental review process for benign uses within the setback that do not have harmful impacts. Impacts that are listed as benign or semi-benign would be addressed through a pre-established menu of possible mitigation options and a landscaping protocol that is specific to riparian (streamside) areas beneficial to fish habitat. The landscaping protocol and mitigation options, which might include such things as revegetation, erosion control, and stormwater management, would be developed through consultation with the Alaska Department of Fish and Game, U.S. Fish and Wildlife Service, and other entities that are knowledgeable on riparian issues. Uses that are not benign or semi-benign would first go through the variance process to demonstrate that the encroachment is unavoidable and dictated by unusual circumstances, per the usual variance criteria. If the variance is approved, mitigation would then be addressed through options described within code, essentially returning the development to an acceptable level of benign or semi-benign.

Ms. Boyce's research indicates that variances to waterbodies have an approval rate of 77.6 percent. Resource agencies and local non-profit organizations that address fish habitat agree that mitigation to off-set the impacts from these variances has been inadequate, and stream habitat and water quality continue to decline. CBJ currently has five impaired salmon streams (Duck Creek, Jordan Creek, Vanderbilt Creek, Lemon Creek, and Pederson Hill Creek), while many others are perceived as threatened.

Staff will try to obtain a more specific breakdown of waterbody variance requests, approvals, and denials, before the Title 49 committee meeting. However waterbody variances have typically addressed a wide variety of uses, ranging from benign to potentially severe. Following is a partial list:

- Limbing or tree cutting within the 0-25 foot no disturbance zone or 25-50 no development setback. (Tree cutting is not allowed within either range, because the code definition of development includes removal of substantial vegetative cover.) These requests are typically for view enhancement, but occasionally address safety concerns such as falling trees, or, in the case of Jordan Creek at the Juneau International Airport, a need to improve visibility to address safety issues. These requests have also addressed after-the-fact enforcement cases.
- Construction of small structures, such as decks or sheds.
- Restoration activities that require grading, or removal or replacement of vegetation, within the 0-25 foot no-disturbance zone.
- Placement of utilities within the setback.
- Construction of fences within the setback.
- Construction of larger buildings within the setback, occasionally up to and beyond the 0-25-foot no-disturbance zone. These requests have included both single-family homes and commercial buildings.
- Construction of trails, shelters, and other public amenities.
- Construction of new roads within the setback.

Emergency requests in particular present a unique challenge. Both private property owners and government land managers have presented cases where vegetative removal is considered an immediate and urgent need. We currently have no process to evaluate these requests and expedite them if they are warranted.

Initial rough draft ordinance for discussion purposes

With these ideas in mind, staff proposes the following very rough draft for discussion purposes. This approach would require development of Riparian Landscaping Standards and Mitigation Standards.

Delete 49.70.950(f)

Revise 49.70.310 Habitat as follows:

The ordinance would begin with a brief statement of the purpose and intent, which is to protect habitat and water quality, and an explanation of the key elements of habitat and water quality.

- a) All anadromous streams and lakes listed in the most current Alaska Department of Fish and Game Anadromous Waters Catalog shall have an inner setback (0-25 feet) and an outer setback (35-50 feet). The setback shall be measured by the horizontal distance from the Ordinary High Water Mark, as determined by Community Development Department.

[Title 49 will need to be revised to adopt the Comprehensive Plan definition of the Ordinary High Water Mark. The Comprehensive Plan currently dictates that staff, rather than applicants, determine the Ordinary High Water Mark.]

- b) The following uses are allowed within the 0-25 foot setback with approval of a Stream/Lakeside Development Permit, authorized through the departmental review process, provided that those uses meet the Riparian Landscaping Standards and address five mitigation options from the Mitigation Standards requirements listed in subsection —: flood management; stream bank and stream buffer restoration; removal of invasive species; stormwater management; construction of a fence; bridges and related public infrastructure

[To be determined with consultation from ADFG et al]

- c) The following uses are allowed within the 25-50 foot setback with approval of a Stream/Lakeside Development Permit, authorized through the departmental review process, provided that those uses meet the Riparian Landscaping Standards and address five mitigation options from the Mitigation Standards requirements listed in subsection —: removal of trees and vegetation for viewshed enhancement; construction of a fence; trail crossings; bridges and related public infrastructure

[To be determined with consultation from ADFG et al]

- d) The following uses are prohibited within the 0-25 foot inner setback, except when specifically allowed in sections a-c: placement of impervious surfaces;

[To be determined with consultation from ADFG et al]

- e) The following uses are prohibited within the 25-50 foot outer setback, except when specifically allowed in sections a-c : structures with a total square footage of X (or, alternatively, X percentage of the 25-50 foot setback)

- f) The following uses require a Variance: view shed enhancement within the inner buffer;

[This section would list uses deemed higher impact by ADFG et al, which require clear justification.]

- g) Uses unlisted shall be addressed by---

- h) Furthermore, the CDD Director is granted such authority to issue an emergency setback encroachment waiver if the Director determines that the following criteria are met: 1) the setback encroachment addresses a public safety

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need documented in writing by an official of the CBJ Police Department or related office; 2) the setback encroachment requires immediate action on a timeline that cannot be addressed through the Stream/Lakeside Development Permit process or through the Variance process; and 3) the setback encroachment provides mitigation consistent with the Landscaping Standards and Mitigation Standards listed in section ----.

A partial list of outstanding issues:

- 1) Should streambed mining or suction dredge mining be exempt from the setback? Under what terms?
- 2) Tidewater lot lines do not have a required setback. When does the buffer zone change to a zero setback at tidewater?
- 3) Should the city retain a standard for rehabilitation of degraded streams with large developments, per CBJ Code 49.70.950(e)? If so, how should this standard be addressed?
- 4) Are lawns acceptable within the 25-50 foot setback?
- 5) Is limbing and vegetative removal ever acceptable within the 0-25 foot zone except for restoration purposes? (E.g. Jordan Creek airport issue)
- 6) Should trails be allowed? Within both buffers? Under what terms?
- 7) How can CBJ's new stream maps be used to identify buffers in advance, and should this approach be codified?

Other ordinance approaches to consider:

- 1) CDD could conduct an analysis, as many other communities have, of the appropriate setback for each stream or stream type. E.g. some streams may require only a 25-foot setback to protect habitat, while others may need more than 50. This is also listed as an Implementation Action in the 2013 Comprehensive Plan, included at the end of this memo.
- 2) CDD could integrate the setback ordinance with the flood protection ordinance, and incorporate stream buffer measures that specifically address flood control.
- 3) CDD could establish maximum impervious cover requirements within the setback.
- 4) CDD could consider slope analysis.
- 5) CDD could consider buffer averaging: e.g. a property owner could encroach into one area with limited low-impact uses if an overall buffer of 50 feet or greater is maintained in other areas.
- 6) CDD could develop separate variance criteria for habitat impacts. This is listed as an Implementation Action in the 2013 Comprehensive Plan. Staff recommends against this approach, because the Variance process is not the appropriate process to evaluate habitat impacts; the Variance process is used to determine whether unique circumstances warrant the encroachment. The ordinance could then address habitat impacts.

These approaches would delay the ordinance approval process, and funding is not available for additional analysis at this time. Due to the urgency of the revision and a need to minimize controversy, staff recommends retaining the existing setbacks, while allowing for more flexibility and predictability. Pre-defined mitigation and landscaping options will reduce uncertainty for the applicant, while protecting habitat and water quality, per the intent of the ordinance.

Current ordinance and Comprehensive Plan policies for reference

49.70.950(f)

(f) All structures and foundations located adjacent to streams or lakes listed in Table VI-2 of Appendix C of the Juneau Coastal Management Plan, shall have a 50-foot setback from each side of the stream or lake measured from the ordinary high water mark, where feasible and prudent; provided, docks, bridges, culverts and public structures whose

purpose is access to or across the stream or lake are not subject to this policy, and provided further, uses which must be in or adjacent to the stream or lake in order to function, such as mining activities, fish culturing, water supply intakes and similar uses, are exempt from the setback requirement. The setback shall be vegetated or revegetated, where feasible and prudent, and such vegetation or revegetation shall be kept or arranged to maximize shade on the stream.

49.70.310 Habitat.

(a) Development in the following areas is prohibited:

- (1) On Benjamin Island within the stellar sea lion habitat;
- (2) Within 330 feet of an eagle nest on public land;
- (3) Within 50 feet of an eagle nest on private land, provided that there shall be no construction within 330 feet of such nest between March 1 and August 31 if it contains actively nesting eagles;
- (4) Within 50 feet of the banks of streams designated in Appendix B of the comprehensive plan of the City and Borough of Juneau, 2008 Update; and
- (5) Within 50 feet of lakeshores designated in Appendix B of the comprehensive plan of the City and Borough of Juneau, 2008 Update.

(b) In addition to the above requirements there shall be no disturbance in the following areas:

- (1) Within 25 feet of stream designated in Appendix B of the comprehensive plan of the City and Borough of Juneau, 2008 Update; and
- (2) Within 25 feet of lakeshores designated in Appendix B of the comprehensive plan of the City of Borough of Juneau, 2008 Update.

(Serial No. 87-49, § 2, 1987; Serial No. 2008-30, § 3, 10-20-2008)

Definitions 49.80.120.

Development means any of the following:

- (1) Construction, reconstruction or enlargement of a structure involving more than 120 square feet;
- (2) A subdivision;
- (3) Conduct of a home occupation;
- (4) Change in use of a lot, including any structure thereon;
- (5) Installation or emplacement of a mobile or modular home;
- (6) Removal of substantial vegetative cover;

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- (7) Excavation, dredge or fill activity;
- (8) Installation of a sign;
- (9) For the purposes of chapter 49.65, article I, the work performed in relation to a deposit, subsequent to exploration but prior to extraction of commercial quantities of a mineral commodity, aimed at, but not limited to, preparing the site for mining, defining an ore deposit, conducting pilot plant operations, and construction of roads or ancillary facilities;
- (10) Any site work in preparation or anticipation of the above.

Ordinary High Water Mark Definition in Title 49:

Ordinary high water mark means a line or mark impressed on the bank or shore of the non-tidal portion of a river, lake or stream; caused by the long-term action of non-tidal water, and indicated by erosion, shelving, changes in soil characteristics, absence of terrestrial vegetation, presence of aquatic vegetation, or other physical characteristics.

Ordinary High Water Mark Definition from the CBJ 2013 Comprehensive Plan:

ORDINARY HIGH WATER (OHW):

- (1) in the non-tidal portion of a river, lake or stream; the portion of the bed(s) and banks up to which the presence and action of the non-tidal water is so common and usual, and so long continued in all ordinary years, as to leave a natural line or “mark” impressed on the bank or shore and indicated by erosion, shelving, changes in soil characteristics, destruction of terrestrial vegetation, or other distinctive physical characteristics;
- (2) in a braided river, lake or stream; the area delimited by the natural line or “mark,” as defined in part 1 above, impressed on the bank or shore of the outside margin of the most distant channels; or
- (3) In a tidally influenced portion of a river, lake or stream, setbacks shall be taken from mean high water elevation or from the ordinary high water mark, whichever offers greater protection to the water body.

This definition includes the first two numerals of the Alaska Department of Fish and Game definition (to promote agency compatibility with definitions and because this definition is the most detailed), and the second numeral of a previously approved Comprehensive Plan definition, because it is the most detailed regarding tidally influenced areas.

A related section to consider cleaning up is 49.70.950(e):

(e) Each development which adjoins a river or stream which has been degraded by previous human activity shall, as part of its development plan, include provisions for rehabilitation of the stream or river, and shall be approved by the state department of fish and game. Such provisions shall be limited to removal of debris, removal of abandoned machinery and vehicles, grading and stabilization of banks and related cleanup activities, and shall include preservation or restoration of riparian vegetation. Restoration shall not be required beyond that needed to return the area to natural appearance and function; provided, the following are exceptions to this policy:

- (1) Construction of one single-family or duplex dwelling on a lot of record;

- (2) Construction of single-family or duplex dwellings on lots created by subdivisions of four or fewer lots.

2013 Comprehensive Plan Policies

Stream Corridors and Lake Shorelines

Stream courses and lakes possess unique ecological, recreational, and scenic values. Portions of the stream corridors also function as floodways and floodplains and protect against erosion of adjacent properties. Development along stream corridors and lake shorelines can destroy their ecological, scenic and recreational values. It also can cause destruction of stream banks, increased runoff, sedimentation and pollution, and increase the danger of flooding to people and property. Carefully designed and sited development that is responsive to the conditions of the site can diminish the potential negative impacts on these ecosystems as well as surrounding land uses, and may be able to actually enhance degraded stream and lake habitat and water quality. Shoreline values can be maintained and destruction of property from flooding and stream bank erosion minimized by careful management of shoreline development, which primarily takes the form of requiring development to be set back from shorelines of creeks, streams and lakes and to retain or restore natural vegetation. The Land Use Code provides for some basic, or minimum, streamside protection. Additionally, many parcels along the Mendenhall River have been purchased by the CBJ government as greenbelt areas, providing greater protection for these water bodies and habitats. Further efforts are required to protect those and other stream corridors and to coordinate the various management and enhancement activities.

POLICY 7.3. TO PROTECT RIPARIAN HABITAT, INCLUDING STREAM CORRIDORS AND LAKE SHORELINES, FROM ADVERSE EFFECTS OF DEVELOPMENT AND TO PROVIDE A HIGHER LEVEL OF PROTECTION FOR NON-URBAN SHORELINES IN PUBLIC OWNERSHIP.

Development Guidelines

7.3 - DG1 Rivers, streams, and lakes should be managed so as to protect natural vegetation, water quality, fish or wildlife habitat, and natural water flow.

7.3 - DG2 On publicly-owned lands, designated on the Land Use Code Maps as not appropriate for development an area extending 200 feet from the Ordinary High Water Mark (OHWM) of the shorelines or stream corridors of the anadromous fish creeks, streams, and lakes listed in the most recently CBJ-adopted Alaska Department of Fish and Game (ADF&G) inventory of anadromous fish streams. On CBJ-owned lands that are not designated for disposal in the 1999 CBJ *Land Management Plan*, maintain 200 foot stream buffers from the OHWM of the shorelines of the following anadromous fish streams: Peterson Creek (out-the-road), Shrine Creek, Bridget Creek, Cowee Creek, Davies Creek, Peterson Creek (northwest Douglas Island), Eleven Mile Creek, Middle Creek, and Hilda Creek. This buffer zone or setback may be adjusted or altered, on a case-by-case basis, when a scientific analysis of the specific function(s) of the particular creek's value(s) finds that the setback should be more based on its functional value(s).

7.3 - DG3 On privately-owned lands, require a minimum setback of 50 feet from the OHWM of all creeks, stream corridors and lake shorelines listed in the most recently CBJ-adopted ADF&G inventory of anadromous fish streams. This 50-foot setback is to be considered a basic or minimum setback from the water body and its riparian habitat until a biological functional analysis of the water body and adjacent habitat is conducted that identifies a specific greater or lesser setback distance appropriate to the development and functional value of the particular water body and associated riparian habitat, and an ordinance amending that setback is adopted.

7.3 - DG4 CBJ Community Development Department staff will determine the OHWM on properties subject to development permits. OHWM determinations will be based on habitat and biological considerations according to the adopted OHWM definition in Title 49, the Land Use Code.

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Implementing Actions

7.3 – IA1 Fund an effort to develop for adoption into the Land Use Code a riparian habitat protection ordinance that tailors riparian standards to the particular stream-type, functional value and location and which would be consistent with, and complementary to, related Title 49 regulations protecting wetlands, flood zones and coastal areas.

7.3 – IA2 Amend the Land Use Code to update the definition of OHWM as soon as possible.

7.3 – IA3 Investigate the feasibility of providing tax incentives and tax relief for property owners who implement riparian or wetland habitat protection and conservation measures and improvements to their land, such as easements, restoration and assured Best Management Practices (BMPs) maintenance activities.

7.3 – IA4 Require recorded easements on plats and on property records for major developments to provide public access to shorelines and stream corridors, consistent with appropriate statutory and case law.

7.3 – IA5 Give high priority to public acquisition of open space/natural areas and/or public recreation easements to the stream corridor of Pederson Hill Creek (aka “Casa Del Sol Creek”) to add to the recent public acquisition of stream corridors of Montana Creek and the west side of the Mendenhall River.

7.3 – IA6 Where development or other causes have led to serious stream bank erosion, undertake programs, in cooperation with other appropriate agencies and private owners, to restore degraded stream banks and prevent further erosion in a manner that provides erosion protection and safe fish habitat.

7.3 – IA7 The Wetlands Review Board (WRB) should advise the Planning Commission regarding direct and cumulative impacts to riparian functions when variances to stream and lakeshore setbacks are requested by Applicants. The WRB should also make recommendations regarding appropriate mitigation measures when such variances are deemed warranted by the WRB and Planning Commission.

7.3 - IA8 Amend the Land Use Code to include additional criteria in the grounds for variance standards that require an evaluation of impacts to habitat and water quality for variance requests from streamside and lakeshore setbacks, and to provide for mitigation when variances to stream or lakeshore setbacks are granted.

7.3 - IA9 The CBJ government should designate publicly-owned shoreline areas along the roaded areas of the borough for public access recreation, stream corridor protection and/or wildlife access protection areas.

7.3 - IA10 Conduct biological functional analyses on streams and adjacent habitat to determine the appropriate setback from each of the following streams for new development on CBJ—owned land: Peterson Creek (out-the-road), Shrine Creek, Bridget Creek, Cowee Creek, Davies Creek, Peterson Creek (northwest Douglas Island), Eleven Mile Creek, Middle Creek, and Hilda Creek. Once the appropriate stream corridor width has been determined for a stream, adopt that stream corridor as a required protection area in the Comprehensive Plan and/or Land Use Code.

POLICY 7.4. TO ADOPT THE MOST RECENT ALASKA DEPARTMENT OF FISH AND GAME (ADF&G) INVENTORY OF ANADROMOUS FISH STREAMS FOR USE IN REVIEWING DEVELOPMENT PROPOSALS ON LAND CONTAINING WATERBODIES.

Implementing Actions

7.4 - IA1 Annually adopt by ordinance or resolution the most recent list of anadromous fish streams pursuant to the ADF&G annual or biannual inventory entitled Waters Important to Spawning, Rearing, or Migration of Anadromous Fishes—Southeastern Region. Update the CBJ’s GIS database and mapping layers and the CBJ Open Space Resolution as additions or corrections are made to the list. The CBJ should make the adopted updated list on the city’s website.

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7.4 - IA2 Concurrently with adoption of the ADF&G annual or biannual inventory of anadromous fish streams in the borough, revise the Land Use Code §49.70.310(a)(4) to state “Within 50 feet of the banks of streams designated as anadromous fish habitat by the most recently CBJ adopted inventory of anadromous fish streams listed by the Alaska Department of Fish and Game.”

7.4 - IA3 Revise the CBJ 49, the Land Use Code, to compile all of the requirements for stream and lake shoreline management that are now under Habitat and Wetlands Management and map water bodies and riparian habitat subject to those regulations and guidelines on the CBJ GIS system.



Community Development

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DATE: September 16, 2016

TO: Title 49 Committee

FROM: Jill Maclean
 Senior Planner

VOICE (907) 586-0756
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CC: Beth McKibben, Planning Manager
 Rob Steedle, Director of Community Development

SUBJECT: Proposed Changes to CBJ 49.40 Parking & Traffic – Reduction in Parking in Downtown Douglas (AME2016 0013)

Staff was directed by the Assembly to review parking requirements in downtown Douglas, and the possibility of creating a parking overlay district similar to the Parking District 1 (PD1) and Parking District 2 (PD2) in downtown Juneau. This action was spurred by the desire of a property owner to lease and operate a convenience store. The property under the current code is required to have five off-street parking spaces—three for the convenience store, and one for each of the two apartments located in the same building.

In an effort to update Title 49 specifically for parking requirements in the downtown Douglas area, staff reviewed the Comprehensive Plan, zoning in the area, Table of Minimum Parking Standards (TMP) and the Table of Permissible Uses (TPU), identifying areas in need of updating due to lack of off-street parking availability in the neighborhood.

A neighborhood meeting was held on September 6, 2016 in the Douglas Public Library. Approximately 25 residents/property owners attended, not including representatives from the Community Development Department and Alaska Department of Transportation and Public Facilities (see Attachment A). Attached are the meeting notes and PowerPoint presentation for your review and information (see Attachments B and C).

Staff presented the proposal of a parking district similar to those located in downtown Juneau (see Attachment C), with a 50% reduction in parking. After discussion and questions a member of the public suggested reductions on a case-by-case basis rather than a district. This proposal was unanimously supported by those present. Another suggestion from the public, which was supported by most, was that single-family dwellings should be excluded from the reduction.

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Reduction in Parking in Downtown Douglas
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Staff has outlined several options (see table below) and their potential effects for reducing parking requirements in the downtown Douglas area. There are several items of note that should be considered:

1. Parking districts are not appealable—it is a blanket reduction of the standard parking requirements without regard to any unique aspects of use or location;
2. Waivers run with the use AND the property—creating greater flexibility, responsiveness to need, and potentially lessening impacts to the surrounding area;
3. In developing a waiver mechanism, the ordinance could state that certain conditions must be met. For example, if the property has the ability to provide parking, then parking must be provided; if the reduction of parking serves a public benefit such as economic development; or if the inability to provide parking is hindering redevelopment; and
4. Waivers are appealable.

Please let me know if you have any questions.

Thank you.

	Public Process	Appealable?	Pros	Cons
Parking District	No	No	1. Speediest reduction allowed by-right regardless of use (unless specifically excluded in the ordinance).	1. Automatic reduction for the % approved for the district which may not be enough. 2. Reduction may not be appropriate for uses with heavier impacts to the neighborhood. 3. There is no appeal process.
Waivers by Planning Commission	Yes	Yes – to the Assembly	1. Allows for public input through a public hearing process. 2. Waivers run with the location AND the use, unlike a variance, which runs with the property. 3. Ordinance could provide criteria that must be met in order to grant a reduction. 4. Allows for greater flexibility given the needs of the property and use.	1. The timeframe is the longest of the three proposals due to public hearing process. 2. Not by-right. 3. Uncertainty.
Waivers by Director Discretion	No	Yes – to the Planning Commission;	1. Allows for efficient processing of reduction requests; could require applicant to provide evidence of neighbors support similar to De Minimis Variances process [CBJ 49.20.250 (C)]. To be clear, <u>a waiver is not variance</u> . 2. Could provide a process for neighbors to participate by voicing support via letters with the application OR concerns if they choose to appeal. 3. Waivers run with the location AND the use, unlike a variance, which runs with the property. 4. Ordinance could provide criteria that must be met in order to grant a reduction. 5. Allows for greater flexibility given the needs of the property and use.	1. Not by-right. 2. Uncertainty.

NEIGHBORHOOD MEETING - DOUGLAS PARKING - SEPTEMBER 6, 2016

[illegible]

Douglas Parking Public Meeting – 9/6/2016
6pm Douglas Library

CDD Staff proposed a 50% parking requirement reduction in a Douglas parking overlay district.

AKDOT staff mentioned that if a parking district overlay were implemented they may consider restricting on street parking to one side of Third Street every other day for snow removal in the winter months.

The public asked where people would park their cars if parking on Third were reduced in half in the winter. They commented that people park there because they have nowhere else to park.

Joyce (last name?) 1214 1st Street – asked how the Douglas parking became a big issue. Kristin Cadagan replied that it became an issue when she tried to open a convenience store and the store couldn't operate because it couldn't meet the parking requirement. She looked for auxiliary parking, but there was none available. She stated that Douglas can't develop since most sites cannot meet their parking requirement.

Tom Gilson 314 C Street – Before Douglas was part of the Borough there were no parking requirements. There are now a lot of nonconforming houses that do not provide off street parking.

Bill Janes commented that people do not pay attention to parking restrictions and the CBJ should turn the other way so the convenience store can operate. The regulations should be bent to what works for Douglas.

Robert Gintilly asked that whatever is adopted, he would like the Waterfront Industrial land to be included.

Brad Curee owner of Treadwell Place (4-plex) supports anything that can help businesses open in Douglas. Does not support winter parking restrictions. Does not want to see regulations that solve one problem and cause others. He also inquired whether the City had looked for land to lease out for parking

Arnold Liebelt supports reductions that foster businesses but is cautious about reductions for D-18 or residential dwellings in general. He suggested a parking waiver that relies on public comment on a case by case basis. 4 ways were heard in the crowd.

One member of the public wanted to see the reduction expanded to 80%

Several members stated they didn't think the proposed overlay was solving the problem and felt the waiver fit the community best.

Heidi Olson supports waiver for commercial but not residential

Laura Boyce explained to the crowd that if a waiver was adopted it would be approved by the Board of Adjustment.

One member asked how often the parking lot behind the library is full and if an agreement could be made.

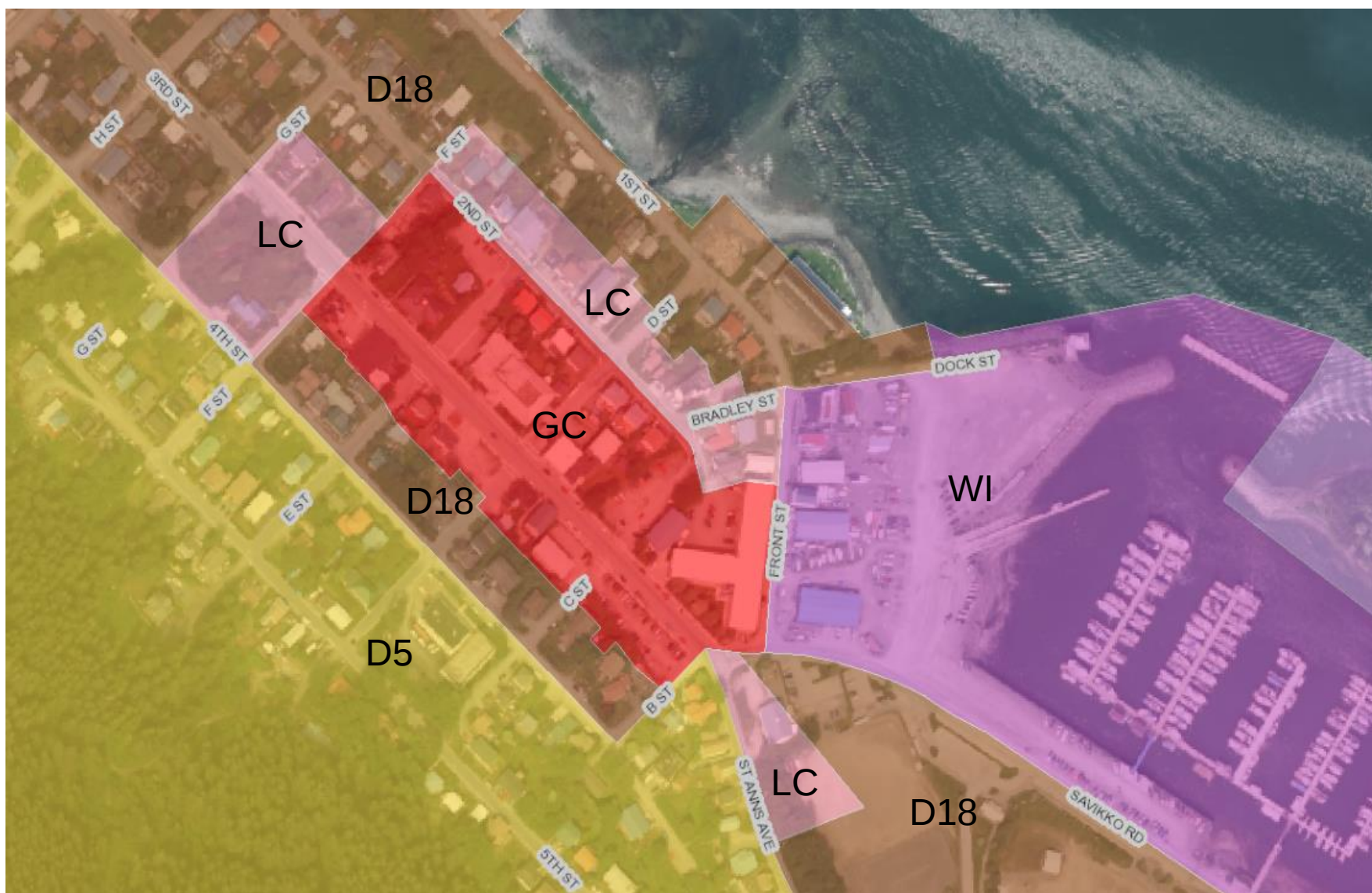
Richard Bolon asked how many people present parked on the street. Approximately half the crowd raised their hand.

Overall group was frustrated there was a faster solution for the convenience store operators.

AME2016-0013 Proposed Douglas Parking District

Neighborhood Meeting
September 6, 2016

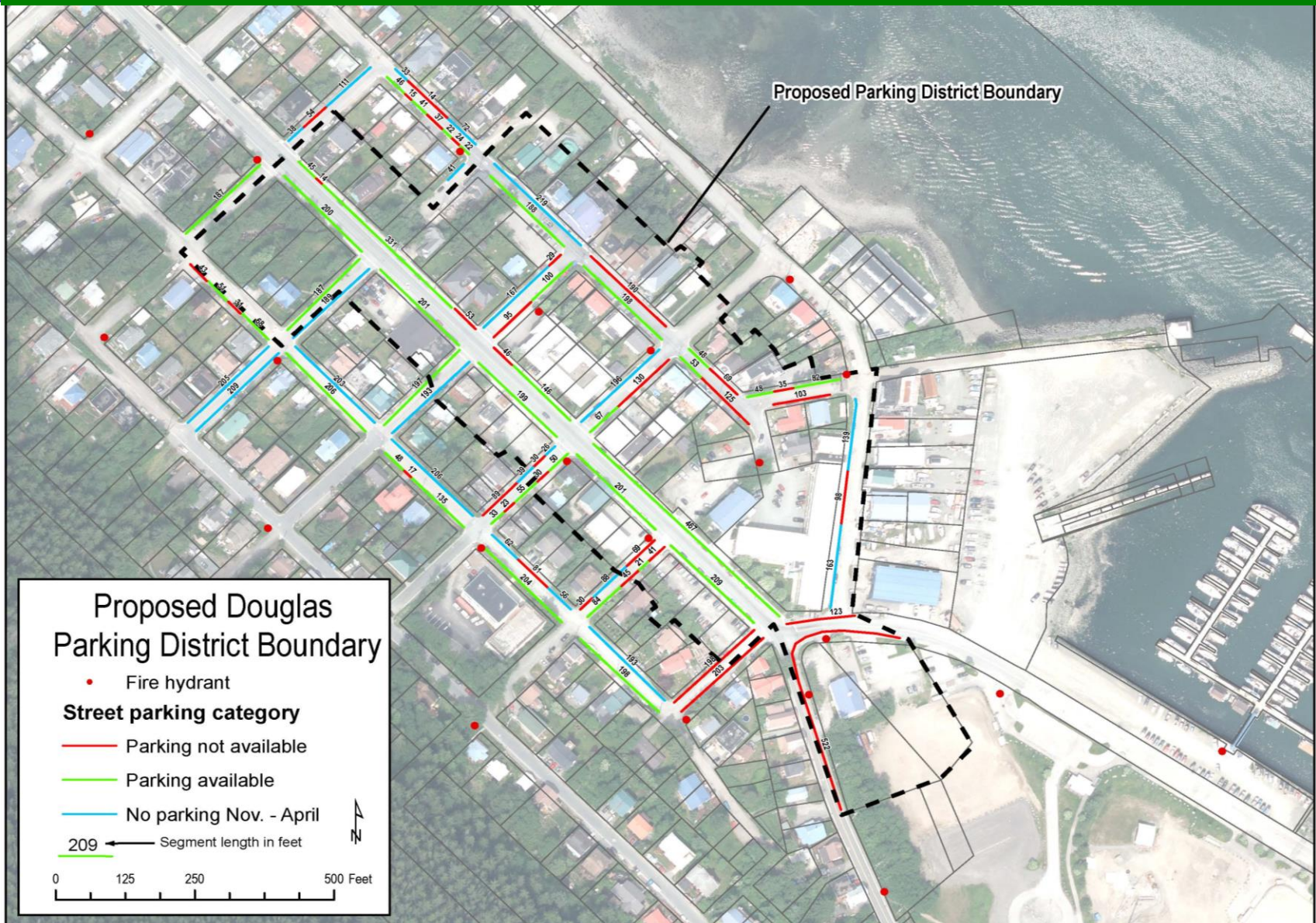
Area Zoning



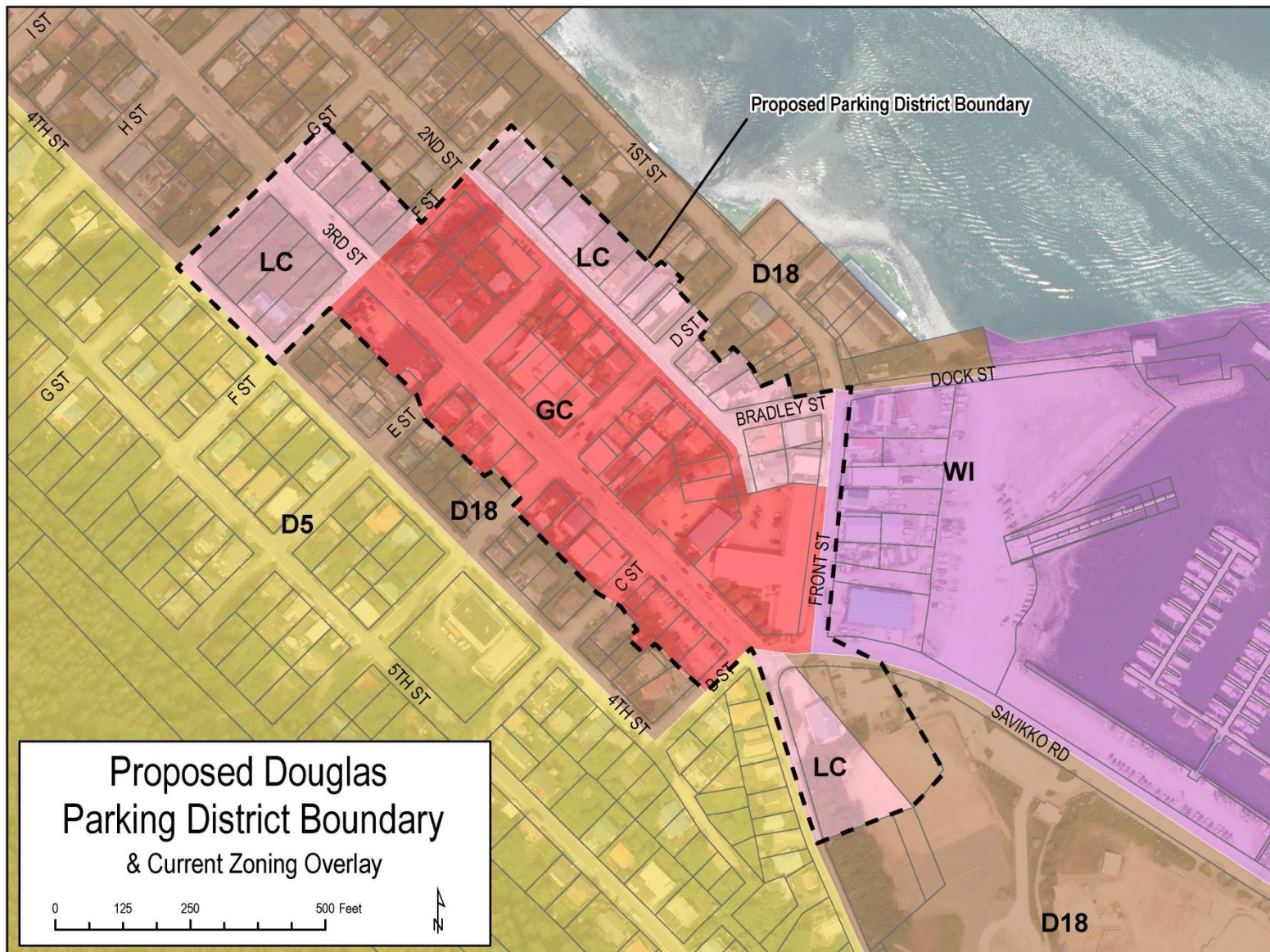
Uses & Current Parking Requirements

ZONING	ZONING DISTRICT DESCRIPTION	LAND USE EXAMPLES	CURRENT PARKING REQUIREMENTS
D18	Mid-rise type residential; intended to accommodate multi-family development of 18 dwelling units per acre	Single-family, Multi-family dwellings; Child-care; Home occupations; Light manufacturing	<u>Single-family/duplex</u> – 2 per dwelling; <u>Multi-family</u> – 1 per 1 bedroom; 1.5/2 bedroom; 2 per 3 or 4 bedroom
Light Commercial (LC)	Intended to accommodate commercial development that is less intensive than general commercial; most use are allowed in GC, but in LC require a Conditional Use Permit; residential use is allowed	Single-family, Multi-family dwellings; Child-care; Sales & rental goods; Professional offices; Light manufacturing; Health care clinics; Dry cleaners	<u>Child-care</u> – 1per employee plus 1 per every 10 children; <u>Bank/offices</u> – 1 per 300 sq. ft. of gross floor area; <u>Brewery</u> – 1 per 200 sq. ft. of gross floor area
General Commercial (GC)	Intended to accommodate most commercial uses; residential use is allowed	Single-family, Multi-family dwellings; Sales & rental goods, merchandise, equipment; Laboratory, research uses; Restaurants	<u>Convenience store</u> – 1 per 250 sq. ft. of gross floor area; <u>Repair/service station</u> – 5 spaces per bay; <u>Restaurant</u> – 1 per 200 sq. ft. of gross floor area

Current Available On-Street Parking



Proposed District



Uses & Current Parking Requirements

ZONING	ZONING DISTRICT DESCRIPTION	LAND USE EXAMPLES	CURRENT PARKING REQUIREMENTS	PROPOSED PARKING REQUIREMENTS
D18	Mid-rise type residential; intended to accommodate multi-family development of 18 dwelling units per acre	Single-family, Multi-family dwellings; Child-care; Home occupations; Light manufacturing	<u>Single-family</u> – 2/dwelling; <u>Multi-family</u> – 1/1 bedroom; 1.5/2 bedroom; 2/3 Or 4 bedroom	Reduce by 50% All Uses?
Light Commercial (LC)	Intended to accommodate commercial development that is less intensive than general commercial; most are allowed in GC, but in LC require a Conditional Use Permit; residential use is allowed	Single-family, Multi-family dwellings; Child-care; Sales & rental goods; Professional offices; Light manufacturing; Health care clinics; Dry cleaners	<u>Child-care</u> – 1/employee plus 1/every 10 children; <u>Brewery</u> – 1/200 sq. ft. of gross floor area; <u>Bank/offices</u> – 1/300 sq. ft. of gross floor area	Reduce by 50% All Uses?
General Commercial (GC)	Intended to accommodate most commercial uses; residential use is allowed	Single-family, Multi-family dwellings; Sales & rental goods, merchandise, equipment; Laboratory, research uses; Restaurants	<u>Convenience store</u> – 1/250 sq. ft. of gross floor area; <u>Repair/service station</u> – 5 spaces/bay; <u>Restaurant</u> – 1/200 sq. ft. of gross floor area	Reduce by 50% All Uses?

Next Steps:

- ☐ Present proposal to the Planning Commission Title 49 Subcommittee for review and comment
 - ☐ **September 21, 2016 - Title 49 Committee Meeting**
(public may submit comments in writing ahead of time; public testimony may be allowed)
- ☐ Public Hearing before the Planning Commission for their recommendation (favorable or not favorable)
 - ☐ **October 11, 2016 - Planning Commission Agenda**
(tentative)
- ☐ Public Hearing before the Assembly for their final approval or denial

AME2016-0013

Proposed Douglas Parking District

QUESTIONS?

September 17, 2016

Dear members of the Title 49 Subcommittee,

I attended the public meeting on Sept 6 where CBJ was taking public testimony from Douglas residents about the potential changes in parking in the downtown area.

As I understand it, there is a proposal to reduce the required off-street parking requirements for three area zonings. I strongly support the restrictions being reduced for GC and LC zoning to encourage commercial business entities who might consider investing in the community. I see an increase to on-street parking within these zones as a temporary occurrence. I also think that if parking is an issue for customers, the natural evolution for that business will either survive or die depending on the worth customers see in the business itself. I would expect that most customers who would be patrons will also be those within the neighborhood who will be walking or on bikes.

I do not support any parking reduction to D18 residential zoning areas, in fact, I'd propose you actually increase the number of off-street parking spaces required for multi-family residences. Reduced off-street parking requirements will result in more on-street parking. I strongly believe that more on-street parking is a safety issue with blind access to kids and pets who might emerge from between on-street parked cars. When I was looking for a home to purchase one of the requirements was that it have off-street parking. There is a no parking sign on one side of my drive but not on the other. There have been countless times when I have been unable to see oncoming traffic and have (luckily) avoided any collisions. But the potential is there. Increased on-street parking is a hinderance to snow removal. I also see increased on-street parking as a potential conflict area and general annoyance for neighbors.

One of the other solutions that was discussed at the public meeting was to leave the parking requirements the same and have the planning committee be open to allow for waivers. This seems like a solution that is open to bias and inequity, has the potential to slow down the process for business owners, and may discourage new business owners from even considering opening a new business.

Thanks for your consideration,

Heidi Olson
918 1st Street, Douglas
907-523-8425



Community Development

City & Borough of Juneau • Community Development
155 S. Seward Street • Juneau, AK 99801
(907) 586-0715 Phone • (907) 586-4529 Fax

DATE: September 14, 2016

TO: Title 49 Committee

FROM: Teri Camery, Senior Planner
Community Development Department

SUBJECT: Proposed Revisions to CBJ Code 49.70.310(a)(2 and 3), Eagle Nest setbacks

Background

At the last meeting CDD staff provided a brief overview and background on the need to revise the eagle nest setback ordinance and proposed initial draft language for the committee to consider. The committee made the following suggestions to staff:

- 1) Lands under public ownership should retain the larger setback (330 feet), rather than the reduction to the same standard as private land (50 feet, with 330 feet only during the nesting season), as staff proposed at the previous meeting.
- 2) Staff should develop ordinance language specific to road construction, and make a distinction between road construction and repaving. The ordinance could have different requirements based on road types. The same relaxation should not be allowed for all roads.
- 3) Evaluate other activities that are noisy and disruptive to eagles, such as generators.
- 4) The ordinance needs to establish how the buffer is measured; e.g. from the base of the tree, or the actual location of the eagle nest in the tree.

Review

Regarding suggestion number one, staff has changed the draft ordinance to retain the larger buffer on public lands.

Regarding suggestion number two, staff respectfully disagrees with this approach. Road classifications change on a regular basis; therefore regulations based on these classifications would also change regularly and make implementation of the ordinance challenging. With road maintenance, alignments are predetermined and cannot be altered based on the location of eagle nests. For new construction, routes are determined by slope, public safety, and other considerations. In staff's experience, routes have never been altered based on the location of an eagle nest. As an alternative, staff suggests that road maintenance and road construction should be exempt from the eagle nest setback if the applicant has obtained an Eagle Take Permit from the U.S. Fish and Wildlife Service (USFWS). (The term "take" in

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the federal permit refers to any impact on eagles within the buffer; it is not restricted to actual removal of the nest. These permits typically require eagle monitoring and other measures to mitigate impacts.)

Regarding suggestion number three on other activities that may be disruptive, staff met with the USFWS raptor biologist, Steve Lewis, last year to review which activities were benign versus harmful. The current draft ordinance is based on this discussion. Mr. Lewis will attend the upcoming meeting to answer questions on impacts, and he can also provide information on what the USFWS Eagle Take permit addresses and the mitigation that USFWS requires through this process.

Regarding the final suggestion, staff recommends that the buffer be measured from the base of the tree in all circumstances. This measurement will be accurate within a few feet. It is not practical for staff to assess the exact distance.

Second Proposed Revision

- 1) Development within 330 feet of an eagle nest on public land is prohibited.
- 2) Development within 50 feet of an eagle nest on private land is prohibited.
- 3) Development within 330 feet of an eagle nest is prohibited in areas outside of the Urban Service Boundary on public and private land during the nesting season, from March 1 through August 30.
- 4) For purposes of sections 1-3 only, development includes the following: a) removal of a tree (or trees) over 10 inches in diameter; b) any work that requires a grading permit; c) construction of a structure that is over six feet tall and has a solid roof; d) blasting; and e) developments with similar impacts as determined by the CDD Director.
- 5) Road maintenance and road construction are exempt from the ordinance if the property owner has obtained an Eagle Take Permit from the U.S. Fish and Wildlife Service.
- 6) The buffer distance shall be measured from the base of the tree that contains the nest.
- 7) Developments which cannot meet the requirements of Sections 1-4 must meet the following standards:
 - a) Placement of concrete and asphalt may occur from June 15-July 15 if placement occurs within an area that has already been cleared.
 - b) Activities that require a grading permit may occur from June 15-July 15 if the activity occurs within an area that has already been cleared.

This revision seeks to address the following issues:

- Eliminates the requirement to determine whether a nest has actively nesting eagles. USFWS does not have the staff resources to make this determination, and CDD staff do not have the time nor the training. We have a hard enough time determining if a nest is even there.
- Avoids using the code definition of development. The code definition of development has many elements that are irrelevant to impacts to eagle nests. A strict application of the current definition would require variances for home occupations that have no noise or construction impacts whatsoever, as just one example. The new proposed definition of development, which

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is specific to the eagle nest setback section only, is limited to activities that are most harmful to eagles, according to USFWS.

- Sets a lower standard for urban eagle nests and a higher standard for nests outside of the urban service boundary. The proposed revision establishes a 50-foot no-development setback for all nests within the urban service boundary, and eliminates the 330-foot no development setback during the nesting season (March 1-August 31). The USFWS believes that lowering this nesting season restriction is acceptable because urban eagles are usually (though not always) more habituated to noise. The 330-foot no-development buffer during the nesting season would continue to apply only in rural areas outside of the Urban Service Boundary where eagles are typically less habituated to noise.
- Sets standards that define acceptable impacts. For developments that cannot comply with the basic no development standard, CDD staff have worked with USFWS to determine activities that are not harmful if the activities are conducted in the middle of the nesting season. This is the period from June 15-July 15, after eaglets have hatched and before eaglets have fledged. CDD's goal is to encourage compliance through attainable standards and make variances the exception.
- Exempts road construction and road maintenance from the buffer requirements if the landowner has obtained an Eagle Take Permit from the US Fish and Wildlife Service.

Current ordinance and Comprehensive Plan policies for reference

CBJ Code 49.70.310(a)(2 and 3) states:

(a) *Development in the following areas is prohibited:*

(2) *Within 330 feet of an eagle nest on public land;*

(3) *Within 50 feet of an eagle nest on private land, provided that there shall be no construction within 330 feet of such nest between March 1 and August 31 if it contains actively nesting eagles;*

The Code definition of development (49.80.120) states:

Development means any of the following:

(1) *Construction, reconstruction or enlargement of a structure involving more than 120 square feet;*

(2) *A subdivision;*

(3) *Conduct of a home occupation;*

(4) *Change in use of a lot, including any structure thereon;*

(5) *Installation or emplacement of a mobile or modular home;*

(6) *Removal of substantial vegetative cover;*

(7) *Excavation, dredge or fill activity;*

(8) *Installation of a sign;*

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- (9) For the purposes of [chapter 49.65](#), article I, the work performed in relation to a deposit, subsequent to exploration but prior to extraction of commercial quantities of a mineral commodity, aimed at, but not limited to, preparing the site for mining, defining an ore deposit, conducting pilot plant operations, and construction of roads or ancillary facilities;*
- (10) Any site work in preparation or anticipation of the above.*

The 2013 CBJ Comprehensive Plan states the following:

POLICY 7.14. TO PROTECT AREAS SURROUNDING IDENTIFIED EAGLE NESTS FROM CONFLICTING LAND USES.

Standard Operating Procedures

7.14 - SOP1 Mature trees that, typically, are suitable for eagle nests should be retained within 1/8th of a mile of the coast.

7.14 - SOP2 In situations where lands are proposed for private platting next to CBJ-owned lands, and if the private party is willing, the CBJ government will consider exchanging land of equal value for those lands within 330 feet of the eagle nest tree and retain it as an eagle management area.

7.14 - SOP3 Prohibit the cutting of trees near shoreline areas for the purpose of eradicating nesting eagles or of preventing eagles from nesting therein.

The full text and additional implementing actions regarding eagle nests in the Comprehensive Plan have been included as an attachment to this document.



Community Development

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

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.