

Agenda

Planning Commission - Regular Meeting City and Borough of Juneau Ben Haight, Chair

February 27, 2018
Assembly Chambers
7:00 PM

I. ROLL CALL

II. REQUEST FOR AGENDA CHANGES AND APPROVAL OF AGENDA

III. APPROVAL OF MINUTES

A. January 23, 2018 Draft Minutes - Regular Planning Commission Meeting

IV. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS

V. CONSENT AGENDA

A. CSP2018 0002: A consistency review for the lease of the Eagle Valley Center ropes course to Southeast Alaska Independent Living (SAIL)

VI. UNFINISHED BUSINESS

A. AME2016 0002: A text amendment to CBJ code 49.20 regarding variances

VII. REGULAR AGENDA

VIII. OTHER BUSINESS

A. Planning Commission Committee Assignments

IX. STAFF REPORTS

X. COMMITTEE REPORTS

XI. LIAISON REPORTS

XII. CONTINUATION OF PUBLIC PARTICIPATION ON NON-AGENDA ITEMS

XIII. PLANNING COMMISSION COMMENTS AND QUESTIONS

XIV. EXECUTIVE SESSION

A. Attorney update regarding the Granite Mountain Properties LLC appeal of USE2017 0006.

XV. ADJOURNMENT

Agenda
Planning Commission
Regular Meeting
CITY AND BOROUGH OF JUNEAU
Ben Haight, Chairman
January 23, 2018

I. ROLL CALL

Ben Haight, Chairman, called the regular meeting of the City and Borough of Juneau (CBJ) Planning Commission (PC), held in the Assembly Chambers of the Municipal Building, to order at 7:05 p.m.

Commissioners present: Ben Haight, Chairman; Paul Voelckers, Vice Chairman; Michael LeVine, Nathaniel Dye, Dan Miller, Dan Hickok, Kirsten Shelton, Carl Greene

Commissioners absent: Percy Frisby

Staff present: Rob Steedle, CDD Director; Beth McKibben, Planning Manager; Teri Camery, Senior Planner; Laura Boyce, Senior Planner; Allison Eddins, Planner II; Amy Liu, Planner I; Robert Palmer, Assistant Attorney II; Dan Bleidorn, Deputy Lands Manager

Assembly members: Beth Weldon, Loren Jones, Jerry Nankervis

At the request of Mr. Steedle, the Planning Commission approved the relocation of AME2016 0002, a text amendment of CBJ code 49.20 regarding variances, to the end of the agenda.

II. APPROVAL OF MINUTES

December 12, 2017 Draft Minutes - Regular Planning Commission Meeting

MOTION: *by Mr. LeVine, to approve the December 12, 2017, Planning Commission minutes with any minor alterations by staff or Commission member.*

The motion passed with no objection.

III. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS - None

IV. PLANNING COMMISSION LIAISON REPORT

Assembly Liaison to the Planning Commission Beth Weldon reported that on January 22, (2018), the Assembly approved the filing of an annexation petition with the local Boundary Commission. The Assembly is also considering how to participate in the Hydro One AEL&P purchase, she reported. The Assembly passed an ordinance amending the Land Use Code regarding eagle nests and eagle habitats. The Assembly also approved the adoption of the Lemon Creek Area Plan, said Ms. Weldon. The next meeting of the Public Works, Lands Committee, and Committee of the Whole will be Monday, January 29, (2018). The next regular meeting of the Assembly is February 12, (2018).

V. RECONSIDERATION OF THE FOLLOWING ITEMS

AME2017 0013: A request to rezone 7.06 acres from D-10 Residential to Light Commercial
Applicant: Douglas Island Development LLC
Location: 3853 Bayview Ave, 12020 Glacier Highway, 11998 Glacier Highway, 11950 Glacier Highway

Staff Recommendation

Staff recommends that the Planning Commission concur with the Director's analysis and findings and recommend approval to the Assembly for a rezone request to change 7.06 acres located at 3853 Bayview Avenue, 12020 Glacier Highway, 11998 Glacier Highway, and 11950 Glacier Highway from D-10 to LC (Light Commercial).

MOTION: *by Mr. Miller, to reconsider AME2017 0013 for purposes of discussion.*

Mr. Miller said the Ad Hoc Auke Bay Area Plan Committee held a meeting several weeks ago during which the implementation of various actions for the Auke Bay Area Plan were discussed. Another meeting for this committee is scheduled for January 30, (2018), said Mr. Miller, to discuss the creation of a new zone for a Traditional Town Center for Auke Bay, he said. The committee also requested that Mr. Steedle communicate with the CBJ mapping department to discuss the potential for development of a grid-like road system on what is primarily private property.

Chairman Haight noted that Mr. Frisby and Ms. Shelton were absent at the last meeting when this item was discussed. Only Commission members present at the last meeting can vote on this issue at this meeting, he noted.

Roll Call Vote:

Yeas: Miller, Dye, Greene, Haight

Nays: Hickok, Voelckers, LeVine

The motion failed.

VI. CONSENT AGENDA

Mr. Dye said he has a potential conflict which he leaves up to the discretion of the Commission. He said he manages property adjacent to one of the lots being sold under CSP2017 0017.

The Commission voiced no objection to Mr. Dye voting on this item.

Mr. Miller said he has a conflict pertaining to items USE2017 0028 and USE 2017 0029. He owns those properties.

Chairman Haight said in the past he was involved with items USE2017 0028 and USE 2017 0029. His involvement was only with the properties, not the tenants, he clarified.

The Commission voiced no objection to Chairman Haight's participation with those items.

USE2017 0028: A Conditional Use Permit for a marijuana retail store.
Applicant: The Mason Jar
Location: 2771 Sherwood Lane

Staff Recommendation

It is recommended that the Planning Commission adopt the Director's analysis and findings and grant the requested Conditional Use Permit. The permit would allow the development of a 1,500 square foot marijuana retail facility in the Industrial zoning district.

The approval is subject to the following conditions:

1. Prior to Certificate of Occupancy for development on Lots 5, 7, 8, and 9 of ANDSOH Subdivision, a bioswale shall be installed between the access and utility easement for Lots 5, 7, 8, and 9 of ANDSOH Subdivision and Pederson Hill/ Casa del Sol Creek; and the applicant shall implement storm water best management practices.
2. All waste containing marijuana product shall be stored in a locked enclosure until transported to the CBJ landfill.
3. Prior to the issuance of a Certificate of Occupancy, the applicant must submit a parking plan showing the required number of parking, loading, and accessible

spaces, and circulation aisles (as applicable). The plan must show how the ADA space will be clearly marked as required by CBJ 49.40.210(e).

4. Prior to issuance of a Certificate of Occupancy a minimum of 777 square feet of live vegetative cover shall be provided, and shown on a site plan reviewed and approved by CDD.
5. Exterior lighting shall not be used in a manner that produces glare on adjacent roads or neighboring property. All exterior lighting fixtures shall be a full cut-off design.

USE2017 0029: A Conditional Use Permit for a marijuana cultivation facility

Applicant: Herb'n Legends

Location: 2771 Sherwood Lane

Staff Recommendation

It is recommended that the Planning Commission adopt the Director's analysis and findings and grant the requested Conditional Use permit. The permit would allow the development of 1,200 square foot marijuana cultivation facility in the Industrial zoning district.

The approval is subject to the following conditions:

1. Prior to Certificate of Occupancy for development on Lots 5, 7, 8, and 9 of ANDSOH Subdivision, a bioswale shall be installed between the access and utility easement for Lots 5, 7, 8, and 9 of ANDSOH Subdivision and Pederson Hill/ Casa del Sol Creek; and the applicant shall implement storm water best management practices.
2. All waste containing marijuana product shall be stored in a locked enclosure until transported to the CBJ landfill.
3. Prior to the issuance of a Certificate of Occupancy, the applicant must submit a parking plan showing the required number of parking, loading, and accessible spaces, and circulation aisles (as applicable). The plan must show how the ADA space will be clearly marked as required by CBJ 49.40.210(e).
4. Prior to issuance of a Certificate of Occupancy a minimum of 777 square feet of live vegetative cover shall be provided, and shown on a site plan reviewed and approved by CDD.
5. Exterior lighting shall not be used in a manner that produces glare on adjacent roads or neighboring property. All exterior lighting fixtures shall be a full cut-off design.

CSP2017 0017: A consistency review for purchase of one lot, and the sale of four CBJ owned lots in an Industrial (I) zone.

Applicant: City & Borough of Juneau, Division of Lands & Resources, and Department of Engineering and Public Works (RecycleWorks Program)

Location: 1721 Anka Street (lot purchase), 5436 Commercial Boulevard and 5233 Shaune Drive (lot sale)

Staff Recommendation

Staff recommends that the Planning Commission forward the subject proposal to the Assembly with a recommendation of approval.

CSP2017 0018: Renewal of a lease for an existing communications tower on CBJ land at the West Juneau reservoir site at the end of Jackson Road

Applicant: City & Borough of Juneau

Location: 3000 Jackson Road

Staff Recommendation

Staff recommends that the Planning Commission find CSP2017 0018 consistent with the 2013 Comprehensive Plan and Title 49 and forward a recommendation of approval to the Assembly.

MOTION: *by Mr. LeVine, to accept staff's findings, analysis and recommendations and approve USE2017 0028 and USE2017 0029 with any minor alterations by staff or Commission member, noting Mr. Miller's recusal from those items.*

The motion passed with no objection.

MOTION: *by Mr. LeVine, to accept staff's findings, analysis and recommendations and approve CSP2017 0017 and CSP2017 0018 with any minor alterations by staff or Commission member.*

The motion passed with no objection.

VII. CONSIDERATION OF ORDINANCES AND RESOLUTIONS - None

VIII. REGULAR AGENDA

USE2017 0027: A Conditional Use Permit to amend USE2016 0018 to include three additional units.

Applicant: Constellation Development LLC

Location: 4401 Riverside Drive

Staff Recommendation

It is recommended that the Planning Commission adopt the Director's analysis and findings and grant the requested Conditional Use Permit. The permit would allow a modification to the USE2016 0018 by allowing one additional building with 3 units.

The approval of USE2017 0027 includes the conditions below, some of which modify conditions of USE2016 0018:

1. Prior to issuance of a building permit, the applicant shall install a silt fence on the 50-foot streamside setback line along the Mendenhall River. The silt fence shall be removed when construction is complete. (COMPLETE)
2. Prior to issuance of a building permit, the applicant shall submit to Community Development Department (CDD) a plan involving how vegetation will be replanted and maintained to ensure the project meets the minimum vegetative area requirement. (COMPLETE)
3. Prior to issuance of a building permit, the applicant shall submit an approved on-site drainage management plan using Best Management Practices (BMP) to ensure drainage is directed to an approved drainage infrastructure and does not directly enter the Mendenhall River without filtration. (COMPLETE)
4. Prior to issuance of a building permit, the applicant shall submit a design for the parking lot buffers (and if needed, buffering snow storage/ garbage containers) meeting one of the following features:
 - a. Sight-obscuring fence or vegetation from grade (0 feet) up to 6 feet; or
 - b. Sight-obscuring fence or vegetation from grade (0 feet) up to 4 feet and non-sight-obscuring (porous) fence or vegetation up to 6 feet in height.
 (COMPLETE)
5. Parking lot buffers shall be installed according to approved plans prior to issuance of a certificate of occupancy for the final unit. (PENDING COMPLETION)
6. Prior to issuance of a building permit, the applicant shall show any exterior lighting, which must be downward-directed to minimize horizontal glare. (PENDING COMPLETION)
7. Prior to issuance of the final Certificate of Occupancy (CO), all required parking lot striping shall be in place (or wheel stops) which complies with dimensions as per 49.40, Parking and Traffic. (PENDING COMPLETION)

8. Prior to issuance of CO of last dwelling unit, the parking lot buffers meeting Condition No. 4 shall be in place. (PENDING COMPLETION)
9. Prior to issuance of CO of the first dwelling unit, the applicant shall submit the Homeowners Association documents to the CDD that indicate the maintenance of all required vegetation and on-site buffers. (COMPLETE)
10. Prior to issuance of CO of the last dwelling unit, the applicant shall coordinate with CDD staff for a site inspection to verify that the vegetative cover was installed accordingly. If CO is requested during poor planting conditions, the applicant shall submit a bond covering the costs of the remaining vegetation to be planted according to provisions of 49.55.010. (BOND POSTED, PENDING COMPLETION)

Density Bonus Conditions

11. Prior to issuance of a building permit, the applicant shall submit drawings and construction plans showing how the 3 density bonus features will be constructed in compliance with CBJ Land Use and Street standards. (COMPLETE)
12. Prior to issuance of a building permit for all 51 units, the applicant shall submit plans and narrative indicating how all conditions will continue to be met. (NARRATIVE COMPLETE, PLANS COMPLETE FOR UNITS 1-36)
13. Prior to final CO of last dwelling unit, the applicant shall coordinate with CDD staff to ensure the density bonus features as shown on Attachment H are complete. This shall include:
 - a. The applicant to submit to CDD a recorded no-development easement that preserves the land between Mendenhall River and the buildings, matching Attachment H. (PENDING COMPLETION)
 - b. All required public improvements must be completed prior to issuance of a Temporary Certificate of Occupancy or Certificate of Occupancy for the final structure. The required public improvements include: the installation of sidewalk as previously described and the installation of the crosswalk across Riverside Drive to the existing sidewalk along Pinedale Street. (PENDING COMPLETION)

Ms. Liu told the Commission that this Conditional Use Permit request would modify the previously approved Conditional Use Permit which allowed for the development of 48 dwelling units along the north end of Riverside Drive in the Mendenhall Valley. That approval included a density bonus. The applicant is now seeking to add three more units for a total of 51 units by using the previously recommended and approved bonus.

Public comments regarding this Conditional Use Permit request focused primarily on concerns about parking, traffic and snow storage, said Ms. Liu. The proposed building will be very similar in look to the previously constructed buildings, said Ms. Liu. The building will satisfy the D-15 setback requirements of 20 feet for the front, 50 feet for the rear, and five feet to the side yard setback. Bonus points were also earned by providing additional green space between the buildings and the required 50-foot rear setback, said Ms. Liu. The site meets the minimum 30 percent vegetative cover requirement and it maintains 45 percent of the lot for vegetative cover, said Ms. Liu.

The building also meets the 35-foot height standard, said Ms. Liu. A lighting plan has not yet been submitted, but the narrative states that lighting would be recessed under carport roof's and cast down at door entries and stairs, said Ms. Liu. The applicant must show the exterior lighting plans prior to issuance of a building permit, she said.

The parking requirement for the total project is 90 spaces, and the applicant plans and providing 95 parking spaces, said Ms. Liu. The applicant also plans on providing more than the required number of van accessible parking spaces, she said.

The staff finds there will be no noticeable escalation of noise resulting from the 51-unit complex instead of the 48-unit complex, said Ms. Liu. Snow storage will take place between each building, she said. Six-foot-tall wooden fences will be used as site buffers and will also help with noise suppression, said Ms. Liu.

The project preserves habitat by complying with the 50-foot streamside buffer along the Mendenhall River, and provides additional green space adjacent to the 50 foot buffer, said Ms. Liu. The applicant has already posted a \$12,500 bond with CBJ to guarantee that landscaping and required vegetative cover will be completed, she noted.

The proposed total of 51 units is consistent with the medium density residential land use designation outlined in the Comprehensive Plan, said Ms. Liu. Medium Density Residential (MDR) is defined as urban lands for multi-family dwellings with a density of five to 20 units per acre, she said. The planned sidewalk along the west edge of Riverside Drive and the crosswalk at Pinedale Street meet the goals of the Juneau Non-Motorized Transportation Plan which recommends improvements to pedestrian and bicycle rider infrastructure in order for those commuters to have a safe and connected means of travel, said Ms. Liu.

This project does not materially endanger the public health or safety nor does it substantially decrease the value of or be out of harmony with property in the neighboring area, nor is it out of conformity with the Comprehensive Plan or other officially adopted plans, said Ms. Liu. The project meets all the necessary requirements for this development, said Ms. Liu.

The applicant must meet the 10 conditions listed above, with the three additional density bonus conditions, said Ms. Liu.

Commission Comments and Questions

Mr. LeVine asked if the scope of the Commission review is to be limited to the request for the three additional bonus units or if the Commission is to go back to the initial Conditional Use Permit request at the beginning of the process.

Ms. Liu said the scope of the review is to be limited to just the additional building.

Mr. LeVine said if the review is to be limited to just the request for the additional building of three units, why the conditions for the entire project have changed. He said it appears a lot of language has been changed and not just limited to the three additional units.

Ms. Liu said some of the modifications to the conditions include cleaning up the language. She said one notable revision was addressing the crosswalk and sidewalk. The previous conditions stipulated that the sidewalk was to be built to the church driveway, she said. It was reworded to state that the sidewalk was to be built to Pinedale Street, she said, as she felt that was a more objective description. They also removed the condition to construct the pedestrian connection to private property since the applicant and the church decided the connection was not needed.

Mr. Dye asked what changes were made regarding the sidewalk and Riverside Drive.

The only change they recommended was to clarify the language from the church to Pinedale Street, she said. That was a more descriptive location, she said.

Mr. LeVine said he did not understand why there was an extra condition number five.

This condition regarding parking lot buffers was added to ensure an appropriate timeline of completion, said Ms. Liu. It does not add anything except for a deadline for completion, said Ms. Liu.

Mr. LeVine said this did not alleviate his concern that this language is not strictly limited to the three units for which the Conditional Use Permit is sought. It goes to the entirety of the CUP, he stated.

Ms. McKibben said the language was changed in an effort to clean up the language. She said that Mr. LeVine did express a valid concern. A step was missing in the original staff report, said Ms. McKibben. She said the staff should be more mindful in the future but that in this instance the previous buildings have already been constructed.

Mr. LeVine said generally they do not go back and fix Conditional Use Permits once they have already been awarded. He said he is troubled by the notion that this can actually be done.

Mr. Palmer said he felt that Mr. LeVine raised a good point. He said the easy answer is that it is definitely within the jurisdiction of the Commission to evaluate the impacts for the additional three units requested with this Conditional Use Permit. Mr. Palmer said he believed the Commission could modify existing conditions if that modification relates to the proposed new development.

Mr. Dye said the current staff report references the old staff report's recommendation of 51 units. The Commission had recommended 48 units, said Mr. Dye.

Ms. McKibben explained that the motion the Planning Commission made was to approve 48 units, not the 51 units that were evaluated in the original staff report.

Mr. Voelckers said there was some reference in the public testimony that addressed concerns such as site drainage. He asked if it was correct that those concerns should not be addressed if they do not pertain to the current Conditional Use Permit request before the Commission this evening.

Ms. Liu said that is correct.

Mr. Voelckers said it appears that in some of the narrative a continuous fence is referenced, but that the graphic illustrates a gap in the fence exists equal to the width of the building. He said he assumed that the property owners would rather have a continuous fence rather than less privacy offered by a large gap in the fence.

Ms. Liu said that would be a good question for the applicant to answer. She said from the standpoint of the staff, the fence as well as the structure would serve the same purpose of obstructing any noise caused by the circulation of the traffic throughout the site.

Mr. Voelckers clarified that from the staff point of view the two discontinuous pieces of fence met the intent of the visual buffer.

Ms. Liu agreed with the statement of Mr. Voelckers.

Applicant

Mr. Travis Arndt said the previous staff report intended that the approval for the other three units went back to the community development director. He said he was here this evening because the evaluation was now up to the Commission instead of the CDD director. The purpose of the fence is primarily to subdue the noise from the vehicles and from the vehicle headlights, he explained.

Mr. Voelckers asked for an explanation of what the greenbelt along the river would look like.

It will predominantly be seeded with grass, said Mr. Arndt, with the addition of plantings designed and implemented by Glacier Gardens.

Mr. Voelckers asked Mr. Arndt if he had any comments to make on drainage issues.

Mr. Arndt said they are taking several measures to help with drainage on the property. There will be one to two feet of shot rock placed below a six-inch-thick pervious concrete pavement. Water will actually soak through the pavement and into the ground below, he said, instead of running off. Along the church property there is a 16-foot-wide drainage easement, said Mr. Arndt, running down the property line between the condominium property and the church property.

Mr. LeVine asked Mr. Arndt if he had reviewed the conditions on the CUP, and if so, if he had any concerns.

Mr. Arndt said he had no concerns.

Mr. Dye asked where the access easement was located.

Mr. Arndt responded that it is along the fence line.

MOTION: *by Mr. Voelckers, to approve USE2017 0027 accepting the staff's findings, analysis, and recommendations with the minor modification that the fence buffer would include a closed fence segment returning to the building as indicated by the applicant.*

Mr. LeVine said he is still troubled by the notion that the Commission is changing the language of the conditions. He said he would like to add a finding for the record that the changes to the conditions are either in the nature of ministerial wording and numbering changes that do not affect the substance and that they are intended for clarity or directly affect additional construction which will be undertaken. He said this did not need to be part of the motion but that he wanted it to be a part of the record as a basis for the Commission's decision.

The motion passed with no objection.

AME2017 0017: An ordinance amending the Land Use Code to provide for an additional setback encroachment exception for certain structural energy efficiency improvements to CBJ code 49.25 (Ord. No. 2018-06).

Applicant: City and Borough of Juneau

Location: Borough-wide

Staff Recommendation

Staff recommends that the Planning Commission forward a recommendation for approval to the Assembly.

This is an ordinance amending the land use code to provide for an additional setback encroachment exception for certain structural energy efficiency improvements, said Ms. Boyce. The proposed ordinance would allow exterior insulation to encroach up to six inches into the setbacks without the need for a variance, said Ms. Boyce.

Commission Comments and Questions

Mr. Miller said this is the system that performs the best in Juneau's climate. He said he would like to increase the projection from six inches to eight inches. The reason for this is because it takes four inches of foam on the outside so that the dew point will never be on the inside of the wall, he said. If there is only three inches of foam, said Mr. Miller, the dew point would go inside of the wall somewhere. It will turn into water inside of that wall, he said. And that is the point of insulating an extension, he said. Mr. Miller said about 50 percent of the homes will remain within the six-inch limit. However, said Mr. Miller, metal clad siding would make for a thicker wall. That would limit people to three inches of foam, when in fact four inches would be better.

Mr. Dye asked if this was intended for all structures or just for existing structures.

Ms. Boyce said this ordinance amendment is intended for existing structures.

Mr. LeVine suggested several word changes to the slide Ms. Boyce had upon the wall, and said he agreed with Mr. Miller that the projection should be greater than six inches to help more home owners with no discernable negative effects.

MOTION: *by Mr. LeVine, to accept staff's findings, analysis and recommendations, and approve AME2017 0017 subject to the wording changes proposed by Mr. Voelckers, the correction made to remove the word "except", and the projection maximum from six to eight inches.*

The motion passed with no objection.

Discussing the amendment after the vote, Mr. Dye asked why this amendment applied only to

existing construction and not new construction.

Ms. Boyce said this request comes up commonly with existing home improvements that are already built to the setbacks. For new home construction, those setbacks would already be configured, she said, as part of the design.

Mr. Dye said he felt that during this time of infill development and small lots, that he felt this tool should be available to all construction, not just remodels.

Mr. LeVine said he felt this amendment is for existing construction, and that it addresses a specific problem. If setbacks with new construction were to be addressed, he said it should be dealt with under its own merit for new construction.

Ms. McKibben said the intent of this amendment is for existing homes that are built to their setbacks that want to make energy efficiency improvements. New construction that is being built to a certain standard can plan for that as they plan their building to fit within the existing setbacks, she said. Ms. McKibben said she felt that was a separate topic which has not been addressed by the Commission, whereas this is to help existing homes that are built to their setbacks to add insulation.

Since it would be in the same section of code, Mr. Dye said he did not understand why new construction would not be dealt with at the same time.

Mr. Miller said he agreed that this should be a topic that should be revisited by the Commission.

Mr. Voelckers said he is persuaded that Mr. Dye has raised a critical point.

Mr. LeVine said it makes a lot of sense to encourage "outsulation". He said he was reluctant to make changes to the entire setback regime without a more thorough analysis. He said he felt they should do with what is before them and revisit this issue for new construction as soon as it is feasible.

Mr. Dye said he wanted to propose an amendment to the ordinance just approved by the Commission.

Mr. Palmer suggested that the ordinance state at the end that it applies to new and existing development.

Mr. LeVine said he felt before the Commission made any decisions about new construction that an analysis was required concerning existing and proposed setbacks for new construction. He said he felt this was a good idea, but that he was not comfortable taking action on this issue

with the current lack of analysis.

Mr. Dye said he did not see how further analysis would be any more helpful in indicating that additional insulation would be beneficial for new home construction.

Mr. LeVine said they currently have five-foot side yard setbacks and that if they are going to allow new construction to be built a foot into those setbacks, then they may vote to change the five-foot side yard setbacks to a larger number.

Mr. Steedle reminded the Commission that they had already voted on this issue. If they wish to rescind that vote, it would take six votes to rescind that vote before taking the issue up again. He said he thinks that Mr. LeVine is on the right path, and that the topic they are really discussing is setbacks. That could be addressed in the setback code, said Mr. Steedle. Mr. Dye said he did not disagree with Mr. Steedle. He said it seemed to him that setbacks as a whole should be considered and not just with remodel construction.

Mr. LeVine said he had this very problem with his own home and that the action taken by the Commission tonight if approved by the Assembly would have exactly addressed that problem.

Mr. Voelckers said they have already voted on this issue and that perhaps within the next few meetings the staff could come back with analysis of this nature for new construction.

Mr. Miller said the Commission has voted on the current amendment and they should let that stand. He said this ordinance amendment addresses most of the problems that people come up with when trying to remodel their homes. This especially pertains to the Juneau town and Douglas town areas, he said. He suggested that the remaining part of this issue be hashed out at a Title 49 meeting, brought back before the Commission, and then add the sentence suggested by Mr. Palmer.

IX. Unfinished Business

AME2016 0002: A text amendment to CBJ code 49.20 regarding variances

This ordinance has been updated resulting from the last time it was before the Commission on December 12, (2017), said Ms. Boyce. It was also subsequently discussed at a Title 49 meeting, on December 20, (2017), said Ms. Boyce. The purpose of this ordinance is to:

- ✓ Provide clarity regarding what is and what is not variable
- ✓ Remove the preliminary threshold requirement
- ✓ Require the posting of a public notice sign for those variances requiring a public hearing
- ✓ Amend the variance criteria to reduce subjectivity
- ✓ Amend the De Minimis/Administrative variance

Mr. LeVine wanted to clarify that this amendment changes nothing about the substance but the process regarding variances. A hardship is still required, but it is wrapped into another condition, he said.

Ms. Boyce said the way the code currently reads the lead up to the variance criteria talks about there being a hardship. However, there is no criterion that actually does that analysis, she said. They have removed the hardship requirement and instead included it in the criteria so there is actually a hardship analysis, she said.

Mr. Miller said at the last meeting Mr. LeVine and himself voiced concerns that they are ratcheting down the places where variances can be used so that property owners can have a means to receive justice. The intent is to avoid the usage of variances for all the zoning issues or other ordinances that need to be fixed, said Mr. Miller. There are likely to be property owners who have issues that are not addressed by current ordinances, said Mr. Miller. For them to receive justice within the system of tightened variances, they thought of adding a sixth item to be addressed, he said. This would aide someone in an unusual situation who was not covered by the five items mentioned.

Mr. Dye said he requested at the last meeting a graphic of what has not been fixed yet in the code, and what is in the process of being fixed, and how that related to the percentage of past variances. He asked if that information is now available.

Ms. Boyce said she has a list of the code amendments currently in process, as well as another graphic which breaks up all of the variances into type. Since 1987, 50 percent of all variances deal with setbacks, said Ms. Boyce.

They have made amendments to the code with the 2015 subdivision related amendments, said Ms. Boyce. They have made a number of access-related changes, and part of it was privately maintained access roads and public rights-of-way, said Ms. Boyce. They have also approved the shared access amendment which also provides another small subdivision option that has access and frontage related aspects to it, she said. They have also just amended the panhandle ordinance, she said, which improves access to two-lot subdivisions, she said. Those were the majority of the access-related variances they have seen, she said.

Mr. Miller said the old ordinances were for all zoning districts. The new ordinances are just residential areas, he said. There still remain big holes within the ordinances, said Mr. Miller.

Ms. Boyce said the panhandle ordinance applies to all two-lot subdivisions. She said it is not just restricted to residential zones. Shared access was restricted to residential zones, she said.

Mr. LeVine said he shares Mr. Miller's concern. He said the question is how to implement these

new variance standards to ensure there is equity for all parties. He asked if the procedure would be to allow people to apply for variances using the old criteria if the underlying code has not been updated.

Mr. Voelckers said he agreed with Mr. LeVine's strategic suggestion because he felt they all have a gut feeling that every possible situation has not been covered regarding variances.

Mr. Palmer said the criteria that are listed in Attachment A are probably where the bulk of the discussion can be focused. He offered a revision to the language of the ordinance in Attachment A. Defining what a design and what a dimensional standard is has been very difficult, said Mr. Palmer. The intent for the current draft in Attachment A was to flip that around and state that only building setbacks, lot width, lot depth and building height can be varied, he said. They could use language that stated that in effect anything within Title 49 can be varied. Then the focus would be on the criteria; specifically, the last criterion which is criterion five, identifying what elements can and cannot be varied, aid Mr. Palmer. It could be amended to say that, "A variance is required to vary a requirement of this title." It would then enable the Commission to focus on the specific conditions, said Mr. Palmer.

Mr. LeVine asked the staff why they did not proceed with this direction outlined by Mr. Palmer in the first place.

The variance as it has been used has become a waiver tool and a design modification tool, said Ms. Boyce. They are trying to rein it in so that it can be used as it has meant to be used, she added. They will come up with something else to be used for waivers and design modifications, she said. They are also trying to make the line more distinct between someone needing a variance and someone wanting a variance, said Ms. Boyce.

There are a few items which were varied which should not have been varied, said Ms. Boyce, such as density and lot coverage.

Ms. McKibben said the code already stipulates that variances are not to be used for use or density. If that were to be allowed then there would need to be a significant amount of analysis to back that up, she said.

Mr. Voelckers said he thought this move to clean up the variance process was not so much that it would be more lenient but that the City Attorney's office was worried that the Commission could move into an area which would not be defensible at the Supreme Court level because it violates the basic premise of a variance, which was a unique physical hardship due to the property, said Mr. Voelckers.

Chairman Haight said if they left the introductory language as it currently stands, how much reduction in the number of variances would they see just due to the fact that they have

changed the other standards.

Mr. Steedle said he thought that was a very difficult question to answer. It becomes incumbent upon the staff and the Board of Adjustment to apply the criteria rigorously, he said. Mr. Steedle said he thinks that is where they have failed over the years, because it is very difficult to say “no” to an applicant. The thrust of this was to make it easy to say “no”, said Mr. Steedle. It becomes a question of how much discipline they think the Board of Adjustment needs, he said.

Mr. Voelckers said he would like to see definitive language that was strongly directed but at the same time left some leeway for the decision-makers for addressing dimensional standards, lot size, etc.

Mr. Palmer said he would definitely like to work to figure out some way to satisfy the intent. He said to him this seemed like an issue which could be better addressed through a Committee of the Whole or Title 49 meeting. He said he was a little hesitant at this time to propose specific language to try to address this issue.

Chairman Haight asked the Commission if it had any issue with the criteria.

Mr. LeVine said the way the criteria were explained in the staff report is confusing to him. He said he felt it would be better to simply use the language cited in the Supreme Court opinion. He said he felt just restating the rule would create confusion.

Mr. Voelckers said he had a similar issue with language on page 7 of the proposed ordinance; “The grant of the variance is reasonably tailored to relieve the hardship.” And yet the first sentence in the staff analysis of this criterion uses the language, “... is the minimum needed to provide relief”. He said he is wary of using the term “minimum needed” as it is not definitive.

Mr. LeVine agreed, stating he would also change the phrase “reasonably tailored” to “narrowly tailored.” He also noted that criteria and criterion do not analyze things. That sentence should have a different noun in it, he said.

Under 49.20.240 - *Board of Adjustment Action*, Mr. Voelckers said he felt the statement “The board of adjustment shall hear all variance requests except administrative variances” should have “and appeals of denied” be inserted before “administrative variances”.

Mr. Dye suggested that it should state who the director’s decision would be appealed to, under 49.20.240 (2). (“An administrative variance decision of the director may be appealed if a notice of appeal is filed within 20 days of the director filing a notice of decision with the municipal clerk.”)

Mr. Palmer said he felt both of those concerns with the code were addressed in the portion of

the code which states that the decision of the director may be appealed to the Planning Commission.

Criterion five states: "The grant of the variance does not result in a smaller lot size, a greater density, or greater lot coverage than allowed for the zone district." What about, for example, a small, legally nonconforming lot, said Mr. Voelckers.

Ms. Boyce said for substandard lots that already exist there are a number of setback reductions that can apply. There is a formula that can be applied to address those smaller, nonconforming lots, she said.

Ms. McKibben added that there can be a reduced front yard setback when the setbacks of the three adjacent properties are averaged. The only question that is not answered pertains to density, she said. If there was an existing building with nonconforming density it would probably be able to continue. The nonconforming code draft separates the nonconforming situations so that lots, setbacks, density and use are addressed separately, said Ms. McKibben.

Mr. LeVine said he concurred with the idea that more time should be spent thinking about the ordinance. There are several ideas that might at least be worth thinking about, said Mr. LeVine. One idea is to address the time in which the code has been updated, he said. There are provisions of the code which have not been updated, he said. He asked if there would be a way to connect the applicability of the variance requirement to the time in which the code has been updated. For example, said Mr. LeVine, variances would be inapplicable to code which has been updated within a specified period of time. The variances would be applicable until a waiver is developed within a certain period of time. That would not be to hardship, he said.

Mr. Dye said the process is so fluid that he would be concerned about cementing a time frame to it.

On page 219 of the staff report, said Mr. Miller, it is already outlined what the desired outcome is going to be. What they don't have is what to implement in terms of flexibility until the desired outcome is reached, he said. It would be helpful to have a paragraph or two in the staff report which would assist future commissions.

Chairman Haight said this item can come back to the Planning Commission for another review at its February 13, (2018) meeting.

IX. BOARD OF ADJUSTMENT - None

X. OTHER BUSINESS**Adoption of Revised Planning Commission Rules of Order**

Mr. LeVine said he appreciates all the work which has gone into the rules of order before them. He asked if it needs to be clarified anywhere that this applies to the Board of Adjustment as well as the Planning Commission. He asked why there is a separate provision addressing reconsideration. He stated that it would most probably be dealt with according to *Robert's Rules of Order*.

Mr. Palmer said the reconsideration provisions that are included are different than the default rules under *Robert's Rules of Order*.

Mr. Miller asked what a privileged motion was.

Mr. Palmer said a privileged motion allowed whoever makes that motion to interrupt the speaker and to interrupt the process that is going on.

Mr. Dye asked why reconsideration did not require a supermajority vote.

Mr. Palmer said that is a discretionary question which the Commission can decide upon.

The section under "Late Written Material" may place the Chair of the Planning Commission in an awkward spot, said Mr. Voelckers, since it would be up to the chair to decide if it was accepted or not.

Chairman Haight said he liked the fact that this section did not absolutely limit the submission of the material to two pages, but that there was discretion to allow additional material.

Mr. Steedle said he concurred with the remarks of Chairman Haight. They do not want to tie the Chair's hands, said Mr. Steedle.

Mr. LeVine asked if the Commission can by vote overrule any decision the Chair makes. He said he did not see that outlined in the rules.

Mr. Voelckers said the rule is very carefully laid out about the amount of material which may be received, and when, and then at the same time an easy "out" is provided. He said he felt that could potentially put the Chair in an awkward position.

Mr. LeVine suggested they strike the sentence and let the Commission vote to suspend the rules if that is what it wanted to accomplish. If they strike the sentence "The Chair may reject..." they have the ability to accept that material if the Commission determines it is appropriate to submit, he stated.

The Commission concurred that the initial sentence regarding the chair rejecting the submission of material be struck.

These rules do also apply to the Board of Adjustment, said Mr. Palmer, in answer to Mr. LeVine's question.

Once approved by the Commission these rules will go to the Clerk, said Mr. Steedle, in answer to a question by Mr. Voelckers.

Mr. Palmer said that Rule 10 F. is a motion to rescind. If the Commission passes a motion and then immediately moves to rescind it, six votes would be necessary. The Commission could also make a notice of reconsideration if it takes place at the same meeting. Then a vote of six is required, he said. If the body wanted to require a rule of six votes at a subsequent meeting then that would need to be added to Rule 10, said Mr. Palmer.

Mr. LeVine clarified that the reason that 10 G exists right now is to prevent the Planning Commission from using a procedural mechanism to get around the requirement for a vote of six for rescission.

A policy reason for this is to give the Commission time to think about the item some more and another policy reason is to make sure that members of the community that were there to testify would have the opportunity to come back and attend a subsequent meeting, he said.

Mr. Miller said he would like to speak in favor of only requiring five votes. He said personally after having time to consider an issue his decision-making capabilities were much better. A notice of reconsideration may just be someone needing extra time to consider an issue. He said he felt the Commission should respect each other and honor another Commission member's need to reconsider an issue.

Mr. Voelckers agreed with Mr. Miller, saying he liked the slightly softer burden to at least provide the potential to reconsider an issue.

Mr. Dye said he liked the higher number required for reconsideration because it put more emphasis on the Commission getting information right the first time. Mr. Dye said he did not want it made too easy for Commission members to reconsider an item.

The permit process is a long, drawn-out process as it is. People are waiting for decisions to be made, and they should be made in the most time effective way possible, said Mr. Hickok.

Chairman Haight said he has noted that often a motion for reconsideration comes after a motion has been denied. The fact that they have probably denied an application and that someone has subsequently made a motion for reconsideration gives that applicant one more chance to have their issue voted upon by the Commission. He said he really does favor the softer approach on reconsideration.

Mr. LeVine said he would like the public to be given as much opportunity as possible and therefore would like to stick with the five votes being required for reconsideration.

Chairman Haight said when the motion of reconsideration comes up there is the opportunity to either allow or not allow additional public testimony.

Mr. Palmer said the rule is currently clear that on the motion of reconsideration there is no public testimony.

Chairman Haight said periodically a member of the public will want to testify again. This has never been allowed, he said. However, he noted, he is not finding that in the rules. He asked if there is actually a rule limiting public testimony to one opportunity per individual.

Mr. Steedle said he does not find that in these rules.

Mr. Voelckers said he felt it would be a good idea to stipulate that in the rules.

Mr. Palmer suggested that under Public Participation that it state that a person wishing to testify be given "one" opportunity instead of "an" opportunity.

The Commission concurred on the change from "an" to "one" opportunity.

Mr. Miller pointed out that under reconsideration it stipulates that the motion for reconsideration is debatable to the same extent as the underlying motion.

Mr. Palmer said that sentence had been placed under Reconsideration to clarify that it may be discussed under that circumstance.

MOTION: *by Mr. LeVine, that the Planning Commission adopt the revised Rules and Guidelines subject to two small edits which is to change the word under Section E1 from "an" opportunity to "one" opportunity under Public Participation, and to strike the sentence in 3c beginning with "may" and ending with "written material".*

The motion passed with no objection.

Answering a question by Mr. Voelckers, Mr. Palmer said that these rules do not need to go to the Assembly for approval.

X. DIRECTOR'S REPORT

Mr. Steedle said the Assembly will be meeting at a special meeting on January 30, (2018) to select three commissioners. Two of the sitting commissioners have reapplied, said Mr. Steedle. The February 13, (2018) Planning Commission meeting will be the first time the new Commission meets, he said. Mr. Steedle said he would like to have a Committee of the Whole meeting directly before the February 13, (2018) meeting for the yearly Commission training. The Commission will be able to consider the variance amendment on February 27, said Mr.

Steedle. There is a joint meeting scheduled with the Assembly for February 5, (2018), said Mr. Steedle. That meeting is currently scheduled for noon, he said. Mr. Steedle said he has tendered his resignation, and that sometime within the next few months he will be departing.

XI. REPORT OF REGULAR AND SPECIAL COMMITTEES

Mining Subcommittee

At the last meeting they defined the direction of the agenda over the next several meetings, said Chairman Haight. They will get a report from Jim Clark regarding his proposed changes to the mining ordinance at this Thursday's meeting, he said. These meetings occur every Thursday at 5:30 p.m., said Chairman Haight.

XII. PLANNING COMMISSION COMMENTS AND QUESTIONS

XIII. ADJOURNMENT

The meeting was adjourned at 10:00 p.m.



(907) 586-0715
CDD_Admin@juneau.org
www.juneau.org/CDD
155 S. Seward Street • Juneau, AK 99801

DATE: February 15, 2018

TO: Planning Commission

FROM: Allison Eddins, Planner
Community Development Department

A handwritten signature in black ink, appearing to read 'A. Eddins', is positioned to the right of the 'FROM:' field.

FILE NO.: CSP2018 0002

PROPOSAL: A consistency review for the lease of the Eagle Valley Center ropes course to Southeast Alaska Independent Living (SAIL)

GENERAL INFORMATION

Applicant: City & Borough of Juneau, Lands Department

Property Owner: City & Borough of Juneau

Property Address: 24600 Amalga Harbor Road

Legal Description: USS 1163

Parcel Code No.: 3B4201000010

Site Size: 113.65 acres (4,950,594 sq. ft.)

**Comprehensive Plan Future
Land Use Designation:** (NP) CBJ Natural Area Park

Zoning: (RR) Rural Reserve

Utilities: No public utilities

Access: Access easement through CBJ property to Amalga Harbor Rd.

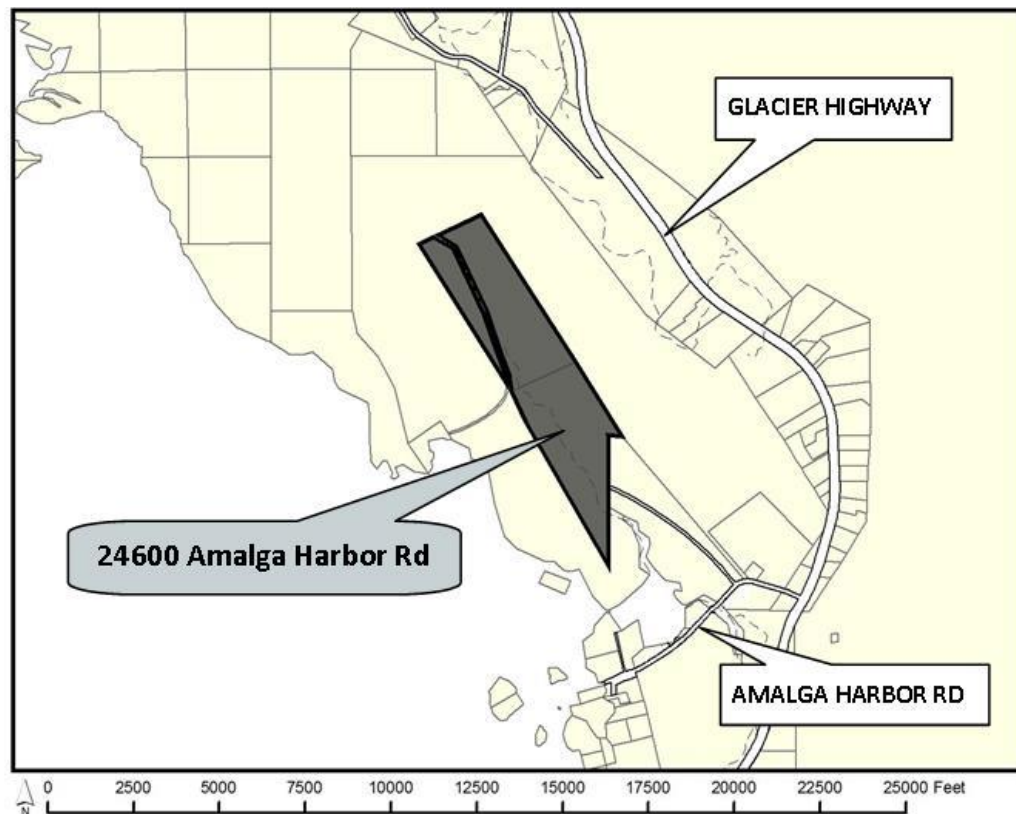
Existing Land Use: Recreational facility

Surrounding Land Use:

North	-	(RR)/Vacant CBJ Land
South	-	(RR)/Vacant CBJ Land
East	-	(RR)/Vacant CBJ Land
West	-	(RR)/Vacant CBJ Land

Planning Commission
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February 15, 2018
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VICINITY MAP



ATTACHMENTS

- Attachment A – Development Permit and CSP Application
- Attachment B – Application to Lease CBJ Land
- Attachment C – Excerpt from January 8, 2018 CBJ Assembly Minutes
- Attachment D – Notice of Decision for CU-02-90
- Attachment E – Public Notice

PROPOSAL

The CBJ Lands and Resources Division requests a Planning Commission recommendation to the Assembly regarding a land lease with Southeast Alaska Independent Living (SAIL) for the use of the ropes course located at the Eagle Valley Center (EVC), a recreational facility managed by the CBJ Parks and Recreation Department.

SAIL is a non-profit organization that provides independent living services and advocacy for people with physical and mental disabilities. As part of the lease agreement, SAIL will upgrade and maintain the ropes course in order to make it safe and available for the public and more accessible for people with mobility restrictions.

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BACKGROUND

The Eagle Valley Center is a 113 acre outdoor recreational facility that CBJ has owned and maintained since 1997. Prior to 1997, the property was privately owned. The property owner received a Conditional Use Permit in 1990 (CU-02-90) that allowed for the development of a commercial recreation facility that included a large lodge and a commercial ropes course (see Attachment D). The Conditional Use Permit also allowed for the development of a golf driving range and a runway for private aircraft. The driving range and the runway are no longer in use.

From 1997 to 2015, the City leased the entire facility to Southeast Alaska Guidance Association (SAGA). The SAGA lease was not renewed, and the ropes course has been closed since fall 2015.

The City currently leases a portion of the lodge to the Juneau Ice Research Program for office space and storage year-round and for two weeks during the summer for orientation. Local school groups and organizations also rent the lodge for summer camps and retreats.

ANALYSIS

CBJ 49.10.170 describes the duties of the Planning Commission including the review and recommendation to the Assembly regarding land disposals as described in Title 53.

CBJ 49.10.170 (c) City and borough land acquisitions, disposals and projects. *The commission shall review and make recommendations to the Assembly on land acquisitions and disposals as prescribed by Title 53 or capital improvement project by any City and Borough agency. The report and recommendation to the commission shall be based upon the provisions of this title, the Comprehensive Plan and the capital improvements plan.*

CBJ 53.09.260 Negotiated sales, leases, and exchanges.

(a) Application, initial review, assembly authority to negotiate. *Upon application, approval by the manager, and payment of a \$500.00 fee a person or business entity, may submit a written proposal to lease, purchase, exchange, or otherwise acquire City and Borough land for a specified purpose. The proposal shall be reviewed by the assembly for a determination of whether the proposal should be further considered and, if so, whether by direct negotiation with the original proposer or by competition after an invitation for further proposals. Upon direction of the assembly by motion, the manager may commence negotiations for the lease, sale, exchange, or other disposal of City and Borough land.*

(b) Planning commission review, final assembly approval. *Upon satisfactory progress in the negotiation or competition undertaken pursuant to subsection (a) of this section, and after review by the planning commission and authorization by the assembly by ordinance, the manager may conclude arrangements for the lease, sale, or exchange or other disposal of City and Borough land. The final terms of a disposal pursuant to this section are subject to approval*

Planning Commission
 File No.: CSP2018 0002
 February 15, 2018
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by the assembly unless the minimum essential terms and the authority of the manager to execute the disposal are set forth in the ordinance enacted pursuant to this subsection. The disposal may not be executed until the effective date of the ordinance.

Since the ropes course at Eagle Valley Center was not advertised for general lease, the CBJ Assembly must determine if the proposed lease to SAIL should proceed by direct negotiation or if the CBJ Parks and Recreation Department should invite other groups to submit proposals to lease the facility. This land lease proposal was heard by the CBJ Assembly at the January 8, 2018, regular meeting. At the time, no competing inquires to lease the ropes course had been received. The CBJ Assembly authorized the City Manager to proceed with lease negotiations directly with SAIL.

CBJ would lease the ropes course to SAIL for a term of 10 years at a standard commercial rate that is used to lease similar city facilities. As part of the lease agreement, SAIL would improve and maintain the course and collaborate with the CBJ Parks and Recreation Department on grants for future trail upgrades. The course will be open to the public during the summer except at certain times when SAIL is hosting special events for their clients. All operations of the ropes course, including booking sessions, will be handled directly through SAIL.

As mentioned previously, the facility received a Conditional Use Permit in 1990 (CU-02-90). The permit allowed for the development of a commercial outdoor recreational facility in a Rural Reserve zoning district. The use, intensity, and size of the facility have changed little since CU-02-90 was approved. Outdoor recreational facilities are still permitted in the Rural Reserve zoning district with a Conditional Use Permit, and the conditions of approval for CU-02-90 still apply.

CBJ 49.25.300 Table of Permissible Use

<i>Use Description</i>		<i>RR</i>
6.200	<i>Outdoor activity conducted outside enclosed buildings or structures</i>	
6.210	<i>Recreational facilities such as golf, country clubs, swimming, tennis courts not constructed pursuant to a permit authorizing the construction of a school</i>	3

Conformity with Adopted Plans

The 1996 Juneau Parks and Recreation Comprehensive Plan does not mention the Eagle Valley Center directly. The facility was privately owned when the plan was written. The Eagle Valley Center is located in Subarea 1 of the 1996 Juneau Parks and Recreation Comprehensive Plan. In *Chapter 8: Recommendations* the plan states:

Develop management plan for Eagle River/Amalga Harbor area – The Eagle River/Amalga Harbor area is predominantly recreation in character and use. Recreation opportunities are offered by the US Forest Service, Alaska State Parks, the Department of Fish and Game, the CBJ and two private facilities. There is private land available for purchase with high recreation and habitat values. A joint effort among these parties, including the private landowners in the area, is recommended.

This proposal was also reviewed for consistency with the 2013 Comprehensive Plan which classifies this land as CBJ Natural Area Park (NP).

Natural Area Parks are CBJ-owned lands characterized by areas of natural quality designed to serve the entire community by providing fish and wildlife habitat, open space/natural areas, access to water, and opportunities for passive and dispersed recreation activities. No development should be permitted other than structures, roads and trails necessary for the maintenance and protection of the resources or for managed public access for education and passive recreation purposes; this may include parking areas, educational kiosks, cabins, rest stations and similar convenience services for the recreational enthusiast. These lands should be zoned to prevent residential, commercial, and industrial development, as well as resource extraction activities. The CBJ should retain ownership of these lands.

The policies in the Comprehensive Plan which most directly relate to this proposal are found within *Chapter 9 – Parks, Recreation, Trails and Natural Area Resources*.

POLICY 9.1 TO PROVIDE QUALITY DISPERSED OUTDOOR RECREATIONAL OPPORTUNITIES AND TO ACQUIRE AND DEVELOP SUFFICIENT LOCAL PARKS AND RECREATIONAL FACILITIES IN LOCATIONS CONVENIENT TO ALL AREAS OF THE CBJ. PLACES GIVEN PRIORITY FOR NEW FACILITIES INCLUDE RAPIDLY DEVELOPING AREAS AND CURRENTLY DEVELOPED AREAS THAT LACK ADEQUATE PARKS AND RECREATION FACILITIES.

9.1 - SOP1 Monitor trends in community demographics and incorporate activities specifically related to under-served populations.

9.1 – SOP9 Work with local non-profit, volunteer, and advocacy groups to efficiently provide supportive services and maintenance of trails and other recreational facilities in the community. In the event that such groups are unable to continue to provide the current level of support, consider community needs and available resources before providing or eliminating the provision of needed support.

9.1 – IA6 Ensure that new facilities, programs and equipment are designed to meet the needs of the disabled community, and that the facilities provide a variety of services for all people with disabilities.

Planning Commission
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The use of this lot and the proposed lease to SAIL is consistent with the 1996 Juneau Parks and Recreation Master Plan and is also consistent with the 2013 Comprehensive Plan.

Habitat

There are no protected habitats that will be affected by this project.

FINDINGS & RECOMMENDATION

Staff finds CSP2018 0002 to be consistent with the 2013 Comprehensive Plan and Title 49 and recommends that the Planning Commission forward a recommendation of approval to the Assembly.

DEVELOPMENT PERMIT APPLICATION

Project Number	CITY and BOROUGH of JUNEAU	Date Received: 1/18/18
Project Name (City Staff to Assign Name)		

Project Description <u>Lease Ropes Course at Eagle Valley Center to SAIL.</u>			
PROPERTY LOCATION			
Street Address <u>24600 Anagle Harbor Road</u>		City/Zip <u>Juneau 99801</u>	
Legal Description(s) of Parcel(s) (Subdivision, Survey, Block, Tract, Lot) <u>Cinnamon Bear Lot 6</u>			
Assessor's Parcel Number(s) <u>384201000010</u>		<u>USS 1163</u>	
LANDOWNER/ LESSEE			
Property Owner's Name <u>City and Borough of Juneau</u>		Contact Person: <u>Greg Chaney</u>	
Mailing Address <u>155 S. Seward St.</u>		Work Phone: <u>586 0205</u>	
E-mail Address <u>greg.chaney@juneau.org</u>		Home Phone: _____	
		Fax Number: _____	
		Other Contact Phone Number(s): _____	
LANDOWNER/ LESSEE CONSENT ****Required for Planning Permits, not needed on Building/ Engineering Permits****			
I am (we are) the owner(s) or lessee(s) of the property subject to this application and I (we) consent as follows:			
A. This application for a land use or activity review for development on my (our) property is made with my complete understanding and permission.			
B. I (we) grant permission for officials and employees of the City and Borough of Juneau to inspect my property as needed for purposes of this application.			
X	<u>Greg P. Chaney</u> Landowner/Lessee Signature		<u>Jan 18 2018</u> Date
X	_____ Landowner/Lessee Signature		_____ Date
NOTICE: The City and Borough of Juneau staff may need access to the subject property during regular business hours and will attempt to contact the landowner in addition to the formal consent given above. Further, members of the Planning Commission may visit the property before the scheduled public hearing date.			
APPLICANT If the same as OWNER, write "SAME" and sign and date at X below			
Applicant's Name <u>Greg Chaney</u>		Contact Person: _____	
Mailing Address <u>155 S. Seward, Juneau</u>		Work Phone: <u>586-0205</u>	
E-mail Address <u>greg.chaney@juneau.org</u>		Home Phone: _____	
		Fax Number: _____	
		Other Contact Phone Number(s): _____	
X	<u>Greg P. Chaney</u> Applicant's Signature		<u>Jan 18 2018</u> Date of Application

STAFF APPROVALS	✓	Permit Type	***SIGN	Date Received	Application Number(s)
		Building/Grading Permit			
		City/State Project Review and City Land Action		1/18/18	CSP 18-0002
		Inquiry Case (Fee In Lieu, Letter of ZC, Use Not Listed)			
		Mining Case (Small, Large, Rural, Extraction, Exploration)			
		Sign Approval (If more than one, fill in all applicable permit #'s)			
		Subdivision (Minor, Major, PUD, St. Vacation, St. Name Change)			
		Use Approval (Allowable, Conditional, Cottage Housing, Mobile Home Parks, Accessory Apartment)			
		Variance Case (De Minimis and all other Variance case types)			
		Wetlands Permits			
	Zone Change Application				
	Other (Describe)				
***Public Notice Sign Form filled out and in the file.					
Comments: 					Permit Intake Initials ANE



CITY/STATE PROJECT AND LAND ACTION REVIEW APPLICATION

See reverse side for more information regarding the permitting process and the materials required for a complete application.

NOTE: Must be accompanied by a DEVELOPMENT PERMIT APPLICATION form.

To be completed by Applicant	PROJECT SUMMARY	
	Southeast Alaska Independent Living (SAIL), has applied to lease the Ropes Course at the Eagle Valley Center which is a facility managed by the CBJ Parks and Recreation Department. SAIL has requested an exclusive lease of the ropes course and plans to fund maintenance, upgrades including making the course more accessible for people with mobility restrictions.	
	TYPE OF PROJECT REVIEW:	
	☐ City Project Review ☒ City Land Acquisition /Disposal ☐ State Project Review	
	PROJECT NUMBERS ASSOCIATED WITH PROPOSAL:	
	Is this project associated with any other Land Use Permits? ☐ YES Case No.: _____ ☒ NO	
	Capital Improvement Program # (CIP)	n/a
	Local Improvement District # (LID)	n/a
	State Project #	n/a
	ESTIMATED PROJECT COST: \$ n/a	
	ALL REQUIRED MATERIALS ATTACHED	
	☒ Complete application ☐ Pre-Application notes (if applicable) ☒ Narrative including: ☒ Current use of land or building(s) ☒ Proposed use of land or building(s) ☒ How the proposed project complies with the Comprehensive Plan ☒ How the proposed project complies with the Land Use Code (Title 49) ☒ Site Plan (details on page 2)	

NOTE: This application is required even if the proposed project is associated with other Land Use permits.

-----DEPARTMENT USE ONLY BELOW THIS LINE-----

CITY/STATE PROJECT FEES	Fees	Check No.	Receipt	Date
Application Fees	\$ <u>0</u>			

This form and all documents associated with it are public record once submitted.

INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED

For assistance filling out this form, contact the Permit Center at 586-0770.

Attachment A

Case Number	Date Received
CSP18-002	11/18/18



RECEIVED
JAN 18 2018
PERMIT CENTER/CDD

Application to Lease City and Borough of Juneau Lands

← Go back

Applicant Information

Southeast Alaska

Independent Living

Mailing Address:

3225 Hospital Drive, Suite 300
Juneau, AK 99801

Legal Representative: Tristan

Knutson-Lombardo

Phone: (907) 586-4920

Email: tlombardo@sailinc.org

CBJ Land Information

Site Address: 24600 Amalga Harbor Road

Legal Description: USS 1163

Map: [Map Link](#)

\$500.00 Fee Paid: Yes

Proposal of Usage:

For over a year, Southeast Alaska Independent Living (SAIL) has been working diligently with the Parks and Recreation Department to re-open facilitated, community use of the Eagle Valley Center's ropes/challenge course. Considered a dearly missed jewel of our community, SAIL is excited to have the course re-certified, repaired and open for groups to once again use. SAIL is proposing long-term, exclusive use of the ropes course, in coordination with the Parks and Recreation Department. Plans include accessibility upgrades so that any individual in Juneau, no matter their ability, have equal access to program opportunities out at the facility and SAIL's ORCA program will offer facilitated access to the course for groups of all ages and abilities throughout the spring, summer and fall months.

Additional Comments for CBJ Staff to Consider:

As mentioned above, SAIL has been working with the Parks and Recreation Department for more than a year on collaborative use of the EVC challenge course. It should be noted that for the past 12 months, we have been stuck waiting for an agreement to come back from the Legal Department, having been provided no indication that an application to Lands for a Lease Agreement was going to be needed. Had we known this when we started the process, we would have proceeded immediately. Having just received notice to apply through Lands, we are quickly applying in hopes for a timely review. Currently, we have an existing funder who has committed a small chunk of matching funds to get this project started, but our ability to apply for additional funding hinges on a concrete and reliable

Attachment B

timeline (and we continue to miss grant deadlines, cycles and opportunities as the months drag on). We are excited for the opportunity to partner with the Parks and Recreation Department to re-open this cherished community venue, and to increase access for people of all abilities. Please don't hesitate to contact us with questions and updates. The check is on its way as of today.

Thank you,

Tristan Knutson-Lombardo

SAIL Deputy Directy

523-4427

tlombardo@sailinc.org

[Delete Entry](#)

[Edit Entry](#)

THE CITY AND BOROUGH OF JUNEAU, ALASKA

Meeting Minutes - January 8, 2018

MEETING NO. 2018-01: The Regular Meeting of the City and Borough of Juneau Assembly, held in the Assembly Chambers of the Municipal Building, was called to order at 7:00 p.m. by Mayor Ken Koelsch.

I. FLAG SALUTE

II. ROLL CALL

Assembly Present: Mary Becker, Rob Edwardson, Maria Gladziszewski (telephonic), Norton Gregory, Loren Jones, Jesse Kiehl, Ken Koelsch, Jerry Nankervis, and Beth Weldon.

Assembly Absent: None.

Staff Present: Rorie Watt, City Manager; Mila Cosgrove, Deputy City Manager; Amy Mead, Municipal Attorney; Laurie Sica, Municipal Clerk; Beth McEwen, Deputy Clerk; Kirk Duncan, Parks and Recreation Director; Kristi West, Eagle Valley Center Manager; Rob Steedle, Community Development Director; Beth McKibben, Planning Manager; Teri Camery, Senior Planner; Jill Mclean, Senior Planner; Allison Eddins, Planner; Bob Bartholomew, Finance Director; Roger Healy, Engineering and Public Works Director; Scott Ciambor, Chief Housing Officer; Patty Wahto, Airport Manager; Travis Wolfe, Firefighter.

III. SPECIAL ORDER OF BUSINESS

IV. APPROVAL OF MINUTES

A. December 18, 2017 Regular Meeting 2017-23

Hearing no objection, the minutes of the December 18, 2017 Regular Assembly Meeting 2017-23 were approved.

B. December 28, 2017 Special Meeting 2017-24

Hearing no objection, the minutes of the December 28, 2017 Special Assembly Meeting 2017-24 were approved.

V. MANAGER'S REQUEST FOR AGENDA CHANGES

Mr. Watt requested a change to the manager's recommendation for Ordinance 2018-01 regarding airport parking operations, to introduce the ordinance, refer the matter to the Committee of the Whole on March 7, and to set the matter for a public hearing at the April 2 regular Assembly meeting. Hearing no objection, it was so ordered.

- Utility Billing is also recommending protest due to the account being 2 months delinquent on their utility payments.
- CBJ Code 20.25.025 provides the licensee an opportunity for an informal hearing before the Assembly as follows:

“(b) If the assembly or committee or a subcommittee thereof recommends protest of the issuance, renewal, transfer, or continued operation of a license it shall state the basis of the protest and the applicant shall be afforded notice and an opportunity to be heard at an abbreviated informal hearing before the assembly to defend the application. For the purposes of this subsection, notice shall be sufficient if sent at least ten days prior to the hearing by certified first class mail to the applicant's address identified on the state license application. At the conclusion of the hearing, the assembly decision to protest the application shall stand unless the majority of the assembly votes to withdraw the protest.”

Your packet contains copies of the notice sent to the licensee as well as the CBJ Code sections and Alaska Statutes pertaining to this matter. The Assembly Human Resources Committee also considered this matter at its meeting immediately preceding this Assembly meeting and will provide a recommendation to the Assembly for action.

The City Manager recommends the Assembly act in accordance with the recommendation from the Human Resources Committee following action at its January 8, 2018, meeting.

Public Comment:

None.

Assembly Action:

Mr. Kiehl said the issues for protest remain, the HRC met and discussed this before this meeting.

MOTION, by Kiehl, to protest the license #2533 for Jack and Arlene Tripp, d/b/a Viking Restaurant and Lounge, mid-cycle due to the following reasons: lack of filing monthly sales tax returns for July - November 2017, plus unremitted sales taxes, liquor taxes and associated late filing fees, late payment penalty and interest; and unpaid utility bills for two months still outstanding. Hearing no objection, it was so ordered.

B. Eagle Valley Center Ropes Course Lease

Southeast Alaska Independent Living (SAIL) has applied to lease the Ropes Course at the Eagle Valley Center. This facility is located at 24600 Amalga Harbor Road and is managed by the CBJ Parks and Recreation Department.

SAIL plans to maintain and upgrade the course to make it more accessible for people with mobility restrictions. Since the Ropes Course was not advertised for general leasing, as stipulated in CBJ§53.09.260 Negotiated sales, leases, and exchanges, the Assembly needs to determine if SAIL's proposed lease should proceed by direct negotiation or if Parks should invite other groups to submit proposals to lease the facility. No competing inquiries have been received at this time. Completing this lease will make SAIL eligible for additional grant funding that will help support its mission.

The City Manager recommends that the Assembly adopt the following motion:

The Assembly authorizes the City Manager to commence lease negotiations with Southeast Alaska Independent Living (SAIL) to lease the Eagle Valley Center Ropes Course.

Public Comment:

Tristan Knudson Lombardo, Assistant Director of Southeast Alaska Independent Living (SAIL), said he has been working with Parks and Recreation on the Ropes Course for over a year to open it back up to the community. He thanked the P&R staff Kristi West and Kirk Duncan who have done amazing work at the lodge. SAIL wants to be part of this "crown jewel" in the community.

Mr. Gregory said he was a member of SAIL's non-profit board and may have a conflict. Ms. Mead said no conflict existed.

Assembly Action:

MOTION, by Becker, to authorize the City Manager to commence lease negotiations with Southeast Alaska Independent Living (SAIL) to lease the Eagle Valley Center Ropes Course. Hearing no objection, it was so ordered.

XI. STAFF REPORTS

Scott Ciambor, Chief Housing Officer said the Assembly appropriated \$75,000 to open a cold weather shelter from 11:30 pm to 6:30 am on nights that temperatures dip below 32 degrees. The operation has been open for 17 nights in December. 309 people have used the facility during that time, averaging about 18 people per night.

Mr. Edwardson asked about volunteer staff. Mr. Ciambor said with the cooperation of The Glory Hole and AWARE, the shelter is operating with 2 staff per night. It was initially difficult to get the staffing but those issues have been alleviated for the rest of the winter.

Mr. Nankervis asked how the shelter operations were affecting the incidence of people sleeping in doorways downtown. Mr. Ciambor said that JPD routinely performs "wake

CITY/BOROUGH OF JUNEAU
★ ALASKA'S CAPITAL CITY

PLANNING COMMISSION
 NOTICE OF DECISION
 May 23, 1990

File No. CU-02-90

JP

Joe M. Smith
 P.O. Box 3-2472
 Juneau, Alaska

Application for: Conditional Use
 Legal Description: U.S. Survey 1198
 Parcel Number: 3-B42-0-100-001-0
 Date Submitted: February 6, 1990
 Hearing Date: May 22, 1990

The Planning Commission at their May 22, 1990, regular public meeting, approved the application for a Conditional Use Permit subject to the following conditions:

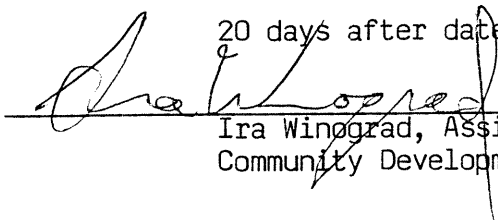
1. The applicant shall provide adequate on-site parking to accommodate peak activity special events. The conditional use permit is subject to staff approval of the parking plan.
2. The applicant shall locate or fence the golf driving range so that golf balls do not present a hazard to off-site pedestrians.
3. The applicant shall not use the golf driving range for the general public (non-lodge guests) unless a conditional use permit is approved for a public driving range.
4. The applicant shall not use the runway for commercial activity such as arriving or departing guests or scenic flights for guests.
5. The applicant shall be responsible for requiring that all-terrain vehicles used on the Amalga Harbor access trail can only be driven by lodge employees.
6. The applicant shall pay 50 percent of any CBJ boardwalk trail improvements on immediately adjacent public property which might be necessitated by direct environmental impact from lodge guests.
7. The applicant shall leave the main entry gate open during lodge business hours or else provide a mechanism to allow lodge guests to open the gate.

Attachment D

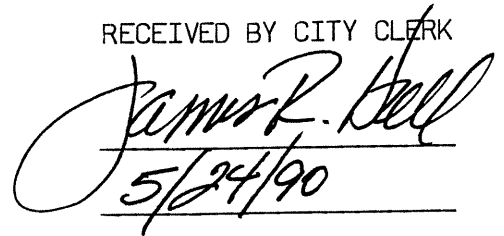
Notice of Decision
CU-02-90
Page 2

8. The applicant shall be responsible to keep vehicles from trespassing outside the easement.
9. The applicant shall demonstrate the availability of 1,050 gallons of potable water per day.
10. The applicant shall meet Department of Environmental Conservation discharge requirements.

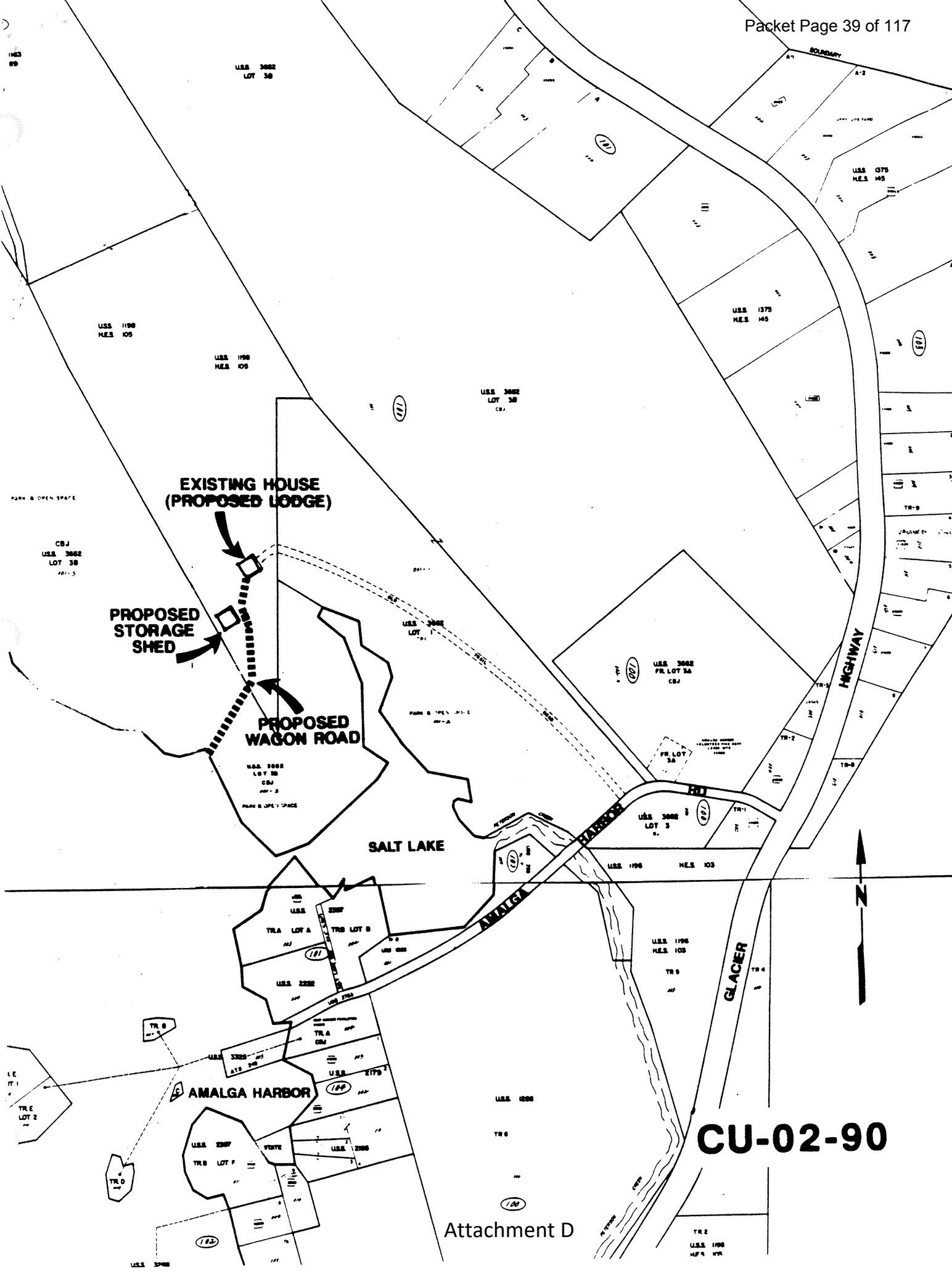
Effective Date: 20 days after date of City Clerks signature.

Project Planner: 
Ira Winograd, Assistant Director
Community Development

RECEIVED BY CITY CLERK


5/24/90

cc: Debra J. Purves

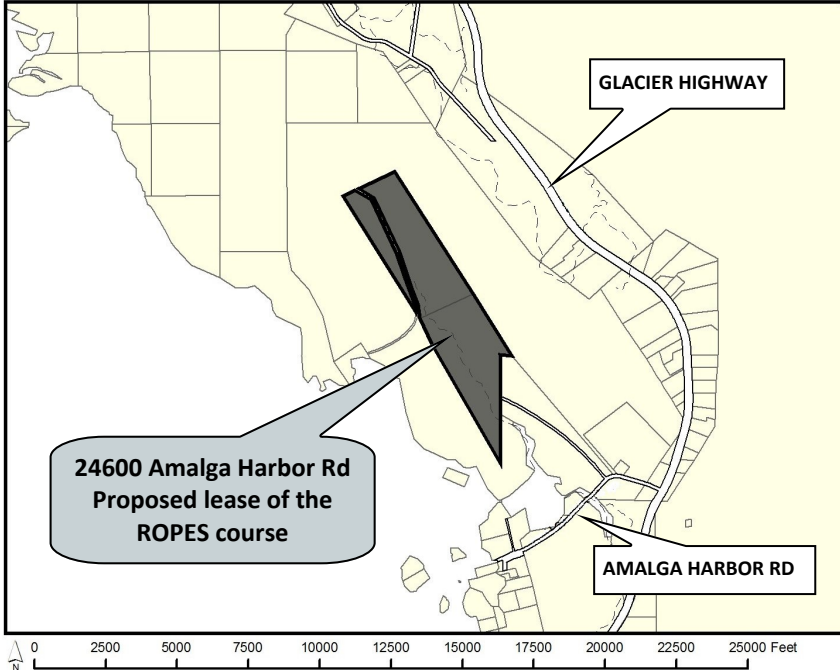


CU-02-90

Attachment D

Invitation to Comment

On a proposal to be heard by the CBJ Planning Commission
Your Community, Your Voice



155 S. Seward Street Juneau, Alaska 99801

TO:

A request has been submitted for consideration and public hearing by the Planning Commission to **lease the ROPES course** located at **the Eagle Valley Center, 24600 Amalga Harbor Road**, in a **Rural Reserve zone**. If recommended for approval, the request will be sent to the CBJ Assembly for final consideration.

TIMELINE

Follow the case (staff report, hearing results, meeting minutes) at
<https://beta.juneau.org/assembly/assembly-minutes-and-agendas>

Now through February 5, 2018

Your comments to the Planner, **Allison Eddins**, will be included in the staff report.

February 6 through 12 noon, February 23

Your comments will be delivered to Commissioners to read along with the staff report in preparation for the hearing.

HEARING DATE & TIME
7:00 pm, February 27, 2018

You may deliver up to 2 pages of written material (15 copies) or give oral testimony at the hearing in City Hall's Assembly Chambers, 155 S. Seward St.

After the PC Hearing

Results will be posted online and if recommended for approval, the case will be sent to the CBJ Assembly.

Phone: **(907)586-0715** ♦ Email: **pc_comments@juneau.org**
Mail: **Community Development, 155 S. Seward St, Juneau AK 99801**

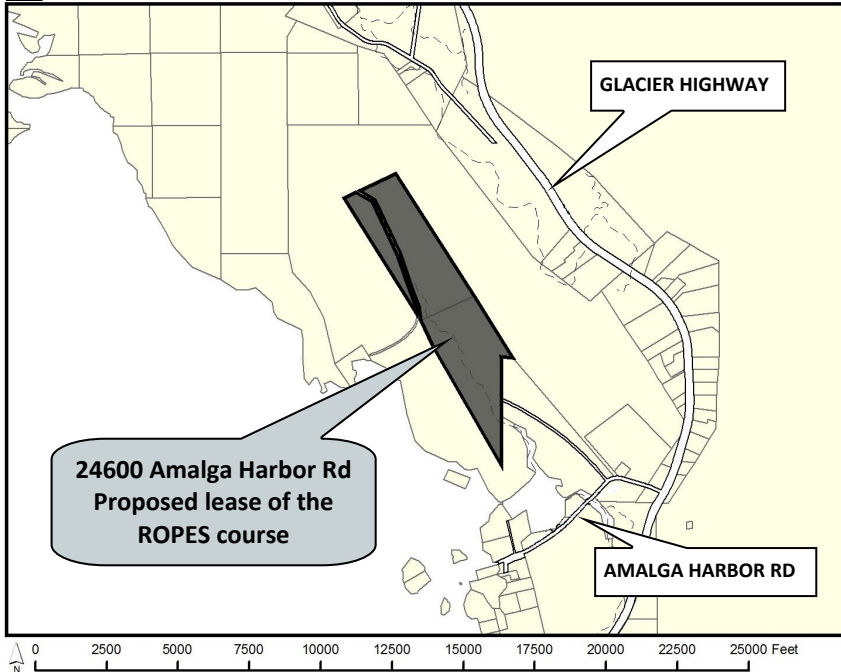
Date notice was printed: January 26, 2018

Attachment E

Case No.: CSP2018 0002
Parcel No.: 3B4201000010
CBJ Parcel Viewer: <http://epv.juneau.org>

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Your Community, Your Voice



155 S. Seward Street Juneau, Alaska 99801

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Date notice was printed: January 26, 2018

Case No.: CSP2018 0002
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Planning Commission

(907) 586-0715
PC_Comments@juneau.org
www.juneau.org/plancomm
155 S. Seward Street • Juneau, AK 99801

PLANNING COMMISSION

NOTICE OF RECOMMENDATION

Date: March 2, 2018
File No.: CSP2018 0002

City and Borough of Juneau
CBJ Assembly Members
155 S Seward Street
Juneau, AK 99801

Proposal: Planning Commission Recommendation to the City and Borough Assembly regarding the lease of the Eagle Valley Center ROPES course to Southeast Alaska Independent Living (SAIL).

Property Address: 24600 Amalga Harbor Road

Legal Description: USS 1163

Parcel Code No.: 3B4201000010

Hearing Date: February 27, 2018

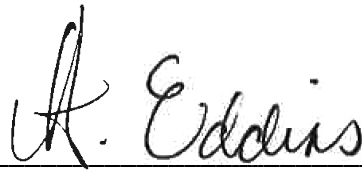
The Planning Commission, at a regular public meeting, adopted the analysis and findings listed in the attached memorandum dated February 15, 2018, and recommended that the City Manager direct CBJ staff to enter into a contract with Southeast Alaska Independent Living (SAIL) for the lease of the ropes course located at the Eagle Valley Center.

Attachments: February 15, 2018 memorandum from Allison Eddins, Community Development, to the CBJ Planning Commission regarding CSP2018 0002.

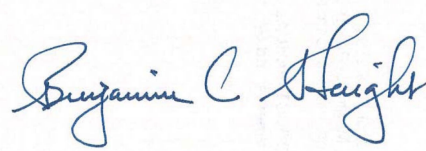
This Notice of Recommendation constitutes a recommendation of the CBJ Planning Commission to the City and Borough Assembly. Decisions to recommend an action are not appealable, even if the recommendation is procedurally required as a prerequisite to some other decision, according to the provisions of CBJ 01.50.020(b).

City and Borough of Juneau
CBJ Assembly
File No.: CSP2018 0002
March 2, 2018
Page 2 of 2

Project Planner:



Allison Eddins, Planner
Community Development Department



Benjamin Haight, Chair
Planning Commission



Filed With City Clerk

03/05/2018

Date

cc: Plan Review

NOTE: The Americans with Disabilities Act (ADA) is a federal civil rights law that may affect this development project. ADA regulations have access requirements above and beyond CBJ - adopted regulations. The CBJ and project designers are responsible for compliance with ADA. Contact an ADA - trained architect or other ADA trained personnel with questions about the ADA: Department of Justice (202) 272-5434, or fax (202) 272-5447, NW Disability Business Technical Center (800) 949-4232, or fax (360) 438-3208.



(907) 586-0715
CDD_Admin@juneau.org
www.juneau.org/CDD
155 S. Seward Street • Juneau, AK 99801

DATE: February 16, 2018

TO: Planning Commission

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

FILE NO.: AME2016 0002

PROPOSAL: A text amendment to CBJ code 49.20 regarding variances

ATTACHMENTS:

- Attachment A: Draft Ordinance 2018-04 – Amending CBJ 49.20, *Variances*
- Attachment B: Planning Commission Meeting Minutes, January 23, 2017
- Attachment C: Memorandum, Assistant Municipal Attorney Palmer, February 7, 2018

INTRODUCTION

The proposed ordinance would amend Title 49, the Land Use Code (“Code”), regarding variances. At the December 12, 2017 Planning Commission Public Hearing this item was continued to a future meeting in order for staff to expand upon the intent of each proposed variance criterion as well as to draft an administrative variance process. This staff report and attached ordinance incorporate the requested changes.

The City and Borough of Juneau (CBJ) Code states in CBJ 49.10.170(d) that the Commission shall make recommendations to the Assembly on all proposed amendments to the Land Use Code, indicating compliance with its provisions and with the Comprehensive Plan.

BACKGROUND

The intent of a variance is to provide relief from the Code requirements in cases of hardship when application of those requirements would place an unreasonable burden on the property owner. Over time the variance has instead become a tool for flexibility, offering relief to property owners to relax Code requirements or even to waive requirements outright in cases when no hardship existed. The variance process has been used often, broadly, and in some cases, inappropriately.

Staff worked with the Title 49 Committee over the past year to propose more objective amendments to the variance requirements and to provide more flexibility elsewhere in the Code, since it is evident that this is something the community values.

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 February 16, 2018
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The Planning Commission discussed the proposed amendment at its Committee of the Whole meetings on June 13, 2017, and August 8, 2017. The Planning Commission reviewed and proposed changes to this ordinance at its regular meetings on December 12, 2017, and January 23, 2018 (Attachment B). The Title 49 Committee of the Planning Commission also met December 20, 2017 to discuss the proposed administrative variance process. The attached ordinance incorporates those changes (Attachment A).

DISCUSSION

As stated above, a variance is intended to provide relief from Code requirements when application of the Code results in an unreasonable hardship. The proposed ordinance is intended to accomplish the following goals:

- Provide clarity regarding what is and what is not variable;
- Remove the preliminary threshold requirement;
- Require the posting of a public notice sign for those variances requiring a public hearing;
- Amend the variance criteria to reduce subjectivity; and
- Amend the De Minimis/Administrative variance.

I. WHAT CAN BE VARIED

The current Code states that a variance is required to vary dimension or design standards of Title 49 (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.

Those provisions have been interpreted broadly. For example, the following items have been considered design or dimensional standards and for which variances have been approved, and will be discussed in more detail below:

- | | |
|----------------------------|---|
| • lot width, | • parking requirements, |
| • lot depth, | • access requirements, |
| • yard setbacks, | • panhandle requirements, |
| • building height, | • sign requirements, and |
| • fence height, | • design standard changes, including Planned Unit |
| • streamside buffers, | Developments (PUDs), canopies, mobile home parks, |
| • vegetative cover, | cottage housing, accessory apartments, common |
| • eagle nest tree buffers, | walls, and historic district requirements. |

At the meeting on January 23, 2018, a number of Commissioners expressed hesitation with limiting the scope of what can be varied (CBJ 49.20.200). The Law Department has provided a

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memo (Attachment C) that includes two options for CBJ 49.20.200. Option 1 restricts variances to six items. Option 2 allows variances to everything except two Code chapters. Staff believes both options are reasonable, and staff prefers Option 1.

The CBJ has consistently prohibited variances that could alter density, lot coverage, the use of land or structure, or reduce a construction standard. In the draft of the proposed changes brought to the Committee of the Whole at its August meeting, staff proposed Criterion 6, which stated that *"The variance would not vary lot density, lot coverage, construction standards, or the use of the land or structure."* At that meeting, the Planning Commission asked for staff to remove Criterion 6 from the criteria and include it as part of the overall introduction to variances located at CBJ 49.20.200. After additional evaluation and discussion, the prior concept of Criterion 6 is now located in Criterion 5; however, the wording has changed. The specifics of proposed Criterion 5 are discussed more below. When the Code specifies what *cannot* be done, it implies that anything *not* listed *can* be done. This is not the intent. The intent is to make clear that variances that are granted do not result in a secondary impact to lot size, lot coverage, or density that is less than the minimum requirement of the zoning district. This is why the concept was not moved to the introductory paragraph but to a modified Criterion 5. Note that, if Option 2 in the Law Department memo (Attachment C) is selected, then Criterion 5 will need to be deleted.

Design standards are no longer proposed as being variable because a hardship is usually difficult to justify in these instances. Typically, a design modification is "wanted" rather than is "needed." Common design standard variances have included access and frontage related requests, panhandle lot design requests, and accessory apartment design requests. However, recent Code changes regarding shared access, privately maintained access roads in public rights-of-way, panhandles, accessory apartments, parking waivers, and eagle habitat have provided more flexibility in these instances such that there is likely no need to make them subject to a variance. This is discussed in more detail below.

(Continued on the following page.)

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Types of Variances Considered Since 1987

Variance Type	Total Number of Cases	Percent of All Variances	Total Number Approved by Type	Approval Percentage by Type
Setbacks	492	53%	451	92%
Parking	114	12%	92	81%
Streamside Buffers	70	7%	66	94%
Dimensional Standards	65	7%	57	88%
Access-Related	49	5%	40	82%
Eagle Tree Setbacks	42	5%	42	100%
Design Standards	39	4%	31	80%
Vegetative Cover	25	3%	24	96%
Height	19	2%	18	95%
De Minimis	12	1%	12	100%
Lot Area	6	>1%	5	83%
Lot Coverage	4	>1%	3	75%
Total	937	100%	853	89%

Source: Variance Permit Data 1987 through 2015

Setbacks

As the table above indicates, of the 937 variances considered in the past thirty years, approximately 53% of all variance requests have been for setback reductions. Setback variances are the most frequent type of area variance, and will continue to be variable going forward. Additional changes to the Land Use Code and Zoning Maps that will create additional flexibility and will better fit properties are currently underway. These changes are expected to reduce the requests for variances to setback requirements.

CBJ 49.25, *Zoning Districts*, establishes the minimum required setbacks for each zoning district. It also provides for a number of setback exceptions and setback reductions that can be applied administratively, without a variance or any special approval. These include the following:

Front Yard Setback Reductions

- **Sloping lots** – lot grades that exceed 25% may have the front yard setback reduced, but may be no closer than 5 feet to the front property line.
- **Substandard Setbacks on Neighboring Properties** – new buildings may have a front yard or street side setback reductions equal to the average of the three closest adjacent buildings.

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Side and Rear Yard Setback Reductions

- **Undersized/Substandard lots** – Setbacks may be reduced to the same percentage that the lot width or depth is reduced, but in no case may be less than 5 feet to the side or rear property line.
- **Tidewater lines** – yard setbacks are not required from tidewater/shore lot lines.

Encroachments Allowed:

- **Carports and garages** – in some instances, a garage or carport may be located no closer than 5 feet to any property line.
- **Architectural features** – architectural features and roof eaves may encroach into setbacks four inches for each foot of yard setback required, but no closer than two feet to a property line.
- **Unenclosed balconies, ramps, parking decks** – these items are exempt from setback requirements when constructed at the same grade as the adjacent roadway.
- **Unenclosed porches and decks.**
- **Uncovered porches, terraces, and patios.**
- **Accessory buildings (non-living spaces) such as sheds, fuel tanks, greenhouses, and playhouses.**
- **Temporary boat or RV shelters.**
- **Arctic entries** – unheated and not used for living space, with gross floor area 65 square feet or less.

The following changes are also being proposed to provide greater flexibility and to alleviate the number of setback variance requests:

- **Area zone district changes** – The downtown residential area, including the Highlands, the Flats (Casey-Shattuck), and Starr Hill, are undergoing rezoning efforts as the majority of setback variances occur in this area of the CBJ. This is a clear indication that the current zoning doesn't "fit" these neighborhoods. Staff is working on developing zoning district standards that better fit these areas before August of 2019, when the Alternative Design Overlay District (ADOD) sunsets.
- **Energy efficiency improvements** – Ordinance 2018-06 is set for public hearing with the Assembly, it would amend Title 49 to allow a setback exception for exterior energy efficiency improvements to encroach into setbacks up to eight inches.

These efforts should help reduce the amount of setback requests and provide additional Code flexibility.

Parking

Approximately 12% of all variance requests have been to parking standards listed in CBJ 49.45. Historically, requests for parking variances are the second most requested variance. Parking variances have been granted to reduce parking standards, to reduce parking or loading space

Planning Commission
File No.: AME2016 0002
February 16, 2018
Page 6 of 16

dimensions, to change parking district standards (change standards from one district to another), and to allow back-out parking onto a street where it is not allowed.

The majority of parking variances granted have been to reduce required parking standards. Title 49 was amended in 2017 (Ord. 2016-46) to add Parking Waivers, a new tool to provide parking flexibility. Parking reductions for minor development may be approved by the Director. The Planning Commission may approve parking reductions for major development. Denial of a waiver can be appealed to the Board of Adjustment or the Assembly as described in CBJ 49.20. The parking waiver is expected to provide relief for a majority of these requests. Additionally, there are three parking districts for the downtown area that provide relief. The Parking District 1 (PD-1) allows for a 60% reduction in required parking while the Parking District 2 (PD-2) allows for a 30% reduction. A Parking Fee-In-Lieu District also allows for the payment in lieu of providing required parking. Those funds are allotted towards downtown parking strategies.

Streamside Buffers

Seven percent of requested variances were for streamside buffers. Staff is currently working on proposed amendments to the streamside buffer requirements; the concept for the update is to allow some types of encroachments when mitigation is provided to minimize impacts to anadromous waterbodies. For encroachments that are not allowed by the Code change, a variance option still needs to be available.

Dimensional Standards

Variances to dimensional standards are requested prior to a new lot being created through the subdivision process. Variance requests to lot width and lot depth may be granted if they do not result in a reduction in lot size below the minimum for the zone district. Dimensional standard variances were seven percent of total requests.

Access and Frontage-Related

Approximately five percent of all variance requests were for access or frontage-related relief. The subdivision updates approved in 2015 (Ordinance 2015-03(am)) included new frontage and access options. Prior to the Code change, a number of variance requests were made to these standards that resulted in shared driveways and/or gravel access roads. The subdivision code update included the Privately-Maintained Access (PMA) road in public rights-of-way. For minor subdivisions (13 or fewer lots) located outside the Urban Service Area, a private gravel road in a public right-of-way may be constructed to access lots in new subdivisions. Recent Code changes in 2017 regarding shared access and panhandle requirements also resulted in additional frontage and access options that previously had been the subject of variance requests regarding shared driveways. These Code amendments have provided development flexibility. Regardless of which option is recommended by the Planning Commission – Option 1 or 2 – the standards in CBJ 49.35 will not be variable. However, the Planning Commission recommended

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File No.: AME2016 0002
February 16, 2018
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approval for a street waiver process at its February 13, 2018 meeting which will provide additional flexibility.

Design Standards

Design standards variances totaled four percent of all variance requests. Over the past 30 years fewer than 40 requests were made to design standards. These included accessory apartment standards, canopy standards, and panhandle standards, for example. Over half of the design standard variance requests were to accessory apartment or panhandle standards. Recent Title 49 amendments to those requirements provide the flexibility sought by the previous variance requests. Canopy standards in Title 49 are currently being reviewed.

Vegetative Cover

A Code change in 2013 resulted in the removal of the Mixed Use (MU) zoning district requirement for vegetative cover. The MU zoning district requirement for 5% vegetative coverage was in conflict with the lot coverage requirement of 0%, allowing complete build out of the lot. Build out of lots in the MU district is encouraged and is consistent with the established development pattern in the Downtown Historic District where many of the previous variance requests occurred. Since the Code was amended, there have been no requests to vary vegetative cover.

Height

Height will continue to be variable. There has been less than one height variance request a year since 1987. A variance is not the only way to exceed the maximum height established in zoning districts. A height bonus may be granted when a developer satisfies the minimum development standards provided in Code. Based upon a point system, the Planning Commission may approve a height bonus for major developments located in the Mixed Use 2 (MU-2), Waterfront Commercial (WC), and Waterfront Industrial (WI) zoning districts. There is no maximum height limit in the Industrial (I) or Mixed Use (MU) zoning districts. Height exceptions also exist for things as church spires, tanks, belfries, cupolas, monuments, flagpoles, chimneys, masts, and similar structures.

De Minimis/Administrative

De minimis cases only account for one percent of all variance types. This ordinance (2018-04) includes an administrative variance provision that would allow the Director to approve before-the-fact and after-the-fact setback variances up to two feet or 25%, whichever is less. This would allow administrative approval for minor encroachments when a hardship exists. Providing for small, before-the-fact variances greatly increases the flexibility of required setbacks.

Planning Commission
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 February 16, 2018
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Lot Area

Less than one percent of all variance requests were for reduced lot area. In a small number of cases (six cases total) variances have been allowed to create lots that were smaller than the minimum that zoning district standards require. This variation to density is explicitly impermissible and should not be allowed to happen in the future. The proposed non-conforming Code changes, as well as the downtown Juneau and Douglas rezoning efforts will address some of these situations.

Lot Coverage

In the past 30 years there have been only four requests to vary lot coverage. Three of those were approved. Downtown Juneau and Downtown Douglas areas have a higher chance of having issues with lot coverage requirements as many of the lots are already non-conforming. Through the Alternative Development Overlay District (ADOD) process, property owners may apply for an ADOD permit approval that could allow greater setback encroachments, lot coverage, and height than what is currently allowed. Staff is working on developing zoning district standards that better fit these areas.

Summary

Due to many recent Code amendments, there are now more tools available to provide the flexibility previously sought with the variance requests from the past 30 years. Staff continues to work on Code changes designed for more flexibility options.

II. REMOVAL OF THE THRESHOLD REQUIREMENT

In a recent variance appeal, *Olmo, LLC. V. BoA* (Feb. 14, 2017), the Assembly held that for a variance the applicant must first show that an unreasonable hardship exists (threshold requirement) prior to determining if a proposal meets the six criteria for granting a variance.

That decision was based on the language of CBJ 49.20.250(b), *Variances other than de minimis*, which states the following:

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...

Prior to this decision variance decisions were generally made by evaluating the six criteria only, none of which included specific evaluation whether a hardship indeed existed.

The draft ordinance (Attachment A) incorporates the Commission's proposal to remove the threshold requirement and incorporate it into the criteria (Criteria 1 and 2). In the draft

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ordinance, a variance request would need to meet the proposed five criteria only and not have to meet an initial threshold requirement as is currently required.

III. PROPOSED CRITERIA

The existing criteria are not clear and are too subjective. The purpose of the proposed criteria changes in the draft ordinance (Attachment A) are to provide greater certainty for developers and property owners and to deter the inappropriate use of the variance process where no hardship exists. The following criteria are proposed in the draft ordinance:

1. Enforcement of the ordinance would result in an unreasonable hardship.

The purpose of this criterion is to analyze whether a hardship exists, and if so, whether it is unreasonable. This differs from the existing Code in that a hardship was implied as a threshold issue, but not explicitly stated as a criterion. With this amendment the applicant must establish that the property has an undue or unnecessary hardship caused by a code requirement in a way that is distinct from other similarly situated properties. Consistent with Criterion 2, the only way an applicant can establish an unreasonable hardship is by identifying an unusual or special condition on the property. (E.g.: *Durkin Vill. Plainville, LLC v. Zoning Bd. of Appeals of Town of Plainville*, 107 Conn. App. 861, 870 (2008) which states that the “basic zoning principle that zoning regulations must directly affect land, not the owners of land” is especially relevant in the context of variances.)

This is consistent with what the Alaska Supreme Court stated in the *City & Borough of Juneau v. Thibodeau*, 595 P.2d 626, 635-636 (Alaska 1979),

Peculiarities of the specific property sufficient to warrant a grant of a variance must arise from the physical conditions of the land itself which distinguish it from other land in the general area. The assertion that the ordinance merely deprives the landowner of a more profitable operation where premises have been substantially the same value for permitted uses as other property within the zoning classification argues, in effect, for the grant of a special privilege to the selected landowner.

For example, the applicant has the burden of proving that an unusual or special condition of the property directly causes the need for a variance. By focusing on an unreasonable hardship this criterion prevents an applicant from seeking a variance solely to relieve pecuniary hardship or inconvenience, which is consistent with Alaska Statute 29.40.040(b)(3). For example, odd-shaped lots or unusual topography are conditions that may contribute to a hardship. The applicant must then explain how the condition creates an unreasonable hardship from complying with Code requirements. The *Thibodeau* decision reiterated that where an ordinance equally affects all property in the zoning district, relief from the ordinance must come from the Assembly through an amendment to the zoning code.

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2. The unusual or special conditions of the property are not caused by the person seeking the variance.

The purpose of this criterion is to reinforce the concept that the hardship must result from an unusual or special condition on the property and to ensure that the hardship is not self-imposed. This is sometimes known as the “self-created hardship” test. It is similar to the criterion in Alaska Statute 29.40.040(b)(1) that a variance may not be granted if “special conditions that require the variance are caused by the person seeking the variance.” This also means that the special conditions or circumstances identified in the application do not result from the actions of the applicant. To otherwise grant such a variance would reward or excuse the owner’s lack of due diligence or poor project planning, which is not the intent. For example, property owners may, intentionally or unknowingly, construct a building that violates the zoning regulations and then later ask for a variance to correct the situation or to minimize expenses in order to correct the situation. This criterion is intended to prevent a variance from being granted in such a case. The applicant will need to provide evidence that the hardship is not self-imposed and that the special conditions do not result from the applicant’s actions. In other words, the applicant will need to provide evidence that the variance is due to circumstances that are beyond the control of the applicant. Furthermore, the request cannot be solely to make it more convenient to use the property.

Examples of self-imposed conditions or conditions resulting from the owner’s actions may include:

- Wanting a larger structure or an addition not allowed by Title 49 when the property does not have an unreasonable hardship.
- Constructing a structure or building without the necessary permits or development that is not in compliance with an approved permit.

Review of Self-Created Hardship Cases

Throughout the United States courts have decided a variety of variance appeals regarding self-created hardship. The most challenging cases appear to involve survey or height errors. Some decisions go to the extreme that a self-created hardship exists when, for example, the owner hires an architect or contractor who constructs the home in the wrong location or too high, the result is considered a self-created hardship and a variance is not available. *E.g., Morikawa v. Zoning Bd. of Appeals of Town of Weston*, 126 Conn. App. 400, 411 (2011).

Similar to this extreme other courts have held that if you have one degree of separation from the landowner to the actor causing the hardship, then some courts will allow the issuance of a variance. An example of that type of decision occurred in *Osborne v. Zoning Board of Appeals*, 41 Conn. App. 351 (1996). In that case, the Osbornes hired an architect who then hired a surveyor. The surveyor made an error and the house was constructed in the setback. Since the architect hired the surveyor and not the Osbornes directly, the court held that the hardship was not self-created because it was not on behalf of the applicant, but on behalf of the architect.

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The Osbornes were separated by one degree from the person who made the error so the error was not self-created and they could seek a variance.

Staff believes the CBJ wishes to take a different approach with the self-created hardship concept similar to the approach discussed in *Turik. v. Town of Surf City*, 182 N.C. App. 427 (2007). In this case an error made in good faith that resulted in a newly constructed building erroneously being built into the setback, even though a building permit and a survey were relied upon, resulted in a hardship that could be considered for a variance. While the error occurred because of the applicant's efforts, it was not considered self-created because the applicant made a good faith effort to build as required by the survey and the limits of the permit.

Reviewing the court cases regarding self-created hardships there appeared to be three approaches to determine what is self-created. In some cases, the courts held:

1. Survey errors done by the owner or owner's direct employees/agents are self-created (*Morikawa*).
2. Survey errors done by people with more than one degree of separation from the owner are NOT self-created (*Osborne*).
3. Surveys, although erroneous, but relied on in good faith is NOT self-created (*Turik*).

Based upon the discussions to date by the Planning Commission, staff believes that #3 is more aligned with the Planning Commission's direction. Errors made, but relied on in good faith, are not self-created and may be considered for a variance.

3. The grant of the variance will not be detrimental to public health, safety, or welfare.

This analysis is to determine whether the variance will conflict with the purpose of the Land Use Code. The purpose and intent of the regulations in the Land Use Code are found at CBJ 49.05.100. Public health, safety, and welfare are one of those primary goals. For instance, if there is a request to reduce a front or street side setback on a corner lot, the analysis should include considering if the sight distance for vehicles will be impaired by reducing the setback, thereby potentially causing a safety issue. The applicant should explain how the variance will not affect safety or health standards, light, traffic, noise levels, and air or water quality.

4. The grant of the variance is narrowly tailored to relieve the hardship.

The purpose of this criterion is to only provide the relief necessary to alleviate the unreasonable hardship. This criterion is not meant to reduce any more of a requirement than is necessary. This criterion limits the extent of the allowed variance while providing the Commission the ability to narrowly tailor relief.

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5. The grant of the variance does not result in a smaller lot size, a greater density, or greater lot coverage than allowed for the zone district.

This criterion is needed is only needed if Option 1 is selected. The purpose in this criterion is to specifically analyze whether the requested variance to lot width, lot depth, building setbacks, or height will have a direct or secondary effect of reducing the minimum requirements in the Table of Dimensional Standards (CBJ 49.25.300) regarding density, lot size, or lot coverage. For example, if a variance to lot depth is approved, the approval cannot result in a lot size less than the minimum area allowed in the zoning district, which affects density. Zoning district standards create neighborhood character, which is one of underlying principles of our zoning code.

IV. AMEND THE DE MINIMIS VARIANCE

The De Minimis Variance was added to the Code in 1995, but has been minimally used. In the current Code, the director may allow a De Minimis Variance that encroaches up to 25% into the required yard setbacks after the building has been constructed. This is an “after-the-fact” variance that can be granted if it can be shown that the building was not intentionally constructed in an erroneous location.

The criteria that must be met in order for the Director to grant approval for these after-the-fact de minimis variances are minimal compared to the criteria for variances. The standards are not the same for these two types of variances, and they are not treated equally. This creates problems because (1) the after-the-fact variance is easier to obtain than non-de minimis variances obtained ahead of time; (2) the underlying policy can encourage developers to seek the after-the-fact variance instead of seeking the non-de minimis variance ahead of time; and (3) CDD already has both the enforcement tools and the discretion to appropriately deal with an inadvertent encroachment. Thus, there is a high likelihood that the de minimis variance provisions would be considered arbitrary.

The intent of this amendment is to eliminate the potential arbitrariness of the existing de minimis variance standards. The amendment provides that an administrative variance can be applied for before or after a project when projections will not encroach more than 25% or two feet into yard setbacks, whichever is less. The Director may approve an administrative variance after determining all of the following:

- Enforcement of the setback ordinance would result in an unreasonable hardship;
- The grant of the variance is not detrimental to public health, safety, or welfare; and
- The grant of the variance is narrowly tailored to relieve the hardship.

Notice will be provided to immediately abutting neighbors. If the Director denies the variance, the applicant may appeal the decision to the Planning Commission. The analysis of the same provisions found in the non-de minimis variance applies equally to administrative variances.

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V. OTHER TITLE 49 AMENDMENTS

As stated previously, one of the purposes of the proposed amendment is to stop using the variance process as a means to reduce Code requirements where no hardship exists. As the data has shown, the types of variances requested and approved indicate that there is a desire for more flexibility in Code. At the beginning of the review of the variance criteria staff and the Title 49 Committee identified areas of Code where increased flexibility should be created. Making these changes will rectify the practice of using the variance as a catch-all. The list below identifies the Code changes that provide additional flexibility that have been made in the last few years, as well as contemplated changes.

As stated previously, yard setbacks, lot width, lot depth, and building height are proposed to remain variable.

The following Code changes have occurred that provide additional flexibility:

- Vegetative cover requirement for Mixed Use zone districts eliminated (2013).
- Accessory apartment – regarding design (2009) and changes to apartment size and permitting requirements (2015).
- Parking – the parking waiver is now in effect (2017).
- Shared access – allows four or fewer lots to share access, frontage on a publicly maintained right-of-way is not required (2017).
- Alternative Development Overlay Districts (ADOD) – The downtown Juneau and the downtown Douglas overlay districts can provide flexibility regarding lot coverage, vegetative cover, and setbacks until zoning that “fits” the downtown residential areas are proposed (2017).
- Panhandle subdivision requirements (2017).
- Removed setbacks from trees with active eagle nests (2018).

As staff continues to update the Code and build in desired flexibility, the list of what can be varied can be amended to delete items as the Code is amended. Staff and the Planning Commission will continue to keep a watchful eye on future opportunities to provide development flexibility.

COMPLIANCE WITH THE COMPREHENSIVE PLAN

Comprehensive Plan Contents

The following discussions, policies, and objectives in the 2013 Comprehensive Plan are relevant to the proposed variances amendment:

From COMPREHENSIVE PLAN VISION AND GUIDING PRINCIPLES (Page 2):

The City and Borough of Juneau is a vibrant State Capital that values the diversity and quality of its natural and built environments, creates a safe and satisfying quality of life for

its diverse population, provides quality education and employment for its workers, encourages resident participation in community decisions and provides an environment to foster state-wide leadership.

To achieve this vision, the CBJ followed these principles in formulating its Comprehensive Plan:

- ***A safe place to raise a family.*** *Maintain safe neighborhoods and circulation systems; provide public spaces and facilities that foster community interaction and cohesiveness.*
- ***Quality education from Pre-school to University levels.*** *Promote quality educational programs and experiences in the schools and lifelong learning for our residents as well as a healthy lifestyle with adequate recreational facilities, resources and programs. Support a vital arts community, celebrating our diverse cultural heritage and unique historic resources.*
- ***A balanced economy.*** *Ensure a balanced, sustainable and diverse economy, actively encouraging employment opportunities for residents of all levels and ages that provide a livable wage and a dependable municipal tax base.*
- ***Natural resources.*** *Highlight and protect our scenic beauty, protect our streams and fish and wildlife habitat and foster the sustainable use of our natural resources.*
- ***A balanced community.*** *Ensure a balance between natural resource protection and the built environment, the efficient provision of infrastructure and goods and services, and housing affordable to all income levels.*
- ***Neighborhood livability and housing.*** *Maintain the identity and vitality of our neighborhoods, actively pursuing affordable housing for a diversity of households while promoting compatible livability and high quality design in new buildings.*
- ***Mobility.*** *Provide an accessible, convenient and affordable transportation system that integrates vehicle, vessel, rail and aircraft transport with sustainable and innovative transportation options— including convenient and fast public transit service, particularly for commuters to work, and bicycle and pedestrian networks throughout the community.*
- ***Involved citizenry.*** *Solicit resident participation and leadership in implementing the Plan policies and actions from all sectors of the community, encouraging mutual understanding and cooperation among all.*

From CHAPTER 2 - SUSTAINABILITY:

POLICY 2.1 TO BUILD A SUSTAINABLE COMMUNITY THAT ENDURES OVER GENERATIONS AND IS SUFFICIENTLY FAR-SEEING AND FLEXIBLE TO MAINTAIN THE

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VITAL AND ROBUST NATURE OF ITS ECONOMIC, SOCIAL, AND ENVIRONMENTAL SUPPORT SYSTEMS.

From CHAPTER 10 – LAND USE:

POLICY 10.2. TO ALLOW FLEXIBILITY AND A WIDE RANGE OF CREATIVE SOLUTIONS IN RESIDENTIAL AND MIXED USE LAND DEVELOPMENT WITHIN THE URBAN SERVICE AREA.

POLICY 10.3. TO FACILITATE RESIDENTIAL DEVELOPMENTS OF VARIOUS TYPES AND DENSITIES THAT ARE APPROPRIATELY LOCATED IN RELATION TO SITE CONDITIONS, SURROUNDING LAND USES, AND CAPACITY OF PUBLIC FACILITIES AND TRANSPORTATION SYSTEMS.

Discussion

The proposed amendment balances the varied Comprehensive Plan policies and is generally consistent with the overall vision.

COMPLIANCE WITH CBJ LAND USE CODE

The proposed amendment to Title 49 will not create any internal inconsistencies within the Code. As stated in CBJ 49.05.100, the purposes and intent of Title 49 are as follows:

1. *To achieve the goals and objectives, and implement the policies of the Juneau comprehensive plan, and coastal management program;*
2. *To ensure that future growth and development in the City and Borough is in accord with the values of its residents;*
3. *To identify and secure, for present and future residents, the beneficial impacts of growth while minimizing the negative impacts;*
4. *To ensure that future growth is of the appropriate type, design and location, and is served by a proper range of public services and facilities such as water, sewage, and electrical distribution systems, transportation, schools, parks and other public requirements, and in general to promote public health, safety and general welfare;*
5. *To provide adequate open space for light and air; and*
6. *To recognize the economic value of land and encourage its proper and beneficial use.*

The variance amendment was drafted with the purpose and intent of Title 49 taken into account. If approved as drafted it will be consistent with the above purposes.

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SUMMARY

Because of all of the changes made to Title 49 in the past few years to provide development flexibility staff supports Option 1 outlined in the Law Department memo, dated February 7, 2018 (Attachment C).

Option 1 is limited to six items being variable, as follows:

A variance is required to and can only vary the following (a) dimensional standards of this title: building setbacks, lot width, lot depth, and building height; and (b) standards directly related to habitat and canopies. Applications for prohibited variances shall not be accepted for filing or shall be rejected by the director.

Option 2 allows variances with the exception of five items, as follows:

Pursuant to this article, a variance may be granted to provide an applicant relief from the requirements of this title. A variance is prohibited from varying any requirement or regulation of this title concerning the use of land or structures, housing density, lot area, requirements in chapter 49.65, or requirements in chapter 49.35. Applications for prohibited variances shall not be accepted for filing or shall be rejected by the director.

Option 1 provides the predictability and consistency that the public, including the development community, have continually requested. It provides clarity for the public and staff, the applicants and neighbors. The Land Use Code is a living document and can be amended as necessary when it is warranted. As the data shows, recently approved Code amendments and amendments in review provide the standards and tools to achieve the flexibility requested through the variance process over the past thirty years. Option 2 would continue the pattern of the past thirty years, leaving much of the Code subject to a variance. This amendment effort has been undertaken to avoid that scenario and provide needed clarity for staff, the Planning Commission, and the public.

FINDINGS

Based upon the above analysis, staff finds that the proposed text amendment to Title 49 is consistent with the goals and policies of the Comprehensive Plan and Title 49. Additionally, this change would not create any internal inconsistencies within any plans or codes.

STAFF RECOMMENDATION

Staff recommends that the Planning Commission review and consider the proposed ordinance and forward a recommendation to adopt Option 1 along with ordinance for approval to the Assembly.

Presented by:
Introduced:
Drafted by:

ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 2018-04 PCv5

An Ordinance Amending the Land Use Code Relating to Variances

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 of Juneau Municipal Code.

Section 2. Amendment of Article. CBJ 49.20 Article II Variances is amended to read:
49.20.200 - Variance.

[See Palmer and Boyce memos for options]

49.20.210 - Submittal.

Except as provided in this article for an administrative variance ~~de minimis variances~~, an application for a variance shall be submitted to the board of adjustment through the department.

49.20.220 - Scheduling and fee.

(a) An application for an administrative variance shall be administered by the department. ~~If the director determines that the variance applied for is de minimis, the application shall be administered by the department according to subsection 49.20.230(a) and subsection 49.20.250(a).~~

(b) If the director determines that the request is not for an administrative variance ~~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 shall not be required and the variance fee shall be reduced by 20 percent. For separate variance applications, a fee and public notice according to section 49.20.230 shall be required.

49.20.230 - Public notice.

(a) Upon determination that the administrative variance application is complete, the director shall mail notice of the application to the immediately adjoining property owners, as determined by the director, and provide at least 14 days to submit comments before issuing a decision. ~~Public notice according to subsection 49.20.250(a)(1)(C) shall be required for consideration or issuance of a de minimis variance.~~

(b) For variances other than administrative 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.~~

49.20.240 - Board of adjustment action.

The board of adjustment shall hear all variance requests except administrative variances ~~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.

49.20.250 -- Variance standards ~~Grounds for variances.~~

(a) Administrative variance. ~~De minimis variances.~~

(1) An administrative variance may be granted to allow projections (i) not to exceed 25 percent of the yard setback requirements of this title, or (ii) two feet, whichever is less, upon the director determining the following:

(A) Enforcement of the setback ordinance would result in an unreasonable hardship;

(B) The grant of the variance is not detrimental to public health, safety, or welfare; and

(C) The grant of the variance is narrowly tailored to relieve the hardship.

(2) An administrative variance decision of the director may be appealed if a notice of appeal is filed within 20 days of the director filing a notice of decision with the municipal clerk.

~~A de minimis variance may be granted by the director after it is shown that all the following conditions have been met~~

~~(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 25 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) Non-Administrative Variance. A variance may be granted to provide an applicant relief from requirements of this title after the prescribed hearing and after the board of adjustment has determined that:

- (1) Enforcement of the ordinance would result in an unreasonable hardship;
- (2) The unusual or special conditions of the property are not caused by the person seeking the variance;
- (3) The grant of the variance is not detrimental to public health, safety, or welfare;
- (4) The grant of the variance is narrowly tailored to relieve the hardship; and
- (5) The grant of the variance does not result in a smaller lot size, a greater density, or greater lot coverage than allowed for the zone district. [If 49.20.200 Option 2 is chosen, then this needs to be deleted]

~~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.~~

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 title and to protect the public interest.

49.20.270 - Expiration and extensions of approval.

Expiration and extensions of variances shall be governed by the procedures and standards established for development permits in chapter 49.15, article II.

Section 3. Amendment of Section. CBJ 49.85.100(10) Generally is amended to read:

49.85.100 - Generally.

Processing fees are established for each development, platting and other land use action in accordance with the following schedule:

(10) Board of adjustment.

(A) Administrative variance ~~De minimis variance~~, \$120.00;

(B) Non-Administrative Variance ~~other than a de minimis variance~~, \$400.00;

(C) Alternative development permit, \$400.00.

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Section 4. Effective Date. This ordinance shall be effective 30 days after its adoption.

Adopted this _____ day of _____, 2018.

Attest: _____
Kendell D. Koelsch, Mayor

Laurie J. Sica, Municipal Clerk

Agenda
Planning Commission
Regular Meeting
 CITY AND BOROUGH OF JUNEAU
Ben Haight, Chairman
 January 23, 2018

I. ROLL CALL

Ben Haight, Chairman, called the regular meeting of the City and Borough of Juneau (CBJ) Planning Commission (PC), held in the Assembly Chambers of the Municipal Building, to order at 7:05 p.m.

Commissioners present: Ben Haight, Chairman; Paul Voelckers, Vice Chairman; Michael LeVine, Nathaniel Dye, Dan Miller, Dan Hickok, Kirsten Shelton, Carl Greene

Commissioners absent: Percy Frisby

Staff present: Rob Steedle, CDD Director; Beth McKibben, Planning Manager; Teri Camery, Senior Planner; Laura Boyce, Senior Planner; Allison Eddins, Planner II; Amy Liu, Planner I; Robert Palmer, Assistant Attorney II; Dan Bleidorn, Deputy Lands Manager

Assembly members: Beth Weldon, Loren Jones, Jerry Nankervis

At the request of Mr. Steedle, the Planning Commission approved the relocation of AME2016 0002, a text amendment of CBJ code 49.20 regarding variances, to the end of the agenda.

II. APPROVAL OF MINUTES

December 12, 2017 Draft Minutes - Regular Planning Commission Meeting

MOTION: *by Mr. LeVine, to approve the December 12, 2017, Planning Commission minutes with any minor alterations by staff or Commission member.*

The motion passed with no objection.

III. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS - None

IV. PLANNING COMMISSION LIAISON REPORT

Assembly Liaison to the Planning Commission Beth Weldon reported that on January 22, (2018), the Assembly approved the filing of an annexation petition with the local Boundary Commission. The Assembly is also considering how to participate in the Hydro One AEL&P purchase, she reported. The Assembly passed an ordinance amending the Land Use Code regarding eagle nests and eagle habitats. The Assembly also approved the adoption of the Lemon Creek Area Plan, said Ms. Weldon. The next meeting of the Public Works, Lands Committee, and Committee of the Whole will be Monday, January 29, (2018). The next regular meeting of the Assembly is February 12, (2018).

V. RECONSIDERATION OF THE FOLLOWING ITEMS

AME2017 0013: A request to rezone 7.06 acres from D-10 Residential to Light Commercial
Applicant: Douglas Island Development LLC
Location: 3853 Bayview Ave, 12020 Glacier Highway, 11998 Glacier Highway, 11950 Glacier Highway

Staff Recommendation

Staff recommends that the Planning Commission concur with the Director's analysis and findings and recommend approval to the Assembly for a rezone request to change 7.06 acres located at 3853 Bayview Avenue, 12020 Glacier Highway, 11998 Glacier Highway, and 11950 Glacier Highway from D-10 to LC (Light Commercial).

MOTION: *by Mr. Miller, to reconsider AME2017 0013 for purposes of discussion.*

Mr. Miller said the Ad Hoc Auke Bay Area Plan Committee held a meeting several weeks ago during which the implementation of various actions for the Auke Bay Area Plan were discussed. Another meeting for this committee is scheduled for January 30, (2018), said Mr. Miller, to discuss the creation of a new zone for a Traditional Town Center for Auke Bay, he said. The committee also requested that Mr. Steedle communicate with the CBJ mapping department to discuss the potential for development of a grid-like road system on what is primarily private property.

Chairman Haight noted that Mr. Frisby and Ms. Shelton were absent at the last meeting when this item was discussed. Only Commission members present at the last meeting can vote on this issue at this meeting, he noted.

Roll Call Vote:

Yeas: Miller, Dye, Greene, Haight

Nays: Hickok, Voelckers, LeVine

The motion failed.

VI. CONSENT AGENDA

Mr. Dye said he has a potential conflict which he leaves up to the discretion of the Commission. He said he manages property adjacent to one of the lots being sold under CSP2017 0017.

The Commission voiced no objection to Mr. Dye voting on this item.

Mr. Miller said he has a conflict pertaining to items USE2017 0028 and USE 2017 0029. He owns those properties.

Chairman Haight said in the past he was involved with items USE2017 0028 and USE 2017 0029. His involvement was only with the properties, not the tenants, he clarified.

The Commission voiced no objection to Chairman Haight's participation with those items.

USE2017 0028: A Conditional Use Permit for a marijuana retail store.
Applicant: The Mason Jar
Location: 2771 Sherwood Lane

Staff Recommendation

It is recommended that the Planning Commission adopt the Director's analysis and findings and grant the requested Conditional Use Permit. The permit would allow the development of a 1,500 square foot marijuana retail facility in the Industrial zoning district.

The approval is subject to the following conditions:

1. Prior to Certificate of Occupancy for development on Lots 5, 7, 8, and 9 of ANDSOH Subdivision, a bioswale shall be installed between the access and utility easement for Lots 5, 7, 8, and 9 of ANDSOH Subdivision and Pederson Hill/ Casa del Sol Creek; and the applicant shall implement storm water best management practices.
2. All waste containing marijuana product shall be stored in a locked enclosure until transported to the CBJ landfill.
3. Prior to the issuance of a Certificate of Occupancy, the applicant must submit a parking plan showing the required number of parking, loading, and accessible

spaces, and circulation aisles (as applicable). The plan must show how the ADA space will be clearly marked as required by CBJ 49.40.210(e).

4. Prior to issuance of a Certificate of Occupancy a minimum of 777 square feet of live vegetative cover shall be provided, and shown on a site plan reviewed and approved by CDD.
5. Exterior lighting shall not be used in a manner that produces glare on adjacent roads or neighboring property. All exterior lighting fixtures shall be a full cut-off design.

USE2017 0029: A Conditional Use Permit for a marijuana cultivation facility

Applicant: Herb'n Legends

Location: 2771 Sherwood Lane

Staff Recommendation

It is recommended that the Planning Commission adopt the Director's analysis and findings and grant the requested Conditional Use permit. The permit would allow the development of 1,200 square foot marijuana cultivation facility in the Industrial zoning district.

The approval is subject to the following conditions:

1. Prior to Certificate of Occupancy for development on Lots 5, 7, 8, and 9 of ANDSOH Subdivision, a bioswale shall be installed between the access and utility easement for Lots 5, 7, 8, and 9 of ANDSOH Subdivision and Pederson Hill/ Casa del Sol Creek; and the applicant shall implement storm water best management practices.
2. All waste containing marijuana product shall be stored in a locked enclosure until transported to the CBJ landfill.
3. Prior to the issuance of a Certificate of Occupancy, the applicant must submit a parking plan showing the required number of parking, loading, and accessible spaces, and circulation aisles (as applicable). The plan must show how the ADA space will be clearly marked as required by CBJ 49.40.210(e).
4. Prior to issuance of a Certificate of Occupancy a minimum of 777 square feet of live vegetative cover shall be provided, and shown on a site plan reviewed and approved by CDD.
5. Exterior lighting shall not be used in a manner that produces glare on adjacent roads or neighboring property. All exterior lighting fixtures shall be a full cut-off design.

CSP2017 0017: A consistency review for purchase of one lot, and the sale of four CBJ owned lots in an Industrial (I) zone.

Applicant: City & Borough of Juneau, Division of Lands & Resources, and Department of Engineering and Public Works (RecycleWorks Program)

Location: 1721 Anka Street (lot purchase), 5436 Commercial Boulevard and 5233 Shaune Drive (lot sale)

Staff Recommendation

Staff recommends that the Planning Commission forward the subject proposal to the Assembly with a recommendation of approval.

CSP2017 0018: Renewal of a lease for an existing communications tower on CBJ land at the West Juneau reservoir site at the end of Jackson Road

Applicant: City & Borough of Juneau

Location: 3000 Jackson Road

Staff Recommendation

Staff recommends that the Planning Commission find CSP2017 0018 consistent with the 2013 Comprehensive Plan and Title 49 and forward a recommendation of approval to the Assembly.

MOTION: *by Mr. LeVine, to accept staff's findings, analysis and recommendations and approve USE2017 0028 and USE2017 0029 with any minor alterations by staff or Commission member, noting Mr. Miller's recusal from those items.*

The motion passed with no objection.

MOTION: *by Mr. LeVine, to accept staff's findings, analysis and recommendations and approve CSP2017 0017 and CSP2017 0018 with any minor alterations by staff or Commission member.*

The motion passed with no objection.

VII. CONSIDERATION OF ORDINANCES AND RESOLUTIONS - None

VIII. REGULAR AGENDA

USE2017 0027: A Conditional Use Permit to amend USE2016 0018 to include three additional units.

Applicant: Constellation Development LLC

Location: 4401 Riverside Drive

Staff Recommendation

It is recommended that the Planning Commission adopt the Director's analysis and findings and grant the requested Conditional Use Permit. The permit would allow a modification to the USE2016 0018 by allowing one additional building with 3 units.

The approval of USE2017 0027 includes the conditions below, some of which modify conditions of USE2016 0018:

1. Prior to issuance of a building permit, the applicant shall install a silt fence on the 50-foot streamside setback line along the Mendenhall River. The silt fence shall be removed when construction is complete. (COMPLETE)
2. Prior to issuance of a building permit, the applicant shall submit to Community Development Department (CDD) a plan involving how vegetation will be replanted and maintained to ensure the project meets the minimum vegetative area requirement. (COMPLETE)
3. Prior to issuance of a building permit, the applicant shall submit an approved on-site drainage management plan using Best Management Practices (BMP) to ensure drainage is directed to an approved drainage infrastructure and does not directly enter the Mendenhall River without filtration. (COMPLETE)
4. Prior to issuance of a building permit, the applicant shall submit a design for the parking lot buffers (and if needed, buffering snow storage/ garbage containers) meeting one of the following features:
 - a. Sight-obscuring fence or vegetation from grade (0 feet) up to 6 feet; or
 - b. Sight-obscuring fence or vegetation from grade (0 feet) up to 4 feet and non-sight-obscuring (porous) fence or vegetation up to 6 feet in height.
 (COMPLETE)
5. Parking lot buffers shall be installed according to approved plans prior to issuance of a certificate of occupancy for the final unit. (PENDING COMPLETION)
6. Prior to issuance of a building permit, the applicant shall show any exterior lighting, which must be downward-directed to minimize horizontal glare. (PENDING COMPLETION)
7. Prior to issuance of the final Certificate of Occupancy (CO), all required parking lot striping shall be in place (or wheel stops) which complies with dimensions as per 49.40, Parking and Traffic. (PENDING COMPLETION)

8. Prior to issuance of CO of last dwelling unit, the parking lot buffers meeting Condition No. 4 shall be in place. (PENDING COMPLETION)
9. Prior to issuance of CO of the first dwelling unit, the applicant shall submit the Homeowners Association documents to the CDD that indicate the maintenance of all required vegetation and on-site buffers. (COMPLETE)
10. Prior to issuance of CO of the last dwelling unit, the applicant shall coordinate with CDD staff for a site inspection to verify that the vegetative cover was installed accordingly. If CO is requested during poor planting conditions, the applicant shall submit a bond covering the costs of the remaining vegetation to be planted according to provisions of 49.55.010. (BOND POSTED, PENDING COMPLETION)

Density Bonus Conditions

11. Prior to issuance of a building permit, the applicant shall submit drawings and construction plans showing how the 3 density bonus features will be constructed in compliance with CBJ Land Use and Street standards. (COMPLETE)
12. Prior to issuance of a building permit for all 51 units, the applicant shall submit plans and narrative indicating how all conditions will continue to be met. (NARRATIVE COMPLETE, PLANS COMPLETE FOR UNITS 1-36)
13. Prior to final CO of last dwelling unit, the applicant shall coordinate with CDD staff to ensure the density bonus features as shown on Attachment H are complete. This shall include:
 - a. The applicant to submit to CDD a recorded no-development easement that preserves the land between Mendenhall River and the buildings, matching Attachment H. (PENDING COMPLETION)
 - b. All required public improvements must be completed prior to issuance of a Temporary Certificate of Occupancy or Certificate of Occupancy for the final structure. The required public improvements include: the installation of sidewalk as previously described and the installation of the crosswalk across Riverside Drive to the existing sidewalk along Pinedale Street. (PENDING COMPLETION)

Ms. Liu told the Commission that this Conditional Use Permit request would modify the previously approved Conditional Use Permit which allowed for the development of 48 dwelling units along the north end of Riverside Drive in the Mendenhall Valley. That approval included a density bonus. The applicant is now seeking to add three more units for a total of 51 units by using the previously recommended and approved bonus.

Public comments regarding this Conditional Use Permit request focused primarily on concerns about parking, traffic and snow storage, said Ms. Liu. The proposed building will be very similar in look to the previously constructed buildings, said Ms. Liu. The building will satisfy the D-15 setback requirements of 20 feet for the front, 50 feet for the rear, and five feet to the side yard setback. Bonus points were also earned by providing additional green space between the buildings and the required 50-foot rear setback, said Ms. Liu. The site meets the minimum 30 percent vegetative cover requirement and it maintains 45 percent of the lot for vegetative cover, said Ms. Liu.

The building also meets the 35-foot height standard, said Ms. Liu. A lighting plan has not yet been submitted, but the narrative states that lighting would be recessed under carport roof's and cast down at door entries and stairs, said Ms. Liu. The applicant must show the exterior lighting plans prior to issuance of a building permit, she said.

The parking requirement for the total project is 90 spaces, and the applicant plans and providing 95 parking spaces, said Ms. Liu. The applicant also plans on providing more than the required number of van accessible parking spaces, she said.

The staff finds there will be no noticeable escalation of noise resulting from the 51-unit complex instead of the 48-unit complex, said Ms. Liu. Snow storage will take place between each building, she said. Six-foot-tall wooden fences will be used as site buffers and will also help with noise suppression, said Ms. Liu.

The project preserves habitat by complying with the 50-foot streamside buffer along the Mendenhall River, and provides additional green space adjacent to the 50 foot buffer, said Ms. Liu. The applicant has already posted a \$12,500 bond with CBJ to guarantee that landscaping and required vegetative cover will be completed, she noted.

The proposed total of 51 units is consistent with the medium density residential land use designation outlined in the Comprehensive Plan, said Ms. Liu. Medium Density Residential (MDR) is defined as urban lands for multi-family dwellings with a density of five to 20 units per acre, she said. The planned sidewalk along the west edge of Riverside Drive and the crosswalk at Pinedale Street meet the goals of the Juneau Non-Motorized Transportation Plan which recommends improvements to pedestrian and bicycle rider infrastructure in order for those commuters to have a safe and connected means of travel, said Ms. Liu.

This project does not materially endanger the public health or safety nor does it substantially decrease the value of or be out of harmony with property in the neighboring area, nor is it out of conformity with the Comprehensive Plan or other officially adopted plans, said Ms. Liu. The project meets all the necessary requirements for this development, said Ms. Liu.

The applicant must meet the 10 conditions listed above, with the three additional density bonus conditions, said Ms. Liu.

Commission Comments and Questions

Mr. LeVine asked if the scope of the Commission review is to be limited to the request for the three additional bonus units or if the Commission is to go back to the initial Conditional Use Permit request at the beginning of the process.

Ms. Liu said the scope of the review is to be limited to just the additional building.

Mr. LeVine said if the review is to be limited to just the request for the additional building of three units, why the conditions for the entire project have changed. He said it appears a lot of language has been changed and not just limited to the three additional units.

Ms. Liu said some of the modifications to the conditions include cleaning up the language. She said one notable revision was addressing the crosswalk and sidewalk. The previous conditions stipulated that the sidewalk was to be built to the church driveway, she said. It was reworded to state that the sidewalk was to be built to Pinedale Street, she said, as she felt that was a more objective description. They also removed the condition to construct the pedestrian connection to private property since the applicant and the church decided the connection was not needed.

Mr. Dye asked what changes were made regarding the sidewalk and Riverside Drive.

The only change they recommended was to clarify the language from the church to Pinedale Street, she said. That was a more descriptive location, she said.

Mr. LeVine said he did not understand why there was an extra condition number five.

This condition regarding parking lot buffers was added to ensure an appropriate timeline of completion, said Ms. Liu. It does not add anything except for a deadline for completion, said Ms. Liu.

Mr. LeVine said this did not alleviate his concern that this language is not strictly limited to the three units for which the Conditional Use Permit is sought. It goes to the entirety of the CUP, he stated.

Ms. McKibben said the language was changed in an effort to clean up the language. She said that Mr. LeVine did express a valid concern. A step was missing in the original staff report, said Ms. McKibben. She said the staff should be more mindful in the future but that in this instance the previous buildings have already been constructed.

Mr. LeVine said generally they do not go back and fix Conditional Use Permits once they have already been awarded. He said he is troubled by the notion that this can actually be done.

Mr. Palmer said he felt that Mr. LeVine raised a good point. He said the easy answer is that it is definitely within the jurisdiction of the Commission to evaluate the impacts for the additional three units requested with this Conditional Use Permit. Mr. Palmer said he believed the Commission could modify existing conditions if that modification relates to the proposed new development.

Mr. Dye said the current staff report references the old staff report's recommendation of 51 units. The Commission had recommended 48 units, said Mr. Dye.

Ms. McKibben explained that the motion the Planning Commission made was to approve 48 units, not the 51 units that were evaluated in the original staff report.

Mr. Voelckers said there was some reference in the public testimony that addressed concerns such as site drainage. He asked if it was correct that those concerns should not be addressed if they do not pertain to the current Conditional Use Permit request before the Commission this evening.

Ms. Liu said that is correct.

Mr. Voelckers said it appears that in some of the narrative a continuous fence is referenced, but that the graphic illustrates a gap in the fence exists equal to the width of the building. He said he assumed that the property owners would rather have a continuous fence rather than less privacy offered by a large gap in the fence.

Ms. Liu said that would be a good question for the applicant to answer. She said from the standpoint of the staff, the fence as well as the structure would serve the same purpose of obstructing any noise caused by the circulation of the traffic throughout the site.

Mr. Voelckers clarified that from the staff point of view the two discontinuous pieces of fence met the intent of the visual buffer.

Ms. Liu agreed with the statement of Mr. Voelckers.

Applicant

Mr. Travis Arndt said the previous staff report intended that the approval for the other three units went back to the community development director. He said he was here this evening because the evaluation was now up to the Commission instead of the CDD director. The purpose of the fence is primarily to subdue the noise from the vehicles and from the vehicle headlights, he explained.

Mr. Voelckers asked for an explanation of what the greenbelt along the river would look like.

It will predominantly be seeded with grass, said Mr. Arndt, with the addition of plantings designed and implemented by Glacier Gardens.

Mr. Voelckers asked Mr. Arndt if he had any comments to make on drainage issues.

Mr. Arndt said they are taking several measures to help with drainage on the property. There will be one to two feet of shot rock placed below a six-inch-thick pervious concrete pavement. Water will actually soak through the pavement and into the ground below, he said, instead of running off. Along the church property there is a 16-foot-wide drainage easement, said Mr. Arndt, running down the property line between the condominium property and the church property.

Mr. LeVine asked Mr. Arndt if he had reviewed the conditions on the CUP, and if so, if he had any concerns.

Mr. Arndt said he had no concerns.

Mr. Dye asked where the access easement was located.

Mr. Arndt responded that it is along the fence line.

MOTION: *by Mr. Voelckers, to approve USE2017 0027 accepting the staff's findings, analysis, and recommendations with the minor modification that the fence buffer would include a closed fence segment returning to the building as indicated by the applicant.*

Mr. LeVine said he is still troubled by the notion that the Commission is changing the language of the conditions. He said he would like to add a finding for the record that the changes to the conditions are either in the nature of ministerial wording and numbering changes that do not affect the substance and that they are intended for clarity or directly affect additional construction which will be undertaken. He said this did not need to be part of the motion but that he wanted it to be a part of the record as a basis for the Commission's decision.

The motion passed with no objection.

AME2017 0017: An ordinance amending the Land Use Code to provide for an additional setback encroachment exception for certain structural energy efficiency improvements to CBJ code 49.25 (Ord. No. 2018-06).

Applicant: City and Borough of Juneau

Location: Borough-wide

Staff Recommendation

Staff recommends that the Planning Commission forward a recommendation for approval to the Assembly.

This is an ordinance amending the land use code to provide for an additional setback encroachment exception for certain structural energy efficiency improvements, said Ms. Boyce. The proposed ordinance would allow exterior insulation to encroach up to six inches into the setbacks without the need for a variance, said Ms. Boyce.

Commission Comments and Questions

Mr. Miller said this is the system that performs the best in Juneau's climate. He said he would like to increase the projection from six inches to eight inches. The reason for this is because it takes four inches of foam on the outside so that the dew point will never be on the inside of the wall, he said. If there is only three inches of foam, said Mr. Miller, the dew point would go inside of the wall somewhere. It will turn into water inside of that wall, he said. And that is the point of insulating an extension, he said. Mr. Miller said about 50 percent of the homes will remain within the six-inch limit. However, said Mr. Miller, metal clad siding would make for a thicker wall. That would limit people to three inches of foam, when in fact four inches would be better.

Mr. Dye asked if this was intended for all structures or just for existing structures.

Ms. Boyce said this ordinance amendment is intended for existing structures.

Mr. LeVine suggested several word changes to the slide Ms. Boyce had upon the wall, and said he agreed with Mr. Miller that the projection should be greater than six inches to help more home owners with no discernable negative effects.

MOTION: *by Mr. LeVine, to accept staff's findings, analysis and recommendations, and approve AME2017 0017 subject to the wording changes proposed by Mr. Voelckers, the correction made to remove the word "except", and the projection maximum from six to eight inches.*

The motion passed with no objection.

Discussing the amendment after the vote, Mr. Dye asked why this amendment applied only to

existing construction and not new construction.

Ms. Boyce said this request comes up commonly with existing home improvements that are already built to the setbacks. For new home construction, those setbacks would already be configured, she said, as part of the design.

Mr. Dye said he felt that during this time of infill development and small lots, that he felt this tool should be available to all construction, not just remodels.

Mr. LeVine said he felt this amendment is for existing construction, and that it addresses a specific problem. If setbacks with new construction were to be addressed, he said it should be dealt with under its own merit for new construction.

Ms. McKibben said the intent of this amendment is for existing homes that are built to their setbacks that want to make energy efficiency improvements. New construction that is being built to a certain standard can plan for that as they plan their building to fit within the existing setbacks, she said. Ms. McKibben said she felt that was a separate topic which has not been addressed by the Commission, whereas this is to help existing homes that are built to their setbacks to add insulation.

Since it would be in the same section of code, Mr. Dye said he did not understand why new construction would not be dealt with at the same time.

Mr. Miller said he agreed that this should be a topic that should be revisited by the Commission.

Mr. Voelckers said he is persuaded that Mr. Dye has raised a critical point.

Mr. LeVine said it makes a lot of sense to encourage "outsulation". He said he was reluctant to make changes to the entire setback regime without a more thorough analysis. He said he felt they should do with what is before them and revisit this issue for new construction as soon as it is feasible.

Mr. Dye said he wanted to propose an amendment to the ordinance just approved by the Commission.

Mr. Palmer suggested that the ordinance state at the end that it applies to new and existing development.

Mr. LeVine said he felt before the Commission made any decisions about new construction that an analysis was required concerning existing and proposed setbacks for new construction. He said he felt this was a good idea, but that he was not comfortable taking action on this issue

with the current lack of analysis.

Mr. Dye said he did not see how further analysis would be any more helpful in indicating that additional insulation would be beneficial for new home construction.

Mr. LeVine said they currently have five-foot side yard setbacks and that if they are going to allow new construction to be built a foot into those setbacks, then they may vote to change the five-foot side yard setbacks to a larger number.

Mr. Steedle reminded the Commission that they had already voted on this issue. If they wish to rescind that vote, it would take six votes to rescind that vote before taking the issue up again. He said he thinks that Mr. LeVine is on the right path, and that the topic they are really discussing is setbacks. That could be addressed in the setback code, said Mr. Steedle. Mr. Dye said he did not disagree with Mr. Steedle. He said it seemed to him that setbacks as a whole should be considered and not just with remodel construction.

Mr. LeVine said he had this very problem with his own home and that the action taken by the Commission tonight if approved by the Assembly would have exactly addressed that problem.

Mr. Voelckers said they have already voted on this issue and that perhaps within the next few meetings the staff could come back with analysis of this nature for new construction.

Mr. Miller said the Commission has voted on the current amendment and they should let that stand. He said this ordinance amendment addresses most of the problems that people come up with when trying to remodel their homes. This especially pertains to the Juneau town and Douglas town areas, he said. He suggested that the remaining part of this issue be hashed out at a Title 49 meeting, brought back before the Commission, and then add the sentence suggested by Mr. Palmer.

IX. Unfinished Business

AME2016 0002: A text amendment to CBJ code 49.20 regarding variances

This ordinance has been updated resulting from the last time it was before the Commission on December 12, (2017), said Ms. Boyce. It was also subsequently discussed at a Title 49 meeting, on December 20, (2017), said Ms. Boyce. The purpose of this ordinance is to:

- ✓ Provide clarity regarding what is and what is not variable
- ✓ Remove the preliminary threshold requirement
- ✓ Require the posting of a public notice sign for those variances requiring a public hearing
- ✓ Amend the variance criteria to reduce subjectivity
- ✓ Amend the De Minimis/Administrative variance

Mr. LeVine wanted to clarify that this amendment changes nothing about the substance but the process regarding variances. A hardship is still required, but it is wrapped into another condition, he said.

Ms. Boyce said the way the code currently reads the lead up to the variance criteria talks about there being a hardship. However, there is no criterion that actually does that analysis, she said. They have removed the hardship requirement and instead included it in the criteria so there is actually a hardship analysis, she said.

Mr. Miller said at the last meeting Mr. LeVine and himself voiced concerns that they are ratcheting down the places where variances can be used so that property owners can have a means to receive justice. The intent is to avoid the usage of variances for all the zoning issues or other ordinances that need to be fixed, said Mr. Miller. There are likely to be property owners who have issues that are not addressed by current ordinances, said Mr. Miller. For them to receive justice within the system of tightened variances, they thought of adding a sixth item to be addressed, he said. This would aide someone in an unusual situation who was not covered by the five items mentioned.

Mr. Dye said he requested at the last meeting a graphic of what has not been fixed yet in the code, and what is in the process of being fixed, and how that related to the percentage of past variances. He asked if that information is now available.

Ms. Boyce said she has a list of the code amendments currently in process, as well as another graphic which breaks up all of the variances into type. Since 1987, 50 percent of all variances deal with setbacks, said Ms. Boyce.

They have made amendments to the code with the 2015 subdivision related amendments, said Ms. Boyce. They have made a number of access-related changes, and part of it was privately maintained access roads and public rights-of-way, said Ms. Boyce. They have also approved the shared access amendment which also provides another small subdivision option that has access and frontage related aspects to it, she said. They have also just amended the panhandle ordinance, she said, which improves access to two-lot subdivisions, she said. Those were the majority of the access-related variances they have seen, she said.

Mr. Miller said the old ordinances were for all zoning districts. The new ordinances are just residential areas, he said. There still remain big holes within the ordinances, said Mr. Miller.

Ms. Boyce said the panhandle ordinance applies to all two-lot subdivisions. She said it is not just restricted to residential zones. Shared access was restricted to residential zones, she said.

Mr. LeVine said he shares Mr. Miller's concern. He said the question is how to implement these

new variance standards to ensure there is equity for all parties. He asked if the procedure would be to allow people to apply for variances using the old criteria if the underlying code has not been updated.

Mr. Voelckers said he agreed with Mr. LeVine's strategic suggestion because he felt they all have a gut feeling that every possible situation has not been covered regarding variances.

Mr. Palmer said the criteria that are listed in Attachment A are probably where the bulk of the discussion can be focused. He offered a revision to the language of the ordinance in Attachment A. Defining what a design and what a dimensional standard is has been very difficult, said Mr. Palmer. The intent for the current draft in Attachment A was to flip that around and state that only building setbacks, lot width, lot depth and building height can be varied, he said. They could use language that stated that in effect anything within Title 49 can be varied. Then the focus would be on the criteria; specifically, the last criterion which is criterion five, identifying what elements can and cannot be varied, aid Mr. Palmer. It could be amended to say that, "A variance is required to vary a requirement of this title." It would then enable the Commission to focus on the specific conditions, said Mr. Palmer.

Mr. LeVine asked the staff why they did not proceed with this direction outlined by Mr. Palmer in the first place.

The variance as it has been used has become a waiver tool and a design modification tool, said Ms. Boyce. They are trying to rein it in so that it can be used as it has meant to be used, she added. They will come up with something else to be used for waivers and design modifications, she said. They are also trying to make the line more distinct between someone needing a variance and someone wanting a variance, said Ms. Boyce.

There are a few items which were varied which should not have been varied, said Ms. Boyce, such as density and lot coverage.

Ms. McKibben said the code already stipulates that variances are not to be used for use or density. If that were to be allowed then there would need to be a significant amount of analysis to back that up, she said.

Mr. Voelckers said he thought this move to clean up the variance process was not so much that it would be more lenient but that the City Attorney's office was worried that the Commission could move into an area which would not be defensible at the Supreme Court level because it violates the basic premise of a variance, which was a unique physical hardship due to the property, said Mr. Voelckers.

Chairman Haight said if they left the introductory language as it currently stands, how much reduction in the number of variances would they see just due to the fact that they have

changed the other standards.

Mr. Steedle said he thought that was a very difficult question to answer. It becomes incumbent upon the staff and the Board of Adjustment to apply the criteria rigorously, he said. Mr. Steedle said he thinks that is where they have failed over the years, because it is very difficult to say “no” to an applicant. The thrust of this was to make it easy to say “no”, said Mr. Steedle. It becomes a question of how much discipline they think the Board of Adjustment needs, he said.

Mr. Voelckers said he would like to see definitive language that was strongly directed but at the same time left some leeway for the decision-makers for addressing dimensional standards, lot size, etc.

Mr. Palmer said he would definitely like to work to figure out some way to satisfy the intent. He said to him this seemed like an issue which could be better addressed through a Committee of the Whole or Title 49 meeting. He said he was a little hesitant at this time to propose specific language to try to address this issue.

Chairman Haight asked the Commission if it had any issue with the criteria.

Mr. LeVine said the way the criteria were explained in the staff report is confusing to him. He said he felt it would be better to simply use the language cited in the Supreme Court opinion. He said he felt just restating the rule would create confusion.

Mr. Voelckers said he had a similar issue with language on page 7 of the proposed ordinance; “The grant of the variance is reasonably tailored to relieve the hardship.” And yet the first sentence in the staff analysis of this criterion uses the language, “... is the minimum needed to provide relief”. He said he is wary of using the term “minimum needed” as it is not definitive.

Mr. LeVine agreed, stating he would also change the phrase “reasonably tailored” to “narrowly tailored.” He also noted that criteria and criterion do not analyze things. That sentence should have a different noun in it, he said.

Under 49.20.240 - *Board of Adjustment Action*, Mr. Voelckers said he felt the statement “The board of adjustment shall hear all variance requests except administrative variances” should have “and appeals of denied” be inserted before “administrative variances”.

Mr. Dye suggested that it should state who the director’s decision would be appealed to, under 49.20.240 (2). (“An administrative variance decision of the director may be appealed if a notice of appeal is filed within 20 days of the director filing a notice of decision with the municipal clerk.”)

Mr. Palmer said he felt both of those concerns with the code were addressed in the portion of

the code which states that the decision of the director may be appealed to the Planning Commission.

Criterion five states: "The grant of the variance does not result in a smaller lot size, a greater density, or greater lot coverage than allowed for the zone district." What about, for example, a small, legally nonconforming lot, said Mr. Voelckers.

Ms. Boyce said for substandard lots that already exist there are a number of setback reductions that can apply. There is a formula that can be applied to address those smaller, nonconforming lots, she said.

Ms. McKibben added that there can be a reduced front yard setback when the setbacks of the three adjacent properties are averaged. The only question that is not answered pertains to density, she said. If there was an existing building with nonconforming density it would probably be able to continue. The nonconforming code draft separates the nonconforming situations so that lots, setbacks, density and use are addressed separately, said Ms. McKibben.

Mr. LeVine said he concurred with the idea that more time should be spent thinking about the ordinance. There are several ideas that might at least be worth thinking about, said Mr. LeVine. One idea is to address the time in which the code has been updated, he said. There are provisions of the code which have not been updated, he said. He asked if there would be a way to connect the applicability of the variance requirement to the time in which the code has been updated. For example, said Mr. LeVine, variances would be inapplicable to code which has been updated within a specified period of time. The variances would be applicable until a waiver is developed within a certain period of time. That would not be to hardship, he said.

Mr. Dye said the process is so fluid that he would be concerned about cementing a time frame to it.

On page 219 of the staff report, said Mr. Miller, it is already outlined what the desired outcome is going to be. What they don't have is what to implement in terms of flexibility until the desired outcome is reached, he said. It would be helpful to have a paragraph or two in the staff report which would assist future commissions.

Chairman Haight said this item can come back to the Planning Commission for another review at its February 13, (2018) meeting.

IX. BOARD OF ADJUSTMENT - None

X. OTHER BUSINESS**Adoption of Revised Planning Commission Rules of Order**

Mr. LeVine said he appreciates all the work which has gone into the rules of order before them. He asked if it needs to be clarified anywhere that this applies to the Board of Adjustment as well as the Planning Commission. He asked why there is a separate provision addressing reconsideration. He stated that it would most probably be dealt with according to *Robert's Rules of Order*.

Mr. Palmer said the reconsideration provisions that are included are different than the default rules under *Robert's Rules of Order*.

Mr. Miller asked what a privileged motion was.

Mr. Palmer said a privileged motion allowed whoever makes that motion to interrupt the speaker and to interrupt the process that is going on.

Mr. Dye asked why reconsideration did not require a supermajority vote.

Mr. Palmer said that is a discretionary question which the Commission can decide upon.

The section under "Late Written Material" may place the Chair of the Planning Commission in an awkward spot, said Mr. Voelckers, since it would be up to the chair to decide if it was accepted or not.

Chairman Haight said he liked the fact that this section did not absolutely limit the submission of the material to two pages, but that there was discretion to allow additional material.

Mr. Steedle said he concurred with the remarks of Chairman Haight. They do not want to tie the Chair's hands, said Mr. Steedle.

Mr. LeVine asked if the Commission can by vote overrule any decision the Chair makes. He said he did not see that outlined in the rules.

Mr. Voelckers said the rule is very carefully laid out about the amount of material which may be received, and when, and then at the same time an easy "out" is provided. He said he felt that could potentially put the Chair in an awkward position.

Mr. LeVine suggested they strike the sentence and let the Commission vote to suspend the rules if that is what it wanted to accomplish. If they strike the sentence "The Chair may reject..." they have the ability to accept that material if the Commission determines it is appropriate to submit, he stated.

The Commission concurred that the initial sentence regarding the chair rejecting the submission of material be struck.

These rules do also apply to the Board of Adjustment, said Mr. Palmer, in answer to Mr. LeVine's question.

Once approved by the Commission these rules will go to the Clerk, said Mr. Steedle, in answer to a question by Mr. Voelckers.

Mr. Palmer said that Rule 10 F. is a motion to rescind. If the Commission passes a motion and then immediately moves to rescind it, six votes would be necessary. The Commission could also make a notice of reconsideration if it takes place at the same meeting. Then a vote of six is required, he said. If the body wanted to require a rule of six votes at a subsequent meeting then that would need to be added to Rule 10, said Mr. Palmer.

Mr. LeVine clarified that the reason that 10 G exists right now is to prevent the Planning Commission from using a procedural mechanism to get around the requirement for a vote of six for rescission.

A policy reason for this is to give the Commission time to think about the item some more and another policy reason is to make sure that members of the community that were there to testify would have the opportunity to come back and attend a subsequent meeting, he said.

Mr. Miller said he would like to speak in favor of only requiring five votes. He said personally after having time to consider an issue his decision-making capabilities were much better. A notice of reconsideration may just be someone needing extra time to consider an issue. He said he felt the Commission should respect each other and honor another Commission member's need to reconsider an issue.

Mr. Voelckers agreed with Mr. Miller, saying he liked the slightly softer burden to at least provide the potential to reconsider an issue.

Mr. Dye said he liked the higher number required for reconsideration because it put more emphasis on the Commission getting information right the first time. Mr. Dye said he did not want it made too easy for Commission members to reconsider an item.

The permit process is a long, drawn-out process as it is. People are waiting for decisions to be made, and they should be made in the most time effective way possible, said Mr. Hickok.

Chairman Haight said he has noted that often a motion for reconsideration comes after a motion has been denied. The fact that they have probably denied an application and that someone has subsequently made a motion for reconsideration gives that applicant one more chance to have their issue voted upon by the Commission. He said he really does favor the softer approach on reconsideration.

Mr. LeVine said he would like the public to be given as much opportunity as possible and therefore would like to stick with the five votes being required for reconsideration.

Chairman Haight said when the motion of reconsideration comes up there is the opportunity to either allow or not allow additional public testimony.

Mr. Palmer said the rule is currently clear that on the motion of reconsideration there is no public testimony.

Chairman Haight said periodically a member of the public will want to testify again. This has never been allowed, he said. However, he noted, he is not finding that in the rules. He asked if there is actually a rule limiting public testimony to one opportunity per individual.

Mr. Steedle said he does not find that in these rules.

Mr. Voelckers said he felt it would be a good idea to stipulate that in the rules.

Mr. Palmer suggested that under Public Participation that it state that a person wishing to testify be given "one" opportunity instead of "an" opportunity.

The Commission concurred on the change from "an" to "one" opportunity.

Mr. Miller pointed out that under reconsideration it stipulates that the motion for reconsideration is debatable to the same extent as the underlying motion.

Mr. Palmer said that sentence had been placed under Reconsideration to clarify that it may be discussed under that circumstance.

MOTION: *by Mr. LeVine, that the Planning Commission adopt the revised Rules and Guidelines subject to two small edits which is to change the word under Section E1 from "an" opportunity to "one" opportunity under Public Participation, and to strike the sentence in 3c beginning with "may" and ending with "written material".*

The motion passed with no objection.

Answering a question by Mr. Voelckers, Mr. Palmer said that these rules do not need to go to the Assembly for approval.

X. DIRECTOR'S REPORT

Mr. Steedle said the Assembly will be meeting at a special meeting on January 30, (2018) to select three commissioners. Two of the sitting commissioners have reapplied, said Mr. Steedle. The February 13, (2018) Planning Commission meeting will be the first time the new Commission meets, he said. Mr. Steedle said he would like to have a Committee of the Whole meeting directly before the February 13, (2018) meeting for the yearly Commission training. The Commission will be able to consider the variance amendment on February 27, said Mr.

Steedle. There is a joint meeting scheduled with the Assembly for February 5, (2018), said Mr. Steedle. That meeting is currently scheduled for noon, he said. Mr. Steedle said he has tendered his resignation, and that sometime within the next few months he will be departing.

XI. REPORT OF REGULAR AND SPECIAL COMMITTEES

Mining Subcommittee

At the last meeting they defined the direction of the agenda over the next several meetings, said Chairman Haight. They will get a report from Jim Clark regarding his proposed changes to the mining ordinance at this Thursday's meeting, he said. These meetings occur every Thursday at 5:30 p.m., said Chairman Haight.

XII. PLANNING COMMISSION COMMENTS AND QUESTIONS

XIII. ADJOURNMENT

The meeting was adjourned at 10:00 p.m.



**Law Department
City & Borough of Juneau**

MEMORANDUM

DATE: February 7, 2018
 TO: Planning Commission
 FROM: Robert H. Palmer III, Assistant Municipal Attorney
 SUBJECT: Draft Ordinance 2018-04, Variances

This memorandum provides context and language options to resolve the Planning Commission's concerns regarding the scope of variances in draft ordinance 2018-04.

What is a variance?

A variance gives permission for a person to violate the law (Title 49).

Unlike a conditional use permit that allows a use that is expressly permitted, a variance allows a development that is expressly prohibited. Because a variance is permission to violate Title 49 and because the provisions of Title 49 are the "minimum required in the interest of public health, safety and general welfare," the variance requirements are rigorous and only warranted in very limited circumstances. The touchstone concept requires some regulatory hardship that arises from the physical conditions of the land that distinguishes it from other land in the general area. Such a hardship is required to ensure the variance is not arbitrarily granted and the grant of the variance does not erode the rational basis for the Title 49 regulation in dispute. As the Alaska Supreme Court said, "where the ordinance equally affects all property in the same zoning classification, relief from the general conditions of the governing law properly must come from the assembly through an amendment to the zoning code." *City and Borough of Juneau v. Thibodeau*, 595 P.2d 626, 636 (Alaska 1979). Thus, the variance is a pressure relief valve to preserve the constitutionality of Title 49.

What is the purpose for this variance amendment?

I understand the purpose of this variance amendment (Ord. 2018-04) is (1) to clarify the scope of variances, (2) to clarify and simplify the standards for evaluating variances, and (3) to sever the Board of Adjustment from its past variance decisions. Ordinance 2018-04 accomplishes those purposes.

Amending 49.20.200, scope of regular variances.

The Planning Commission reviewed Ord. 2018-04 version PC4 on January 23, 2018. That version clarifies the scope and criteria for administrative and regular variances. Commissioners appeared satisfied with the administrative variance amendments and the criteria for the regular

variance amendments. However, many Commissioners expressed hesitation with the scope of the regular variance in 49.20.200 (Option #1, below), which had been narrowed to just building setbacks, lot width, lot depth, building height, habitat and canopies. The intent was always to allow variances to the first four criteria, but habitat and canopies were added to the scope at the prior meeting to address concerns that those code provisions could also present an unreasonable regulatory hardship until they are amended.

The thrust of Commissioner's hesitation was discomfort with limiting 49.20.200 to just six items, which may inadvertently omit other Title 49 provisions that could present other unreasonable regulatory hardships. That concern warrants substantial merit and would require steadfast discipline when applying the variance criteria in every case to avoid transforming the variance from a tool that preserves the constitutionality of Title 49 to a tool that provides for flexible development. If the Planning Commission believes other Title 49 provisions need to be more flexible (i.e. waivers, mitigations, exceptions), then those strict provisions need to be amended instead of the variance provision. Staff has prepared a detailed memorandum explaining the flexibility that the CBJ recently provided in Title 49 to minimize reliance on the use of variances. However, if the Planning Commission still believes that 49.20.200 should be amended to accommodate inadvertent omissions, then Option #2 may relieve the current hesitation:

49.20.200 Option 1: Variances limited to six items.

A variance is required to ~~and can only~~ vary the following (a) dimensional standards of this title: building setbacks, lot width, lot depth, and building height ~~dimensions or design standards of this title~~; and (b) standards directly related to habitat and canopies. Applications for prohibited variances shall not be accepted for filing or shall be rejected by the director.

49.20.200 Option 2: Variance allowed except to five items.

Pursuant to this article, a variance may be granted to provide an applicant relief from the requirements of this title. A variance is prohibited from varying any requirement or regulation of this title concerning the use of land or structures, housing density, lot area, requirements in chapter 49.65, or requirements in chapter 49.35. Applications for prohibited variances shall not be accepted for filing or shall be rejected by the director. ~~A variance is require to vary dimensions or design standards of this title.~~

AME2016 0002 – Proposed Code Amendment Regarding Variances

**Planning Commission Presentation
February 27, 2018**



Recap of Previous Public Hearings

December 12, 2017 Public Hearing (cont.) –

- Revise criteria
- Further explain criteria meaning in report

January 23, 2018 (cont.) –

- Revise criteria
- Make revisions to report
- Consider options for CBJ 49.20.200



Draft Ordinance No. 2018-04 Variances

Presented by:
Introduced:
Drafted by:

ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA
Serial No. 2017-33 PCv2
An Ordinance Amending the Land Use Code Relating to Variances

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 of Juneau Municipal Code.

Section 2. Amendment of Article. CBJ 49.20 Article II Variances is amended to read:
49.20.200 - Variance.
A variance ~~can only be required to vary the following dimensional standards of this title: building setbacks, lot width, lot depth, and building height dimensions or design standards of this title.~~

49.20.210 - Submission.
~~Except as provided in this article for de minimis variances, an application for a variance shall be submitted to the board of adjustment through the department.~~

Page 1 of 7 Ord. 2017-33 PCv2 12.06.17
Attachment A: Draft Ordinance

CITY AND BOROUGH OF
JUNEAU
COMMUNITY DEVELOPMENT

1. Amend what can be varied
2. Include the hardship analysis as a criterion (previously the threshold requirement)
3. Require the posting of a public notice sign for public hearing variances
4. Amend the variance criteria to remove subjectivity
5. Amend the De Minimis / Administrative variance

Ordinance Options

Options:

- List what can be varied, with a criterion that specifically states what cannot be varied
 - Can have a longer list of variable items initially and then can delete those as the Code changes with more flexible options
- Leave the Code open for variances, but include what cannot be varied in the purpose section

CITY AND BOROUGH OF
JUNEAU
COMMUNITY DEVELOPMENT

Ordinance Options

Option 1: Variance limited to six items

A variance is required to and can only vary the following (a) dimensional standards of this title: building setbacks, lot width, lot depth, and building height and (b) standards directly related to habitat and canopies. Applications for prohibited variances shall not be accepted for filing or shall be rejected by the director.

Option 2: Variance allowed except to five items

Pursuant to this article, a variance may be granted to provide an applicant relief from the requirements of this title. A variance is prohibited from varying any requirement or regulation of this title concerning the use of land or structures, housing density, lot area, requirements in Chapter 49.65, or requirements in 49.35. Applications for prohibited variances shall not be accepted for filing or shall be rejected by the director.

[Delete Criterion No. 5 if this option is chosen]



Proposed Criteria



Proposed Variance Criteria

CBJ 49.20.250(b) Non-administrative variance. A variance may be granted to provide an applicant relief from the requirements of this title after the prescribed hearing and after the board of adjustment has determined the following:

1. Enforcement of the ordinance would result in an unreasonable hardship;
2. The unusual or special conditions of the property are not caused by the person seeking the variance;
3. The grant of the variance is not detrimental to public health, safety, or welfare;
4. The grant of the variance is narrowly tailored to relieve the hardship; and
5. The grant of the variance does not result in a smaller lot size, a greater density, or greater lot coverage than allowed for the zone district.

[Delete criterion No. 5 if Option 2 is chosen]



Administrative Variance



Existing De Minimis Variance

- Director can grant a variance after-the-fact if development encroaches no more than 25% into a setback
- Doesn't address before-the-fact situations
- Director may choose to enforce
- Only applies to building setbacks
- Difficult to establish intent
- Less stringent criteria to meet



Proposed Administrative Variance

Director can grant a variance before- or after-the-fact for encroachments that:

- Do not exceed 25% of the yard setback,
- OR**
- Do not exceed 2 Feet, whichever is less.

Notice will be provided to immediately adjoining neighbors and will have 14 days to provide comments.

Decision may be appealable to the Board of Adjustment.

The director may approve after determining the following:

- *Enforcement of the setback ordinance would result in an unreasonable hardship;*
- *The grant of the variance is not detrimental to public health, safety, or welfare; and*
- *The grant of the variance is narrowly tailored to relieve the hardship.*



Public Notice



Public Notice

<u>Administrative Variance:</u> - Mailed notice sent to immediately adjoining neighbors, as determined by the Director 14 day response period (NEW) - Neighbors provide written concerns/support - Appealable to the Board of Adjustment	<u>Non-Administrative Variance</u> - Posting of public notice sign on the applicant's property (NEW) - Mailed notice to neighbors within 500 feet - Neighbors can speak at public hearing or submit written comments - Appealable to the Assembly
--	---



What Can Be Varied



Proposed Variances – Options

Current Code:

- Dimensional standards
- Design Standards

Option No. 1:

A variance is required to and can only vary the following the following:

- dimensional standards of this title:
 - **building setbacks,**
 - **lot width,**
 - **lot depth,**
 - and **building height,** and
- standards directly related to:
 - **habitat,** and
 - **canopies.**
- Cannot vary use, density, lot area, or lot coverage

Option No. 2:

A variance is prohibited from varying any requirement or regulation of this title concerning

- **the use of land or structures**
- **housing density**
- **lot area**
- **requirements in Ch. 49.65, Specified Uses**
- **requirements in Ch. 49.35., Public and Private Improvements**



Types of Variances

Types of Variances Considered Since 1987

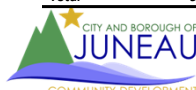
Variance Type	Total Number of Cases	Percent of All Variances	Code Changes in Effect	Code Changes in Progress	Code Changes Proposed
Setbacks	492	53%	ADOD (2017), Many setback reductions and encroachments already allowed	ADOD 2019, Energy efficiency encroachment (2018), Administrative variance	Yes
Streamside Buffers	70	7%	Parking Waiver, reductions and fee-in-lieu districts already exist downtown	In Progress	
Access-Related	49	5%	Shared Access, PMAs, Panhandle changes	Street waivers	
Design Standards	39	4%	Accessory apartments, panhandle changes	Canopy changes, common wall changes	Yes
Height	19	2%	MU standard change		
Lot Area	6	>1%	Height bonus in Code Before and After-the fact variances		
Lot Coverage	4	>1%	ADOD	ADOD	
Total	937	100%			

Source: Variance Permit Data 1987 through 2015



Providing Flexibility in the Land Use Code

Variance Type	Total Number of Cases	Percent of All Variances	Code Changes in Effect	Code Changes in Progress	Code Changes Proposed
Setbacks	492	53%	ADOD (2017), Many setback reductions and encroachments already allowed	ADOD 2019, Energy efficiency encroachment (2018), Administrative variance	Yes
Parking	114	12%	Parking Waiver, reductions and fee-in-lieu districts already exist downtown	In Progress	
Streamside Buffers	70	7%			
Dimensional Standards	65	7%			
Access-Related	49	5%	Shared Access, PMAs, Panhandle changes	Street waivers	
Eagle Tree Setbacks	42	5%			
Design Standards	39	4%	Accessory apartments, panhandle changes	Canopy changes, common wall changes	Yes
Vegetative Cover	25	3%	MU standard change		
Height	19	2%	Height bonus in Code Before and After-the fact variances		
De Minimis	12	1%			
Lot Area	6	>1%			
Lot Coverage	4	>1%	ADOD	ADOD	
Total	937	100%			



Goal – A More Flexible Code

- **Recent Code Changes:**

- Accessory apartments
- Parking waiver
- Shared access
- Panhandles
- Alternative Design Overlay Districts (ADOD)

- **Upcoming Code Changes:**

- | | |
|-------------------------------------|------------------------------|
| • Eagle tree buffers | • Sign standards |
| • Stream buffers | • Vegetative cover |
| • Privately Maintained Access Roads | • Non-conforming Development |



Recommendation

Staff recommends that the Planning Commission review and consider the proposed ordinance and forward a recommendation for Option 1 along with the ordinance for approval to the Assembly.



Proposed Variances

CBJ 49.25.200 Variance

A variance is required to and can only vary the following (a) dimensional standards of this title: building setbacks, lot width, lot depth, and building height and (b) standards directly related to habitat and canopies.



Proposed Variance Criteria

CBJ 49.20.250(b) *A variance may be granted to provide an applicant relief from requirements of this title after the prescribed hearing and after the board of adjustment has determined that:*

1. *Enforcement of this ordinance would result in an unreasonable hardship;*
2. *The unusual or special conditions of the property are not caused by the person seeking the variance;*
3. *The grant of the variance is not detrimental to public health, safety, or welfare;*
4. *The grant of the variance is narrowly tailored to relieve the hardship; and*
5. *The grant of the variance does not result in a smaller lot size, a greater density, or greater lot coverage than allowed for the zone district.*



Questions and Discussion



Design Standards

Design Standards

Design standards variances totaled 4 percent of all variance requests. Less than 40 requests were made for variances to the following design standards:

<u>Design Standard</u>	<u># of requests</u>
PUD: Buffer	1
Canopy: waiver and setbacks	5
Cottage housing: floor area ratio	3
Mobile home: setbacks and park size	5
Accessory apartment: size and detached	14
Common wall minimum length requirement	1
Panhandle: stem width, lot size, lot width	6
Arterial lot size requirement	5
Minimum rectangle requirement	1



Proposed Variance Criteria - Hardship

CBJ 49.20.250(b) A variance may be granted to provide an applicant relief from requirements of this title after the prescribed hearing and after the board of adjustment has determined that:

1. *Enforcement of this ordinance would result in an unreasonable hardship;*
 - Hardship must now be formally analyzed
 - Applicant must establish that the property has a hardship caused by a Code requirement in a way that is distinct from other similarly situated properties
 - If a loss of all or nearly all beneficial use of the property would occur, then an unreasonable hardship likely exists
 - The applicant has the burden that physical features or conditions of the property directly create, affect, or contribute to the need for a variance



Proposed Variance Criteria – Self-Created

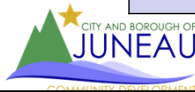
CBJ 49.20.250(b) A variance may be granted to provide an applicant relief from requirements of this title after the prescribed hearing and after the board of adjustment has determined that:

2. *The unusual or special conditions of the property are not caused by the person seeking the variance;*
 - One intent is to dissuade people from purposely violating the Code
 - Applicant must establish that the hardship is not self-imposed and that the special conditions do not result from the applicant's actions
 - Errors made, such as with surveys, but relied on in GOOD FAITH, would not be considered self-created



Proposed Administrative Variance

Minimum Required Setback	25% reduction	20% reduction	15% reduction	10% reduction
25'	18.75' (6.25')	20' (5')	21.25' (3.75')	22.5' (2.5')
20'	15' (5')	16' (4')	17' (3')	18' (2)
17'	12.75' (4.25')	13.6' (3.4')	14.45' (2.55')	15.3' (1.7')
15'	11.25' (3.75')	12' (3')	12.75' (2.25')	13.5' (1.5')
13'	9.75' (3.25')	10.4' (2.6')	11.05' (1.95')	11.7' (1.3')
10'	7.5' (2.5')	8' (2')	8.5' (1.5')	9' (1')
5'	3.75' (1.25')	4' (1')	4.25' (0.75')	4.5' (0.5')
3'	2.25' (0.75')	2.4' (0.6')	2.55' (.45')	2.7' (0.3')



Proposed at the Dec. 12, 2017, Meeting Variance Criteria

A variance may be granted to provide an applicant relief from requirements of this title after the prescribed hearing and after the board of adjustment has determined that:

1. The unusual or special conditions identified in the application are not caused by the person seeking the variance;
2. The variance is necessary so that the applicant can enjoy their property consistent with other property owners in the same area;
3. The grant of the variance will not be detrimental to public health, safety, or welfare, and will not be injurious to nearby property;
4. Enforcement of the ordinance would result in an unreasonable hardship;
5. The grant of the variance is no more than necessary to relieve the hardship;
6. The grant of the variance does not result in density, lot size, or lot coverage less than the minimums for the zone district.



Existing Variance Criteria

CBJ 49.20.250(b):

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;

(cont.)



Existing Variance Criteria

CBJ 49.20.250(b) (cont.):

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.



The Threshold Requirement

CBJ 49.20.200 Variance.

A variance is required to vary dimensions or designs standards of this title.

CBJ 49.20.250(b) Variances other than de minimis.

Where hardship and practical difficulties result from an extraordinary situation or 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: (see six criteria)

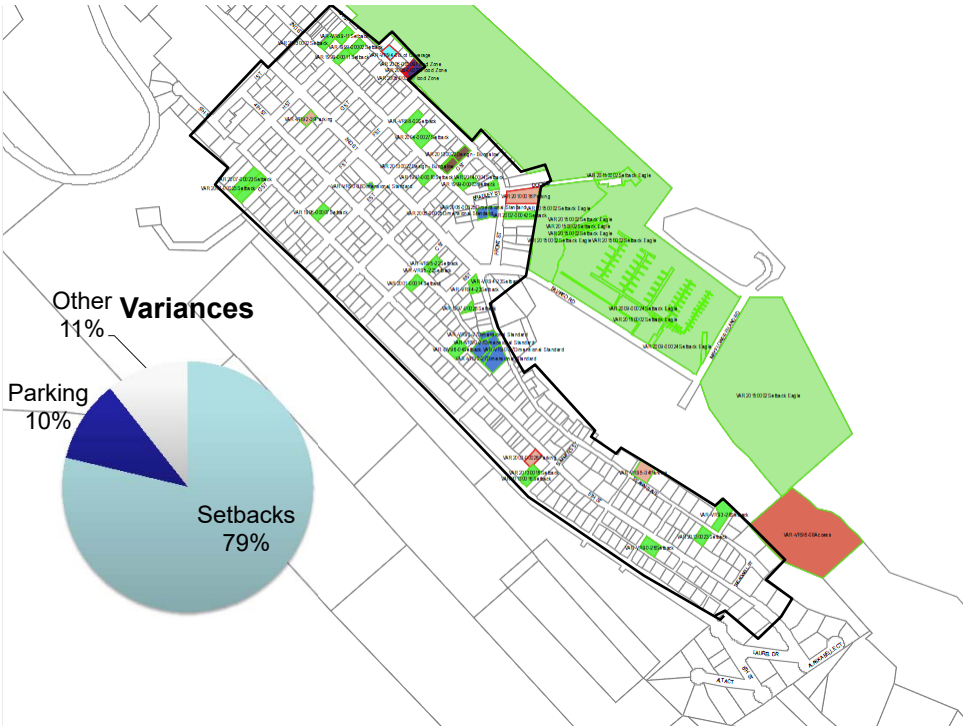
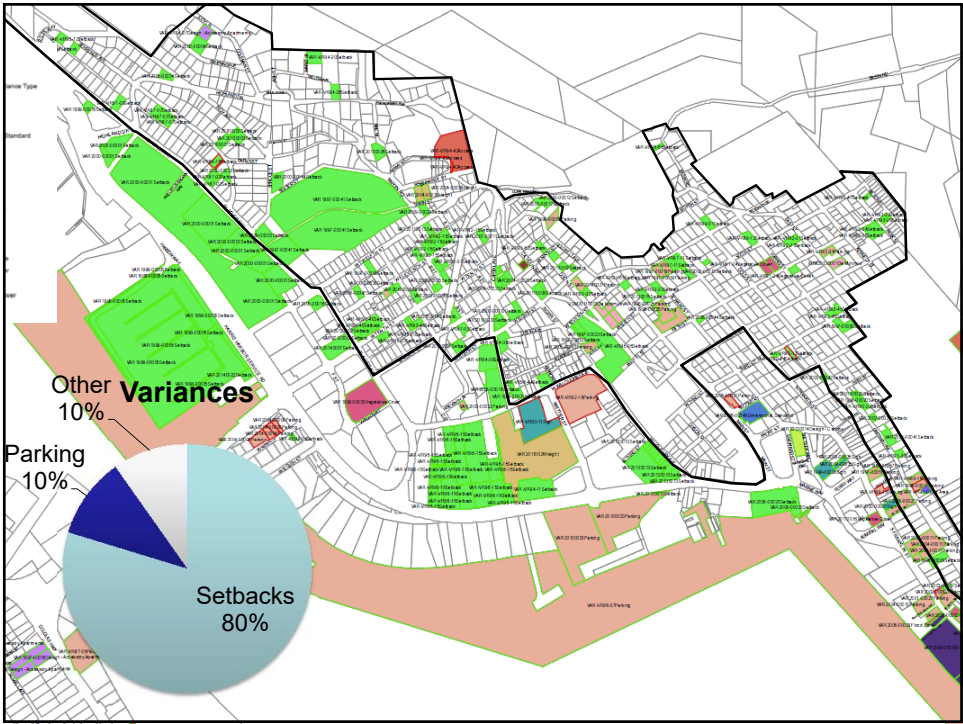


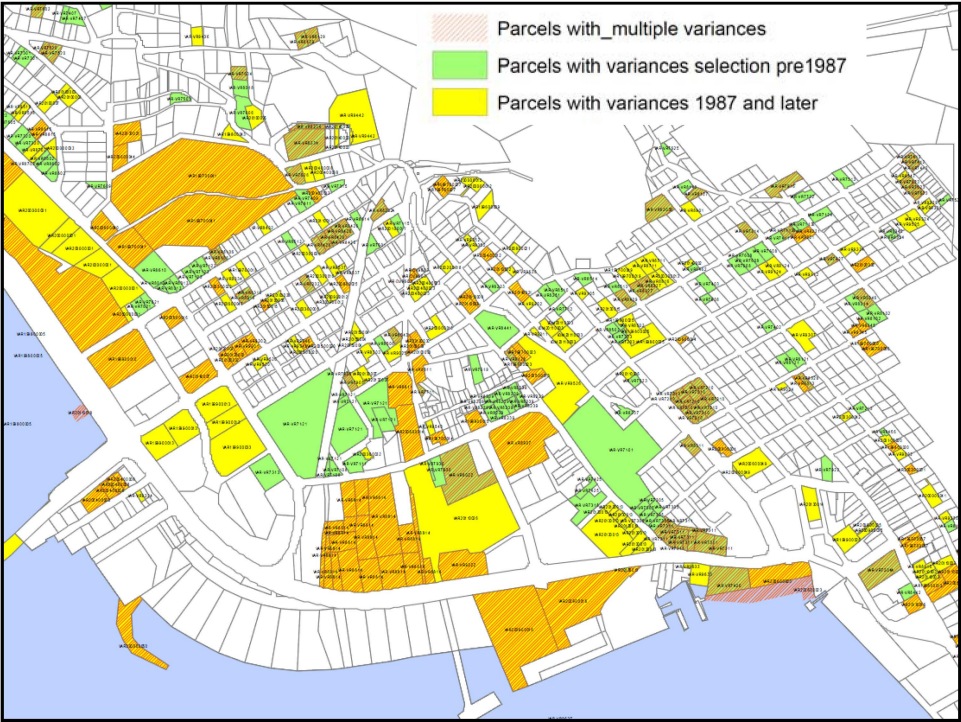
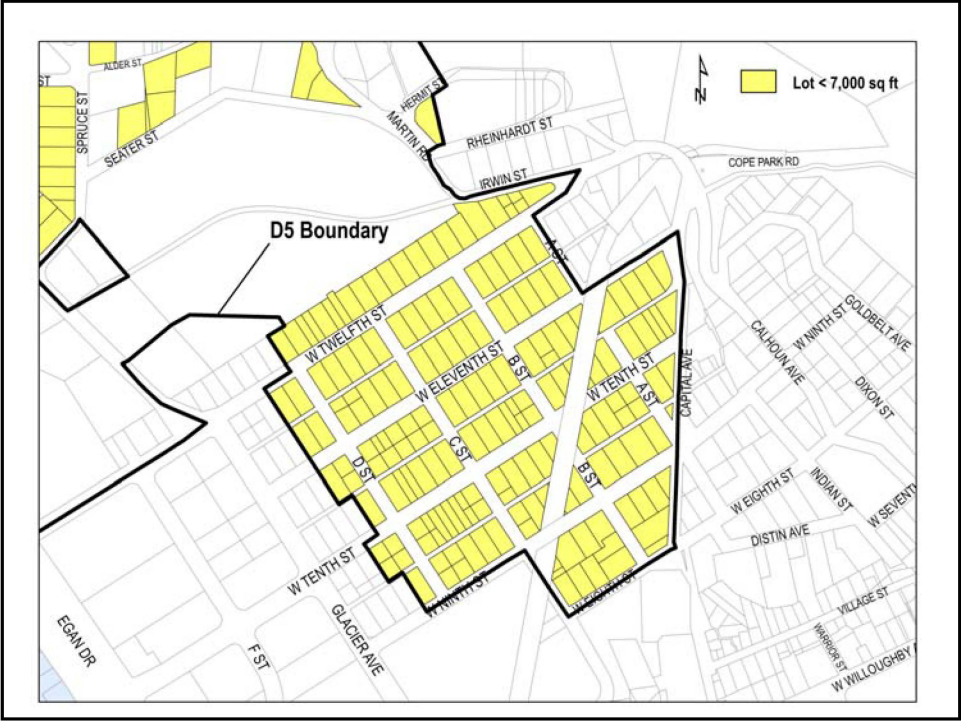
Proposed Variance Criteria

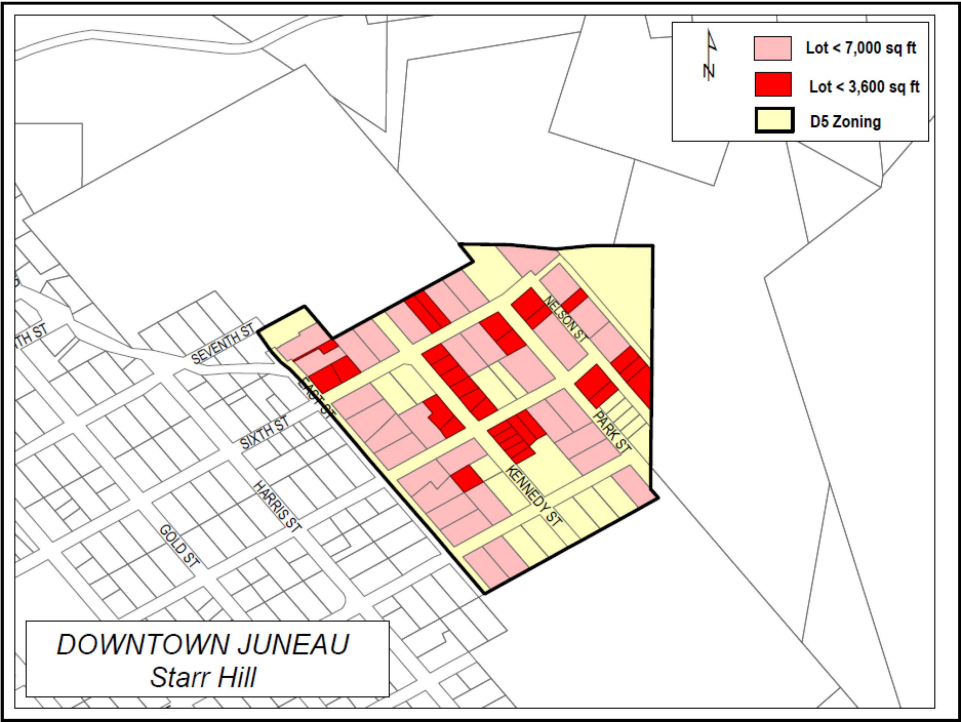
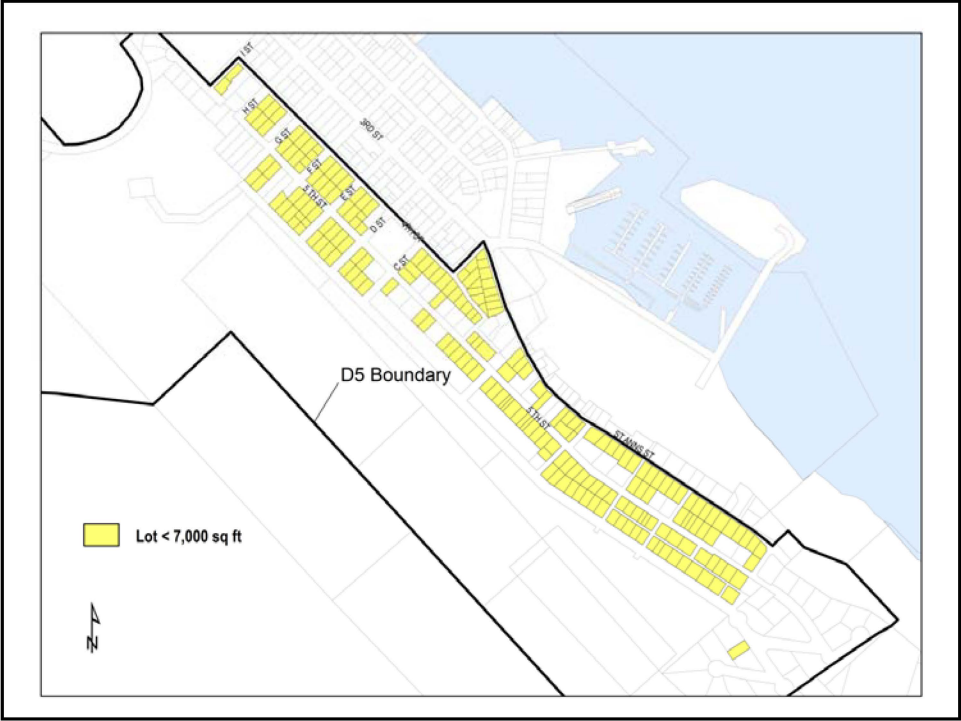
Proposed Variance Criteria:

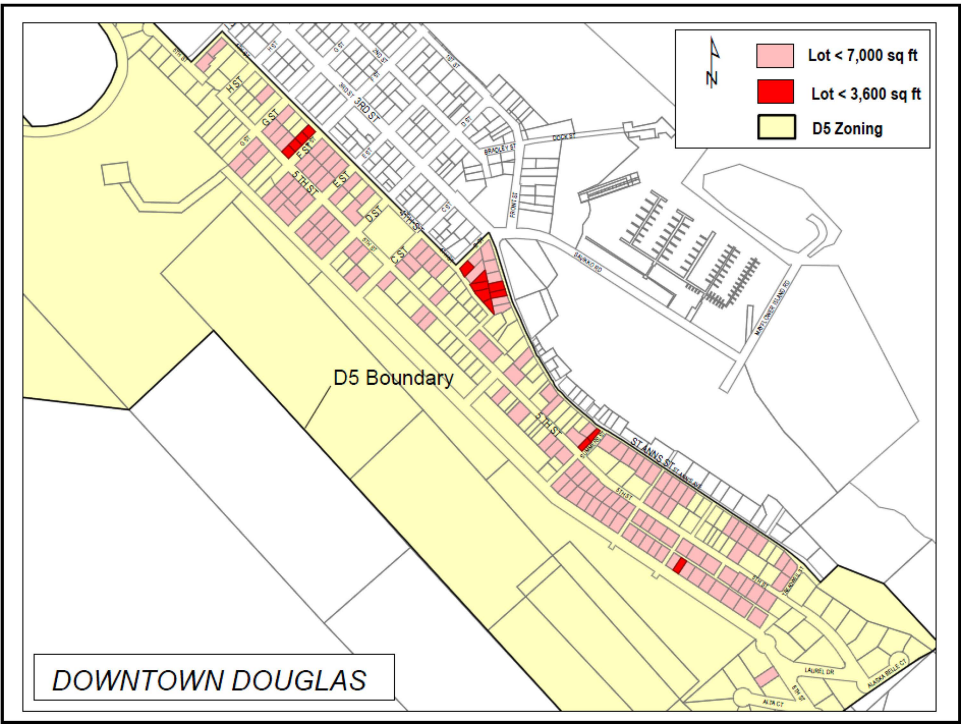
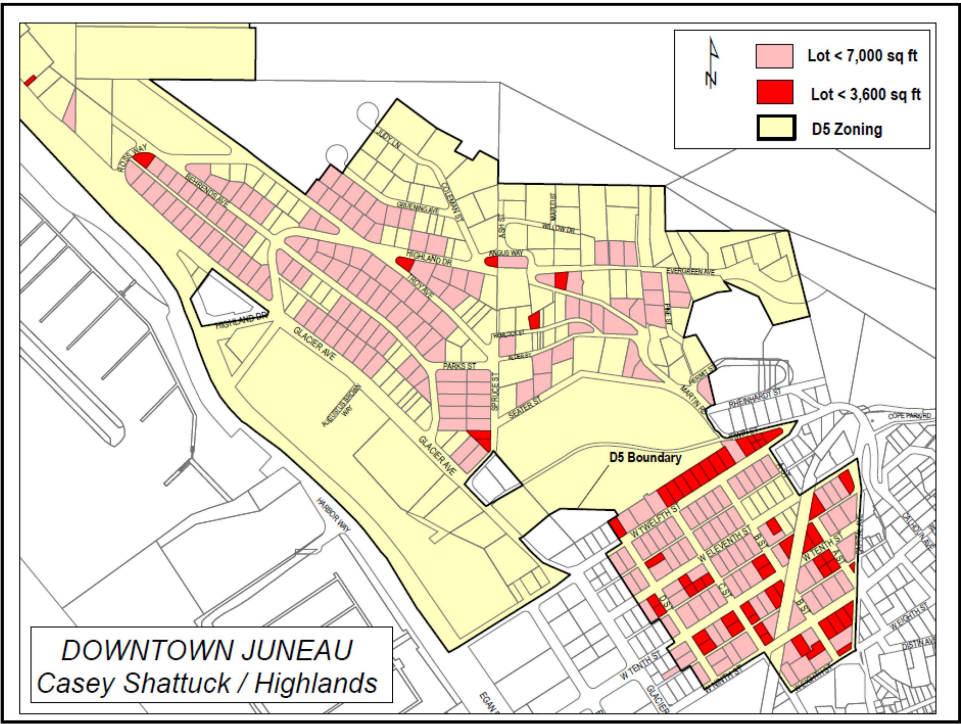
1. *Special conditions and circumstances exist that are peculiar to the land or structures or use involved and are not applicable to other lands and structures in the same district.*
2. *That compliance with the existing standards would unreasonably limit the owner from using the property for a permissible 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.*











What is a Variance?

A variance is an exception from the strict terms of the zoning (or platting) code. It allows for the relaxation of the strict requirements of the code in certain extraordinary cases. Its purpose is to prevent the zoning code from prohibiting reasonable use of a lot because of some peculiarity of the lot not affecting other neighboring properties. It has been described as a safety valve

- Alaska Planning Commission Handbook, 2012



Proposed Variance Criteria

A variance may be granted to provide an applicant relief from requirements of this title after the prescribed hearing and after the board of adjustment has determined that:

1. *Special conditions or circumstances exist that are peculiar to the property in the same zone or vicinity. (These conditions result from the lot size or shape, topography, or other conditions that the property owners cannot control.);*
2. *The variance is necessary so that the applicant can enjoy a property right that other owners of properties in the same zone or vicinity have;*
3. *The grant of the variance will not be detrimental to public health, safety, or welfare, or is injurious to nearby property;*
4. *The hardship is not self-imposed and the variance is the minimum that will alleviate the hardship;*
5. *Literal enforcement of the ordinance would result in unnecessary hardship. Unnecessary hardship means that, because of special conditions of the property that distinguish it from others in the area, the property cannot be reasonably used in strict conformance with the ordinance.*



Proposed Variance Criteria

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

6. *Grant of the variance would not result in a variance to density, lot coverage, construction standards, or use.*



Variances

CBJ 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.

CBJ 49.20.250(b) Variances other than de minimis.

Where hardship and practical difficulties result from an extraordinary situation or 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.



Current Variances

- What can be varied:
 - Dimensions
 - Design standards

- What can **NOT** be varied:
 - Use of land or structures
 - Housing density
 - Lot coverage
 - Or those establishing construction standards

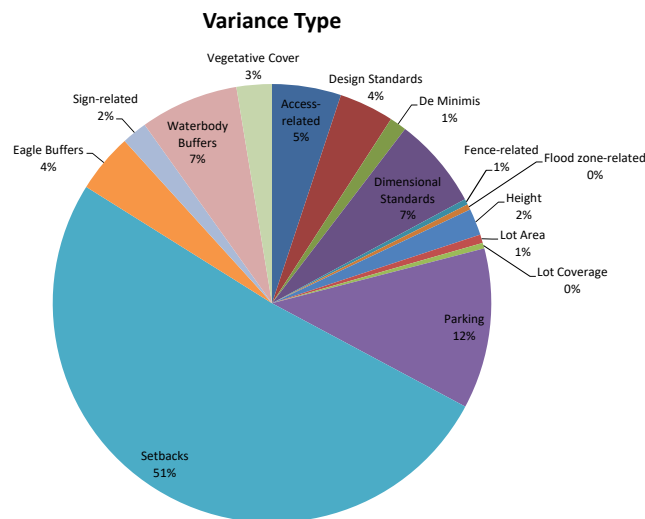


Variance Types – Since 1987

Total Variances
Decided by the
Board of
Adjustment – 964

Total Approved –
856 (88.8%)

Total Denied – 108
(11.2%)



Recent Appeal Decision Regarding Variances

Threshold determination

Per the Assembly's Decision on Appeal in *Olmo, LLC v. Board of Adjustment*, the applicant must first show hardship and practical difficulties resulting from ***an extraordinary situation*** or ***unique physical feature affecting only a specific parcel of property*** prior to determining if a proposal meets the six criterion for granting a variance.



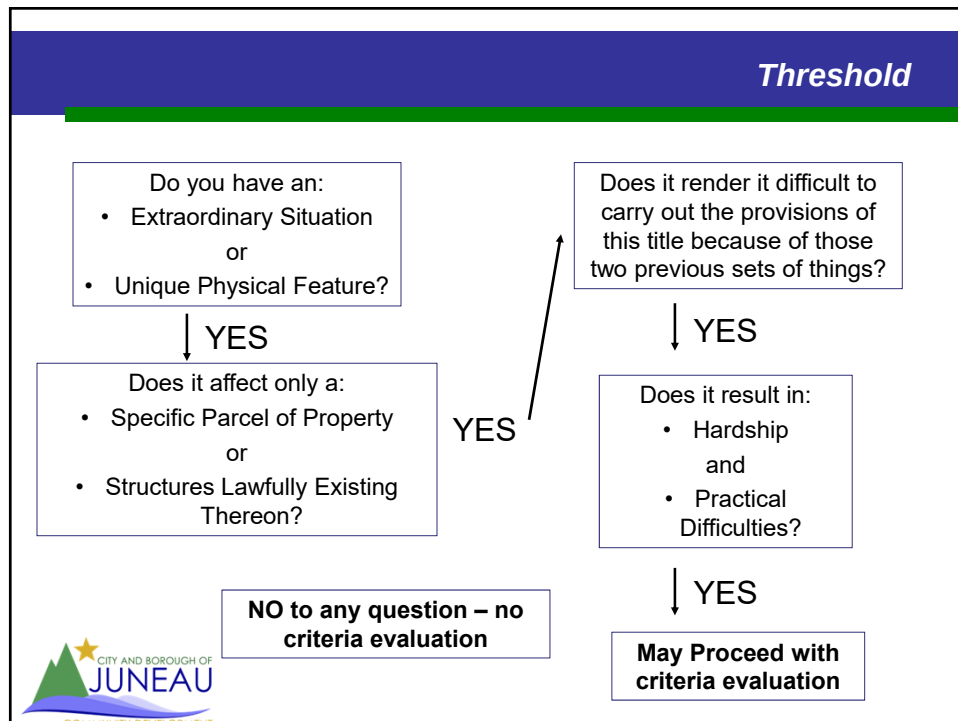
Recent Appeal Decision Regarding Variances

Threshold determination

Peculiarities of the specific property sufficient to warrant a grant of a variance must arise from the physical conditions of the land itself which distinguish it from other land in the general area. The assertion that the ordinance merely deprives the landowner of a more profitable operation where the premises have substantially the same value for permitted uses as other property within the zoning classification argues, in effect, for the grant of a special privilege to the selected landowner. We do not believe that the variance provision in the instant ordinance is intended to achieve such an inequitable result. Rather, where the ordinance equally affects all property in the same zoning classification, relief from the general conditions of the governing law properly must come from the assembly through an amendment to the zoning code.

Olmo, LLC v. CBJ Board of Adjustment, VAR2015-0030, at 5 (CBJ Assembly, Feb. 14, 2017) (citing to *City & Borough of Juneau v. Thibodeau*, 595 P.2d 626, 634-636 (Alaska 1979)).





State Standards

Title 29, AS 29.40.040(b):

A variance from a land use regulation adopted under this section may not be granted if:

- (1) Special conditions that require the variance are caused by the person seeking the variance;
- (2) The variance will permit a land use in a district in which that use is prohibited; or
- (3) The variance is sought solely to relieve pecuniary hardship or inconvenience.



Planning Commission

(907) 586-0715
PC_Comments@juneau.org
www.juneau.org/plancomm
155 S. Seward Street • Juneau, AK 99801

PLANNING COMMISSION NOTICE OF RECOMMENDATION

Date: March 2, 2018
File No.: AME2016 0002

City and Borough of Juneau
City and Borough Assembly
155 South Seward Street
Juneau, AK 99801

Application For: Planning Commission Recommendation to the City and Borough Assembly regarding a text amendment to CBJ code 49.20 regarding variances.

Hearing Date: February 27, 2018

The Planning Commission, at its regular public meeting, adopted the analysis and findings listed in the attached memorandum, dated February 16, 2018, and recommended that the City and Borough Assembly adopt staff's recommendation for approval and chose Option No. 2, as outlined in the Law Department memo, Attachment C of the report, regarding variances. Option No. 2 also includes the deletion of the proposed fifth criterion. Option No. 2 is listed below.

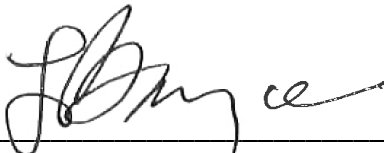
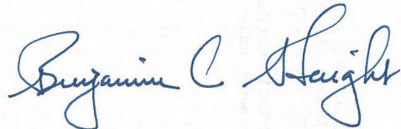
CBJ 49.20.200 Option 2: Variance allowed except to five items.

Pursuant to this article, a variance may be granted to provide an applicant relief from the requirements of this title. A variance is prohibited from varying any requirement or regulation of this title concerning the use of land or structures, housing density, lot area, requirements in chapter 49.65, or requirements in chapter 49.35. Applications for prohibited variances shall not be accepted for filing or shall be rejected by the director. ~~A variance is required to vary dimensions or designs standards of this title.~~

Attachments: February 16, 2018 memorandum from Laura A. Boyce, Senior Planner, Community Development, to the CBJ Planning Commission regarding AME2016 0002.

City and Borough Assembly
 File No.: AME2016 0002
 March 2, 2018
 Page 2 of 2

This Notice of Recommendation constitutes a recommendation of the CBJ Planning Commission to the City and Borough Assembly. Decisions to recommend an action are not appealable, even if the recommendation is procedurally required as a prerequisite to some other decision, according to the provisions of CBJ 01.50.020 (b).

Project Planner:	 Laura A. Boyce, AICP, Planner Community Development Department	 Benjamin Haight, Chair Planning Commission
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 Filed With City Clerk	3/5/2018 Date
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cc: Plan Review

NOTE: The Americans with Disabilities Act (ADA) is a federal civil rights law that may affect this recommended text amendment. ADA regulations have access requirements above and beyond CBJ - adopted regulations. Contact an ADA - trained architect or other ADA trained personnel with questions about the ADA: Department of Justice (202) 272-5434, or fax (202) 272-5447, NW Disability Business Technical Center (800) 949-4232, or fax (360) 438-3208.