

Agenda

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

January 23, 2018
Assembly Chambers
7:00 PM

I. ROLL CALL

II. APPROVAL OF MINUTES

- A. December 12, 2017 Draft Minutes - Regular Planning Commission Meeting

III. WRITTEN AGENCY AND PUBLIC COMMENTS POST DEADLINE

- A. Additional Materials Received Post-Deadline

IV. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS

V. PLANNING COMMISSION LIAISON REPORT

VI. RECONSIDERATION OF THE FOLLOWING ITEMS

- A. AME2017 0013: A Request for a Zone Change from D10 to LC

VII. CONSENT AGENDA

- A. USE2017 0028: A Conditional Use Permit for a marijuana retail store
- B. USE2017 0029: A Conditional Use Permit for marijuana cultivation facility
- C. CSP2017 0017: The purchase of one (1) lot and the sale of four (4) CBJ-owned lots
- D. CSP2017 0018: Renewal of a lease for an existing communications tower

VIII. CONSIDERATION OF ORDINANCES AND RESOLUTIONS

IX. UNFINISHED BUSINESS

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

X. REGULAR AGENDA

- A. USE2017 0027: A Conditional Use Permit to amend USE2016 0018 to include three additional units
- B. AME2017 0017: Text amendment to provide for a setback reduction for exterior energy improvements

XI. BOARD OF ADJUSTMENT

XII. OTHER BUSINESS

- A. Adoption of Revised Planning Commission Rules of Order

XIII. DIRECTOR'S REPORT

XIV. REPORT OF REGULAR AND SPECIAL COMMITTEES

- A. Title 49 Minutes from December 20, 2017

XV. PLANNING COMMISSION COMMENTS AND QUESTIONS

XVI. ADJOURNMENT

Agenda
Planning Commission
Regular Meeting
CITY AND BOROUGH OF JUNEAU
Ben Haight, Chairman
December 12, 2017

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 7:04 p.m.

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

Commissioners absent: Kirsten Shelton, Percy Frisby

Staff present: Rob Steedle, CDD Director; Laura Boyce, Senior Planner; Teri Camery, Senior Planner; Robert Palmer, Assistant Attorney II

Assembly members: Beth Weldon

II. APPROVAL OF MINUTES - None

III. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS - None

IV. PLANNING COMMISSION LIAISON REPORT

Assembly Liaison to the Planning Commission Beth Weldon reported that the Lands Committee reviewed the application from White Oak Towers of Alaska for a new lease for an existing communication tower located at the end of Jackson Road in West Juneau. They continued their discussion on Indian Point. They discussed purchasing property from Aurora Arms to gain access to a parcel of City land behind Glacier Avenue. At the Committee of the Whole meeting they had a presentation from Docks and Harbors and the Morris communication group discussing their plan with the archipelago property. They allowed Docks and Harbors to move forward with a timeline. They have moved the Lemon Creek Area Plan to the full Assembly with a few minor revisions. Coogan Construction was awarded the bid for Phase 1 of the Pederson Hill Subdivision. The next Lands and Assembly Committee of the Whole (COW) meetings are

scheduled for January 29, 2018, at 5:00 and 6:00 respectively.

V. RECONSIDERATION OF THE FOLLOWING ITEMS – None

VI. CONSENT AGENDA - None

VII. UNFINISHED BUSINESS - None

VIII. REGULAR AGENDA

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).

The Auke Bay area plan aspirational designation for this property is for Traditional Town Center, reported Ms. Camery. The existing uses for these four separate properties include an eight plex, a triplex, a camp office and the Auke Bay Bible Church, said Ms. Camery. These parcels of land are adjacent to properties already zoned Light Commercial, noted Ms. Camery. On the other side of Glacier Highway, the land is zoned Waterfront Commercial, she noted.

Rezoning must be for property over two acres or an expansion of an existing zone, said Ms. Camery. This rezone request meets both prerequisites, she said. Rezoning should only be approved upon a finding that the proposed zoning is in substantial conformance with the Land Use Maps of the Comprehensive Plan, said Ms. Camery. While the Auke Bay Area Plan is a part of the Comprehensive Plan, land use designations of the Comprehensive Plan take precedence over the Auke Bay Area Plan land use designations, she said, because at this point they are only aspirational. The staff has found that the Light Commercial designation is in substantial conformance with both the subsidiary and the primary plans, she said.

The staff held two neighborhood meetings; one on September 27, 2017, and one on October 17, 2017, said Ms. Camery. For both meetings, notice was mailed to property owners within 500 feet of the proposed zone change, and in addition notice was given to the Juneau Empire's "your municipality" section, said Ms. Camery.

Ms. Camery read that the CBJ Land Use Code defines the proposed Light Commercial zoning district as:

The LC, light commercial district, is intended to accommodate commercial development that is less extensive than that permitted in the general commercial district. Light commercial districts are primarily located adjacent to existing residential areas. Although many of the uses allowed in this district are also allowed in the general commercial district, they are listed as conditional uses in this district and therefore require commission review to determine compatibility with surrounding land uses. A lower level of intensity of development is also achieved by stringent height and setback restrictions. Residential development is allowed in mixed and single use developments in the light commercial district.

Ms. Camery read that Mixed-Use zoning is defined as:

The MU, mixed use district, reflects the existing downtown development pattern and is intended to maintain the stability of the downtown area. Multi-family residential uses are allowed and encouraged.

The MU2, mixed use 2 district, is intended to place a greater emphasis on residential development than is the case in the MU district. A range of residential development types is allowed. Multi-family residential uses are allowed at a density of up to 80 units per acre.

Subarea guidelines for Auke Bay call for development of an area plan with the goal of creating a transit and pedestrian oriented village, said Ms. Camery. Guideline three also states that it is to encourage high density transit-oriented residential and/or mixed use developments in the Auke Bay village area and around the University, particularly for student and faculty affordable housing, she read. Guideline 12 states that it is to allow development of an infill residential development, such as apartments, condominiums, efficiency or single room occupancy units, and lifestyle housing within new and existing shopping centers, she read.

Lower to mid-rise structures are generally attached to Light Commercial zoning, noted Ms. Camery, or to Mixed-Use 2 zoning, she noted. Light Commercial zoning carries with it a 45-foot height limitation, said Ms. Camery. Mixed-Use 2 zoning focuses more on residential development, she noted. That carries a density of 80 units per acre, she said. Light Commercial zoning carries with it a limit of 30 units per acre, she noted.

The proposed zone change to Light Commercial substantially conforms with the Comprehensive Land Use designation of Medium Density Residential, and is further supported by several Comprehensive Plan policies, said Ms. Camery. Staff also concludes that the Mixed-Use and Mixed-Use 2 zoning districts may not substantially conform, due to high residential densities and the unlimited height allowance in mixed-use zones, she said.

The policies were adopted when the Auke Bay Area Plan was adopted, explained Ms. Camery. The intention of the land use designations on the map for Auke Bay is that they will be developed into new zoning districts, she said. The CDD intends to develop a zoning district that matches Traditional Town Center (TCC), she said. This has not yet been accomplished, she said. Light Commercial zoning is the closest and most compatible zoning district that they currently possess to TCC at this time, said Ms. Camery. Traditional Town Center applies to the Auke Bay town center, said Ms. Camery. This would attract a mix of shopping, dining, arts and music, marine and educational related services, she said.

The proposed zone change to Light Commercial substantially conforms with the Comprehensive Plan Land Use designation of Medium Density Residential, and is further supported by several Comprehensive Plan policies, noted Ms. Camery. The staff also concludes that the Mixed-Use and Mixed-Use 2 zoning districts may not substantially conform, due to high residential densities and the unlimited height allowance in mixed-use zoning, said Ms. Camery.

Ms. Camery outlined that the relevant goals and policies in the Auke Bay Area Plan include the following:

- ✓ Goal 4: Ensure zoning changes in the Auke Bay area conform to the goals and policies of the Auke Bay Area Plan
- ✓ Goal 5, Policy 5.1: Review the Auke Bay Area Plan when considering zone changes in the area
- ✓ Goal 5, Policy 5.2: Promote zone changes that conform to the plan and further advance the goals and policies of the plan
- ✓ Goal 8: Preserve unique views that make the Auke Bay area a truly special place
- ✓ Goal 8, Policy 8.1: Identify, map, and preserve key viewpoints in the Auke Bay area, as depicted in Appendix C
- ✓ Goal 8, Policy 8.3: New development should be evaluated for its impact on the viewpoints shown on the map

The view of the harbor is the essential viewpoint that is to be protected, noted Ms. Camery. CDD cannot evaluate the view shed for a rezone request, noted Ms. Camery. When CDD is presented with a new development proposal, at that time it would be appropriate to consider its effect on the view shed, she said.

In general, said Ms. Camery, the Light Commercial zoning district allows some higher impact commercial uses with the Conditional Use Permit process and allows a broader variety of commercial uses, consistent with the land use code definition of commercial development near residential areas. Mixed-Use and Mixed-Use 2 zones focus more on housing, but still allow for many commercial uses, she said.

There are not any substantial comments from public agency review on this zone request, said Ms. Camery. The Alaska Department of Public Transportation stated that if any new development is proposed, that a Traffic Impact Analysis may be required, she said.

CDD received a total of nine public written comments, said Ms. Camery. CDD heard a lot of concerns regarding the preservation of the character of the adjacent residential area, said Ms. Camery. The concerns in these comments referenced traffic and pedestrian safety, she said. Since the creation of the Auke Bay Area Plan there been many requests for the Department of Transportation to lower the speed limit through Auke Bay, said Ms. Camery. Those requests have not been recognized, she said. There are other concerns expressed about potential noise and congestion which would occur in the area with further development, she said. Specific development plans for the property were requested by some of the commenters; however specific development plans are not a part of a rezone, said Ms. Camery.

The options before the Commission are to approve the application as submitted, deny the request, or recommend an alternative to the Assembly, said Ms. Camery.

Commission Comments and Questions

Commissioner Hickok disclosed that he resides within the Auke Bay area and that he also owns a piece of Mixed-Use property in the area. He said that he felt that he could be fair and impartial when considering this rezone request, but that he wanted to present this information to the Commission and to the public in case it felt that it could create a conflict.

The other Commission members and the public expressed no concern over Mr. Hickok remaining on the Commission to deliberate this issue.

Mr. Voelckers asked if the Atlin Drive rezoning truly established a blanket precedent that all cases of MDR zoning essentially equals Light Commercial zoning, or if it was just applicable to that one specific case.

Mr. Palmer said that the Assembly just looked at the facts of that specific rezone, and found in that instance that Light Commercial zoning substantially conformed with the MDR plan designation. It does not prohibit the Commission from reaching an opposite conclusion, added Mr. Palmer.

Mr. Voelckers asked if the view planes referenced in the Auke Bay Area Plan are established, codified and actionable, or aspirational.

Ms. Camery said the Auke Bay Area Plan policies were specifically adopted by the Assembly. It does include protection for a series of viewpoints, she said. The viewpoint relevant to this rezone application is the view of the harbor, said Ms. Camery. They do not yet have a clearly defined process as to how those reviews would be accomplished, she said. The key point is that the City is legally obligated to implement the policies in the Auke Bay Area Plan, said Ms. Camery.

Mr. Voelckers said the height of 45 feet is enough to obstruct a view. He asked if there was clear language to designate what was or was not allowed regarding development and its impact on the view sheds.

Ms. Camery said she did not have a thorough answer to that question.

Mr. Palmer said that the Auke Bay policies were adopted. However, he said, the staff has not presented and the Assembly has not enacted an ordinance codifying those policies. Therefore, if this rezone request were to be approved by the Assembly, then Light Commercial would govern the building heights, for example. That would be in effect until a new zoning district was created, said Mr. Palmer. This rezone puts the Commission in an awkward position of having knowledge of the Auke Bay policies but without those standards being yet codified, said Mr. Palmer.

Mr. Hickok asked if it was common for a group of various property owners to come together to request a rezone of their property.

Ms. Camery said this has occurred before. She said since a two-acre minimum must be met, that a property owner with less than two acres could try to obtain a rezone with like-minded, adjacent property owners.

Mr. LeVine asked about the consequences should the Commission rezone this parcel to Light Commercial, and one of the property owners subsequently decided to implement a business which was in alignment with Light Commercial. He asked what would happen to that property if it's particular use was not in alignment with the new zoning once it was put in place.

Mr. Steedle said the department plans to create that new zoning district this coming year. Any development that is permissible under Light Commercial zoning that is not permissible in the new zoning district would become legally nonconforming, he said. They will be informing individuals that their projects could potentially be at risk under the new zoning once it is enacted, he said.

Mr. Palmer said this is one of the really vague areas of law. He said in general a property owner has a vested right after a permit is given and there has been substantial investment made. Prior to that the law is very unclear, he said.

Mr. Dye asked for clarification on what major and minor development would look like in this particular area.

Mr. Steedle said that varies by zoning district. In a commercial district minor development is a residential development with 12 or fewer dwelling units, he said, or for a nonresidential building less than 10,000 square feet, and using less than half an acre of land.

Mr. Dye said he assumed that going through the conditional use process would allow the Commission to review some of this.

Mr. Palmer said this is a speculative area. If someone proposed a project consistent with the current zoning district, the Commission is free to evaluate that request and impose conditions or approve or deny the permit, he said. Since the Auke Bay Plan has been adopted with its

inherent policies, the Commission could consider those policies as a factor in its consideration of that Conditional Use Permit, he said. Conditional Use Permits are discretionary and can be denied even if all of the elements have been met, said Mr. Palmer.

In answer to Mr. Dye's question about what would be considered a front yard setback and a side yard setback using the Seaview complex for an example, Ms. Camery said that the front yard setback is determined by the point of access which is off of Seaview, and the street side setback would be off of Glacier Highway. That results in a 25-foot setback off of Seaview and 17 feet off of Glacier Highway, she clarified.

Mr. LeVine asked if over the course of the year when the new zoning districts are developed for Auke Bay, if there would be the opportunities for public input during that process.

Ms. Camery said there definitely would be a public process during this period of zoning district creation for Auke Bay. She said the zoning would be based upon a Traditional Town Center as outlined in the Auke Bay Area plan.

Mr. Hickok asked if the RV (Recreational Vehicle) park in Auke Bay is one of the participating parcels in the rezone request.

Ms. Camery said the RV Park is outside of the area of the parcels requesting the rezone.

Applicant

Property developer Joanne Schmidt said she is the owner of Douglas Island Development and one of the parcel owners requesting the rezone. She said she felt the Auke Bay Area Plan captures what Juneau could be. She said she felt the concepts in the plan were innovative allowing property developers to "achieve something in an absolute gem of an area". The Auke Bay area has a multimillion dollar harbor with a seasonal business, with mining and fishing providing a pretty powerful resource economy, she said.

Ms. Schmidt said development for the Auke Bay area should be encouraged. She said she did recognize there were concerns by some residents about what type of development might take place. She said that any development which she would undertake for the area would be absolutely consistent with the Auke Bay Area Plan.

Commission Comments and Questions

Mr. Voelckers asked Ms. Schmidt how she felt about the fact that the zoning for the Traditional Town Center would not take effect until after she had possibly begun her development project.

Ms. Schmidt said in her opinion the Auke Bay Area Plan was already mature since it has already been adopted. She said as a developer she wants to achieve the highest and best use of her property. She said she did not understand why she would need to wait on her development until the Traditional Town Center zoning had been established. She said there were more constraints for Light Commercial zoning than for land zoned for a Traditional Town Center. There are zero setbacks recommended for a Traditional Town Center, she commented. She said

some members of the community are not pleased about additional development adjacent to their homes. She asked the Commission to consider communities which are very walkable between residences and businesses, and where a car does not need to be used for transportation.

Mr. Dye asked the applicant what the urgency was to rezone the property now rather than wait until the area is properly rezoned for Traditional Town Center.

Ms. Schmidt said she has owned the property for two years and that she would like to commence work on repositioning it. She said she is not sure if the City will complete its rezone of the district within a year, and that she cannot base her business decisions upon a “maybe”. She asked Mr. Dye to keep in mind that it was only after a great deal of research on the part of the CDD staff that it was determined that Light Commercial zoning substantially conforms to that of a Traditional Town Center within the Auke Bay Area Plan and with the Comprehensive Plan.

Mr. Dye said that at this point the highest and best use of that land is not yet defined because it has not yet been determined what the zoning for that area would be once the Auke Bay Area Plan has been implemented.

Ms. Schmidt said the answer to Mr. Dye’s question can be found within the staff report where it states that Mixed-Use development is an avenue to develop several Comprehensive Plan policies. This language is basically carried over into the Auke Bay Area Plan, she noted.

Public Comments

Auke Bay area resident David Massey said they bought a home in the Auke Bay area because for them it was the best area in which to purchase a home. He said the proposed rezone would result in a substantial change to their adjacent residential subdivision. He said as far as the neighbors are concerned, they already have the highest and best use for their property. The Auke Bay Area Plan addresses views specifically, he said. Going from a 35-foot to a 45-foot height limit would add a substantial constraint to their views, he said. He said he felt it would be inappropriate to rezone land before the final zoning for the area had been accomplished.

Auke Bay area resident Gerry Quigg told the Commission that he has lived in this area since 1973. He said Tanner Terrace subdivision held covenants, which it now appears are not worth the paper that they are written on. The home owners approved the request for a rezone to allow an eight plex in the area, he said. He asked if the existing covenants are now worthless.

Mr. Palmer said he did not know the answer to that question.

They have an old subdivision with a sub-standard road, said Mr. Quigg. He said the road is not big enough to handle the current development in the area. Mr. Quigg said Ms. Schmidt was the only individual who wanted the zone change and that she convinced other parcel owners to join.

Mr. Voelckers asked if Mr. Quigg was involved in the planning process during the creation of the Auke Bay Area Plan. Mr. Quigg said he had no idea that the plan would have direct effects upon their neighborhood.

Auke Bay area resident Julie Flint said this proposed rezone is literally in the neighborhood's front yard. She said they have concerns that their neighborhood will no longer be a livable residential area if further business developments take place right next to them. They have only been told that there would be development, but they have no idea what that development might be, she said. She said she did not understand that the Auke Bay Area Plan would have a direct effect upon their neighborhood. She said she did attend an Auke Bay Area Plan meeting and that her feeling was that the plan had already been developed, and that residents in her immediate area were not affected.

Auke Bay resident Rick Currier told the Commission that he has lived in the area since 1993. He said like all of his neighbors, he selected this location because he liked the quiet, residential neighborhood and the views. He said he owns a sailboat in Statter harbor and that he likes to wake up every morning and look out over his sailboat. He said that he and his wife have spent thousands of dollars cutting down trees so that their view would not be obstructed. He said the streets are very narrow and it is difficult for two vehicles to traverse the street at the same time. Mr. Currier said that he did not understand that the Auke Bay plan would affect their neighborhood.

Area resident Ron Flint said that he has lived in the Auke Bay residential area for 24 years. Mr. Flint read a letter to the Commission submitted by area resident and neighbor Andi Story. In her letter she asked for height limits to be restricted in the proposed development area. She said in her letter when they purchased their home the existing covenants stated that they are not allowed to build in a height which would prevent the view of neighbors on the uphill side of the residential development. In her letter she stated that she anticipated there would be a drop in property values should their views be negatively affected.

Mr. Flint said the Auke Bay Area Plan has taken many of his neighbors and himself by surprise. He said to him it seems that the plan for a city town center has been overlaid on top of the community, not taking into consideration the existing development such as their residential neighborhood.

Area resident Debbie Ballam told the Commission that they strongly objected to the proposed rezone and that they believe that it would impart a very negative impact upon their residential neighborhood. The quiet and views from their home are something that she and her husband cherish, she said. They strongly object to turning their residential neighborhood into an area with light commercial zoning, she said. She said they did attend the first meeting but they did not feel that their opinions were heard. She said they are a very small neighborhood with very small voices. They want their neighborhood to remain a low density neighborhood and not light commercial zoning, said Ms. Ballam.

Auke Bay area resident Mike Allan said that there is a good reason that people moved to the Auke Bay area, out the road, and to North Douglas. There is not the hustle and bustle of town and the Valley, he said, and those residents experience a somewhat rural feeling. Mr. Allan said quality of life is an important consideration, and that decisions the Commission makes this evening could affect the Auke Bay area resident's quality of life significantly. Mr. Allan said he did attend a few meetings of the Auke Bay Area Plan Committee and that he did not feel it was the intention of the plan to give a strip mall look from the roundabout to the Legion club.

Mr. Miller asked Mr. Allan if he could show the Commission on the map where he wanted the Light Commercial zone to halt. He said that would be at the two lots consisting of the church property.

Applicant

Ms. Schmidt said she had heard the comments that auto repair shops were allowed in a Light Commercial zone and that she did not believe that was the case. She said it appeared from reviewing the materials that an auto mechanic shop was only allowed in a General Commercial zone. She said she felt another important point was that there was no way that construction of her building to 45 feet would interfere with the views of the residences on the hill behind it. There is a public process in place so that people have time to impart their input. The Auke Bay Area Plan was a process which took over two years, she noted. Ms. Schmidt said there had been ample opportunity provided during that plan process for area residents to weigh in on the formulation of the Auke Bay Area Plan. She said she did not feel that the community would be well served should the Planning Commission decide that her project was not possible because the adjacent neighborhood did not like it.

Commission Comments and Questions

Mr. Hickok asked what would constitute a total of two acres including Ms. Schmidt's property. He asked if it was necessary for the Commission to rezone all seven acres when only two acres were required for the rezone request. He asked the applicant why she wanted to incorporate all of the properties that are listed in the rezone request when only two acres were necessary for the rezone.

Ms. Schmidt responded that she spoke with all of the property owners included in this application and that they were all interested in participating in the rezone request.

Mr. Dye said he has noticed that a lot of public testimony has been focused on view sheds. He said the key Auke Bay view sheds were outlined in the Auke Bay Area Plan. He asked how preservation of the view shed would be interpreted in actual building practices.

Ms. Camery said she felt that was an excellent question. She said that she was not aware that a specific interpretation of this mandate within the plan was outlined.

Mr. Palmer said the Auke Bay Area plan is perhaps the only plan of which he is aware that defines and describes a view shed or a view plane. Other scenic corridors are protected in

policy language, but the Auke Bay Area Plan is unique, he said. The community which participated in the Auke Bay planning process wanted specific areas protected. This puts the Commission in the difficult position of dealing with a policy which has been adopted, but the implementation of that policy has not yet happened, he said.

Mr. Dye asked if a development was proposed which did not require approval by the Commission, if there would be no safeguards in place to protect the view shed.

Mr. Palmer said this was correct.

Mr. LeVine asked Mr. Palmer what the Commission's options were in regard to making its recommendation on this rezone request to the Assembly.

The Planning Commission could approve the request, it could deny the rezone request, and procedurally there are a wide spectrum of options between those two avenues, said Mr. Palmer. It could table the rezone request to a time certain if it wanted to give the staff time to work out a zoning ordinance. The Commission could also probably figure out a way to parse the rezone request to a parcel less than the over seven acres being requested, said Mr. Palmer. The Commission could also ask for more analysis from the staff on the bifurcation of the land parcels if it was interested in that possibility, he added.

Mr. LeVine asked if the Commission could grant a rezone subject to conditions that are not inherent in that zoning district.

Mr. Palmer said technically, this could be done, but that it was highly disfavored. Rezones are to be evaluated as a whole with all of the uses considered, and the goal is to treat all properties within the same zoning district the equally.

MOTION: *by Mr. Voelckers, to table the rezone request for a period not to exceed four months.*

Speaking in favor of his motion, Mr. Voelckers said he found this to be a very complex issue. He said he felt both the Planning Commission and the staff felt some burden due to the fact that they seem to be stuck between the aspirational aspects of the Auke Bay Area Plan and how that plan should be specifically implemented. Mr. Voelckers said he felt that four months would be enough time if Commission members and the staff worked together in a concerted effort towards implementation of the plan in terms of zoning and protection of the view shed, to name a few examples. What constitutes a Traditional Town Center can be interpreted in different ways in terms of how it is zoned, said Mr. Voelckers. It could perhaps proceed in a gradation of density working from less density in the residential areas and increased density as it moved towards the center of the Auke Bay commercial district. They have not yet done the work to define exactly where those lines of demarcation would be, said Mr. Voelckers.

Speaking against the motion, Mr. Miller said that the applicant has presented the Commission with a good rezone application following the zoning rules which are already in place. If the applicant would have to wait four months until the issue was revisited, that could feasibly delay

a project through another winter, said Mr. Miller. The ideas within the Auke Bay Plan could be used as tools considering a Conditional Use Permit, said Mr. Miller. There are still safeguards for the plan in place moving forward with this zoning request, he said.

Mr. Dye said that he shared many of the views of Mr. Miller. However, he said, he struggled with the lack of specifics about protecting the view shed that currently exist. He said he did like the idea of Mr. Voelckers to give the CDD the time to come back to the Commission with an outline of what the zoning district actually should be.

Mr. LeVine asked the staff if they could give the Commission their opinion about what could be accomplished in a four-month timeframe in terms of coming up with specific zoning for the area.

Mr. Steedle responded that he did not feel that four months was sufficient to accomplish that task. In addition to the staff work, they also have to adhere to a public process, he said, in order to define what uses would be allowed in the new zoning district and to take into account the difficult question of the protection of the views. Height would be one consideration, but Mr. Steedle said he felt there was more to it than that.

Work has been completed to come up with zoning districts to match Auke Bay, said Mr. Steedle. This work came to a halt when the planner who was working on that project departed, said Mr. Steedle. After the public process has been completed, then the rezone districts would come to the Commission for its input, said Mr. Steedle. It would then go to the Assembly which in turn had to follow its process, said Mr. Steedle. The new zoning district as approved by the Assembly would not be adopted until a month after that approval, said Mr. Steedle. A four-month process is not enough time, he said.

Mr. Dye asked Mr. Steedle if he felt the Auke Bay Plan was adopted prematurely into the Comprehensive Plan.

Mr. Steedle said he did not feel it was adopted too early into the Comprehensive Plan. He said the Comprehensive Plan itself is aspirational. What they have failed to achieve is to develop the implementation in terms of developing that zoning district, he said. The plan is clear as to what the vision is for the Auke Bay community, said Mr. Steedle.

Mr. Dye asked if Mr. Steedle felt there was enough specific information within the Auke Bay Area Plan to protect the view shed areas if these parcels were rezoned to Light Commercial.

Mr. Palmer said at this point he did not think the plan was specific enough to describe what land use regulations should be implemented to protect that view shed. Building height and locations are factors which need to be considered for view sheds which are currently not codified, said Mr. Palmer. One idea which had been considered is floating setbacks, which would provide bigger corridors on the sides of the property for more access to the view sheds, he said. Those are still nascent ideas and are not ready to be presented to the public, said Mr. Palmer. The concept of the view sheds is outlined in the Auke Bay Area plan, said Mr. Palmer,

but how to protect and preserve those view sheds is difficult. One way to give the body some control over the view sheds at this point is to require each development proposed in those view planes to obtain a Conditional Use Permit, he said. There is a strong balancing act between requiring conditional use permits to protect the view sheds and at the same time assuring that property owners are assured of their property rights, said Mr. Palmer.

Mr. LeVine asked Mr. Steedle if he could give some idea about how much time the staff would require to provide some concrete information for the Commission as to how and where they were proceeding regarding rezoning the Auke Bay Traditional Town Center, so the Commission could weigh the options before it regarding the rezone request before them this evening.

Mr. Steedle said it would be sheer speculation as to what the staff could deliver to the Commission within 4 to 6 months. The Assembly made clear at its retreat that reviewing the Comprehensive Plan was a priority, as it is the downtown area plan, as well as an update to the Housing Needs Assessment, said Mr. Steedle. The staff has a lot of priorities which it is currently juggling, he said.

Mr. Miller commented that they were going to have a noise ordinance at one time. It may prove too difficult to figure out how to protect a view plane, said Mr. Miller. How much roof can someone see from their home and have that still not considered as an intrusion on the view shed, said Mr. Miller. Tonight they have a rezone request which is within the ordinance and which is in place, said Mr. Miller.

Speaking against the motion, Mr. Greene said that they have a reasonable request from the applicant, and that while he can appreciate that the neighbors do not want to give up any view or have other intrusions upon their neighborhood, that the rights of the other property owners exist as well. The tools they currently have available are the Auke Bay Area Plan and the Comprehensive Plan, said Mr. Greene. Mr. Greene said it appears that Light Commercial zoning is the best match for that area at this time.

Mr. Hickok said he did not think it was the intent of the Auke Bay Area Plan to break up neighborhoods. He said he would not have approved the Auke Bay Area Plan if the result would be the destruction of neighborhoods. He said he felt the intent of the plan was to revitalize the area, but not to take apart a great neighborhood which has existed within the community for many years.

In answer to a question by Mr. Dye, Mr. Steedle said that the applicant would not be prohibited from getting their property rezoned within a two-year period because it would be the Department itself which would be applying for the subsequent rezone.

Mr. Palmer added that should the department initiate the rezone within a year, it would be a different zone than the one currently recommended, so the applicant would not be applying for the same type of rezone regardless.

Mr. LeVine said he remained troubled about the prospect of rezoning a property which would be up for yet another rezone within a few years' time. Mr. LeVine said he would support Mr. Voelckers because he would like the staff to have some extra time to look at this issue, and that he was very sensitive to the concerns of the neighborhood. The process will work better if they are all working on it together, said Mr. LeVine. They all want affordable housing, they all want successful businesses and they want people to be able to pursue development interests, said Mr. LeVine.

Mr. Dye presented a friendly amendment to the motion of Mr. Voelckers, that the four-month time period be reduced to 30 days for the staff to come up with a schedule as to what effort and time a rezone would take, and the possibilities of conditioning the rezone based upon the view shed.

Mr. Voelckers did not accept the friendly amendment of Mr. Dye. He said he was going to suggest later in the meeting that the Commission form a committee to work in conjunction with the staff on Auke Bay rezone issues. He said he would rather work towards identifying a solution rather than a list of the items that they did not yet know how to complete.

Roll Call Vote on the Amendment:

Yeas: Dye

Nays: Green, Voelckers, LeVine, Hickok, Miller, Haight

Motion Failed

Mr. Miller said he did feel the best possible outcome was to make this all work for all the parties involved. His concern with any delay is that they were putting a development corporation's business plans on hold over what is at this point conjecture. What was the Commission looking to get from the staff in four months that would sway its opinion on the rezone that it does not have now, asked Mr. Miller.

Chairman Haight said he felt the Commission had the desire to settle the need for neighborhood harmony, which is typically reviewed during a Conditional Use Permit but that sometimes needed to be considered at the time of rezoning as well. He said perhaps those interested in waiting four months for more information could outline for the staff exactly what they needed to help them with their determination.

Perhaps the demarcation line for the Traditional Town Center zone is not yet in the correct place for example, said Mr. Voelckers. A committee working with the staff should be able to come up with some clear guidelines, said Mr. Voelckers.

Mr. LeVine said he felt given some time and the cooperation between a committee and the staff, that in four months' time they could get closer to a rezone better suited to the neighborhood that they could approve.

Mr. Dye said it seemed to him that the viewpoint and how it is defined in the Auke Bay Plan seems to be the major issue. He said he would like to obtain more information from the staff in a shorter period of time instead of postponing this issue for four more months resulting in the loss of a possible building season for the developers.

Mr. Miller asked Mr. Dye if he was referencing 30 calendar days or 30 working days.

Mr. Dye said he would reconsider a new amendment to state the new date of January 23, (2018) which is the fourth Tuesday of that month.

Mr. LeVine said he did not think that January 23, (2018) was enough time to develop a new plan from which to move forward on the Auke Bay zoning issue. He said that is why he voted against the amendment before and why he would vote against it again.

Mr. Dye said maybe there is a way to condition this rezone that allows it to happen in a more expeditious manner for the property owners to be able to enjoy the rezone in a fashion that alleviates the concerns that are raised by the multiple rezones and what the end product might look like.

Mr. Voelckers said he would like enough time to actually accomplish some work on this matter. He said he had not heard the applicant state that they had any plans to accomplish anything this building season.

Mr. Dye said he did not make another amendment to the main motion.

Roll Call Vote on the Main Motion:

Yeas: Hickok, LeVine, Voelckers, Haight

Nays: Dye, Greene, Miller

The motion failed.

MOTION: *by Mr. Miller, to approve AME2017 0013 and approve staff's findings, analysis and recommendations, and to forward the recommended zone change to the Assembly.*

Speaking against the motion, Mr. Miller said on one hand it could be said that the Auke Bay Area Plan supports the requested rezone, and on the other hand it really does not support the rezone request. There are too many ambiguities with the plan to approve this motion, said Mr. Miller. He added that he also agrees with the assessments that if there is a new zone that is brought forward that does address all of the Auke Bay plan issues, that it should not be substantially similar to this rezone request.

Roll Call Vote:

Yeas:

Nays: Greene, Dye, Hickok, Miller, LeVine, Voelckers, Haight

The motion failed.

Chairman Haight said this has been a struggle, and it will drive the staff and the Commission to work on implementation of the Auke Bay Area Plan rezones.

Mr. Miller interjected to say that he is contemplating a reconsideration of the rezone just turned down by the Commission. He asked when the appropriate time would be to pursue this reconsideration.

Mr. Steedle said this item could be revisited at the end of the meeting.

AME2016 0002:	A text amendment to CBJ code 49.20 regarding variances.
Applicant:	City & Borough of Juneau
Location:	Borough-wide

Staff Recommendation

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

The intent of this ordinance is to make the code more flexible, said Ms. Boyce. There are four key parts to the draft ordinance, said Ms. Boyce:

- ✓ Provide clarity regarding what is and is not variable
- ✓ Remove the variance threshold requirement
- ✓ Amends the variance criteria to provide clarity and reduce subjectivity
- ✓ Deletes the De Minimis variance

Since the land use code was updated in 1987, the following types of design and dimensional standard variances have been approved, noted Ms. Boyce:

- ✓ Lot width
- ✓ Lot depth
- ✓ Yard setbacks
- ✓ Building height
- ✓ Anadromous stream/water body buffer setbacks
- ✓ Vegetative cover
- ✓ Flood zones
- ✓ Eagle nest tree buffers
- ✓ Parking requirements

- ✓ Access requirements
- ✓ Panhandle subdivision requirements
- ✓ Sign requirements
- ✓ Design standard changes, including planned unit developments, canopies, mobile home parks, cottage housing, accessory apartments, common walls and historic district requirements

The draft ordinance eliminates the current threshold criteria which is currently required to be met, said Ms. Boyce. For the new draft ordinance, the staff recommends that six criteria be met:

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 is necessary to relieve the hardship.*
6. *The grant of the variance does not result in a density, lot size, or lot coverage less than the minimums for the zone district.*

They have reviewed this draft ordinance thoroughly with the Title 49 Committee as well as reviewed it in two separate Planning Commission COW meetings, noted Ms. Boyce.

The first proposed criterion was not discussed with Title 49 Committee. Ms. Boyce said she suspects that it may be the most debatable criterion before the Commission.

Commission Comments and Questions

1. *The unusual or special conditions identified in the application are not caused by the person seeking the variance.*

Mr. Miller said he liked the way that Criterion 1 is written, but that the explanation of that criterion in the staff report is unsatisfactory. Mr. Miller said he objected to the following sentence within the criterion: *"A self-created hardship will exist if the applicant knew or should have known of any restrictions at the time the site was purchased."* For example, said Mr. Miller, when they created the Walter Sobeloff Building, they knew going into the project that variances were needed to build this spectacular building. Those variances were granted, and Mr. Miller said he felt this was for the benefit of the entire Juneau community. It could be argued that hardship requiring the variance was self-imposed, said Mr. Miller. Most variances are going to be self-created, said Mr. Miller.

Mr. LeVine said he could not think of a variance the Commission has considered that would satisfy this threshold explanation the way that it is written. However, he said, they do not want individuals proceeding far along with the project to which a variance would be required. There should be some restriction on variances, said Mr. LeVine.

Mr. Voelckers said this threshold did address the issue of willful noncompliance. He said Mr. Miller raised a good point in that a lot of times really nice results can be created on severely challenged lots. There needs to be an adequate balance between public benefit and relaxation of the code, he said. This is a nuanced judgment that the Commission needs to make, noted Mr. Voelckers.

Mr. Dye said he had similar thoughts on this topic. If a party asked for a variance on a lot that is too small, they are then creating the hardship, said Mr. Dye. He said he did not feel this portion of the criteria language reflected the will of the Commission.

Mr. LeVine said by applying for the variance they are bringing up the variance debate. Is the threshold language trying to decipher if the applicant has taken unreasonable action or has unreasonable expectations of their property?

Mr. Dye asked if this statement was within the first criterion because otherwise the granting of variances would be too broad in scope.

Mr. Palmer said if this criterion language does not reflect the feelings of the Commission that the language needs to be changed. If the criterion states what the Commission would like to state but that the explanation is not on point, then that needs to be changed, said Mr. Palmer. Mr. Palmer said he thought that they need explanatory language that can be used so that the Commission can evaluate whether or not this is truly an unusual or special situation which warrants a variance.

This draft ordinance language provides an escape hatch for individuals applying for a variance, said Mr. Palmer. The staff report needs to reflect the will of the Commission because it will be used as context for every contentious variance which comes before the Commission, said Mr. Palmer.

Ms. Boyce said the principle incorporated in this criterion is in reference to self-created hardship.

Mr. LeVine asked Ms. Boyce if she could provide an example in which the first criterion would prevent the Commission from granting a variance.

Mr. Hickok asked if this first criterion would serve to eliminate the possibility of individuals building against the code and then asking for a variance after the fact.

In that situation, said Mr. LeVine, they could simply state that retroactive variances are not allowed.

Mr. Palmer suggested that he and the staff do some case analysis with similar cases in courts throughout the United States in which it was decided that there was or was not a self-imposed hardship.

Chairman Haight said he felt that would be most helpful. He said he felt what the Commission was searching for is the demarcation between what is a self-imposed hardship and what is a unique circumstance warranting a variance.

Mr. Voelckers asked Mr. Palmer if he was of the opinion that a variance could at times be used to obtain a higher utilization for a piece of property.

Mr. Palmer said if he had to argue a denial of a variance, that would be a valid argument before the Alaska Supreme Court. If he was a neighbor arguing that a variance should have been denied because it was self-created, it would be very difficult to defend. That is because the entire underlying concept is that the variance tool is really there to prevent an unconstitutional taking of someone's property. If someone is using a variance to get around a height limitation, for example, or a setback limitation, those are circumstances in which a variance is probably not the right tool, said Mr. Palmer. The core problem would be the height or setback requirements of the code, he added.

Mr. Miller said in spite of trying to fix all of the things which are broken within the code, the Commission still needs a tool to be able to accomplish projects. Variances are still a great tool for that, he said. ADOD was an amazing short-term fix, said Mr. Miller. However, he said he wondered if they would actually be able to enact the work they need to do before it lapsed. Mr. Miller said he also had issues with a sentence further down in the staff explanation: "To grant such a variance would reward or excuse the owner's lack of due diligence or poor project planning." Mr. Miller said he did not think asking for a variance was poor planning. He said he felt that it was good planning if it is being requested prior to construction. An example of poor planning is when property owners may either intentionally or unknowingly construct a building that violates the zoning regulations and then later request a variance. Mr. Miller said that is an example of poor planning. Mr. Miller said he just wanted assurance that the mere act of requesting a variance did not automatically place an individual in the situation of a "self-created hardship".

Mr. LeVine said he suspects that the Commission is going to want to retain some variant of this criterion. He said he felt it just needed some rephrasing within the staff report so that the Commission could get behind it.

Mr. Miller said that noncompliant situations can be created which are initially not the fault of the property owner.

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

Mr. LeVine said he wondered if on the side of caution if the word “it and the grant of the variance” should be added after the word “and” in Criterion 3. Mr. LeVine said he just wanted it to be very clear that there were two separate items which needed to be met within that criterion.

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

In answer to a question posed by Mr. Hickok, Mr. Palmer said in general financial hardship is not considered an unreasonable hardship. He said at some point though, as financial hardship escalates, it could be considered as a hardship.

Mr. LeVine said it was not clear to him reading the staff report regarding this criterion that the threshold hardship requirement was being removed, but that it was still required that there be a hardship.

5. The grant of the variance is no more than is necessary to relieve the hardship.

Mr. LeVine said it is more the variance that is of concern here, not the act of granting the variance. He suggested that it read instead: “The variance is no more than is necessary to relieve hardship and maintain neighborhood harmony.” This would be to allow some consideration as to what is going on in the neighborhood, he said.

Mr. Voelckers agreed that some sort of balancing statement makes sense. He said he was not sure if it would be limited just to neighborhood harmony, however.

Mr. Dye said he liked the addition of the concept of neighborhood harmony to this criterion. It would help cap what could become unreasonable requests on the part of the applicant, he noted.

Mr. Steedle said he understood the comments of Mr. LeVine on this criterion but that he did not think it belonged here. He said he felt it made this criterion less clear. Criterion three contains the concept of neighborhood harmony, said Mr. Steedle. He said he felt it would be duplicative to attach that onto number five as well.

Mr. Voelckers suggested the following language for number five: “The grant of the variance is appropriate to relieve the hardship.”

Mr. LeVine suggested: “The variance is narrowly tailored to relieve the hardship.”

Mr. LeVine and Mr. Voelckers both stated they were seeking some limits within the criterion while at the same time providing some flexibility for the Commission in rendering its decisions.

6. The grant of the variance does not result in a density, lot size, or lot coverage less than the minimums for the zone district.

Mr. Voelckers said there may be occasions when the Commission may need to resort to a variance for issues such as lot density or coverage.

Mr. Palmer said he felt that Mr. Voelckers had raised an interesting question that he and the staff could analyze. He said he felt the concept in criterion six is good. He said he felt perhaps the explanation in the staff report accompanying Criterion 6 could be revised. There may be a very small lot in which the setbacks left only about 200 square feet of buildable space, said Mr. Palmer. It would be good for the staff to revisit its analysis of this criterion so something such as that would be addressed, he said.

Mr. Dye asked if there is any way to build into the criteria those extra items which may need to be varied such as for land which was developed prior to the development of modern zoning districts and code.

Mr. Palmer said on the one hand they have a variance tool and on the other hand they have a nonconforming code. In the variance staff report they should outline that there is relief somewhere in the code before this ordinance is enacted.

Mr. Voelckers said basically they are trying to get out of the variance business for design issues. He said he had seen mention of the expansion of the possibilities for conditional use so that it could become an alternate vehicle for items such as a roof which would not work.

Ms. Boyce said her position is that the way the conditional use process is written in the code it already allows for design modification.

Ms. Boyce said they had looked at all the types of variances which have been applied for in the past 30 years. They are trying to build the flexibility into the code to cover those types of situations, she said. It is the larger projects which would be coming before the Commission for modifications anyway, she said, which would be addressed.

De Minimis Variance

Ms. Boyce said they are proposing that the de minimis variance be deleted. Only 16 de minimis applications have been filed, and 12 of those were approved, said Ms. Boyce. The other four were not denied, but the staff is not certain what happened to them, she said. They would like to rename this as an "administrative variance", she said. They would like this to be a variance granted before the fact and not after the fact, she said.

Mr. Miller said he moved to Juneau in 1995 and that he has probably constructed 400 homes in Juneau. One of those 16 de minimis variances which were approved, one was his, said Mr. Miller. When he first started constructing in Juneau, the lots were much larger and it was much easier to meet all of the setback requirements, he said. The last five to seven years, said Mr. Miller, more and more lots are infill, and they are smaller lots. Every foundation he has done in the last three years has had to fit the lots like a glove, he said. The margin for making mistakes is extremely small now, he said.

Mr. Palmer said one of the ideas the staff had regarding this draft ordinance and getting it to the Commission quickly was so that the Commission could consider it and make its decision. However, since they have to do more work on Criterion number 1, and the next meeting is in late January, perhaps the staff should work on some language for an administrative variance, and have a Title 49 Committee meeting prior to the September 23, (2018) meeting, so that at that meeting the staff could hopefully present administrative variance language to the Commission in addition to the regular variance language. They could then consider both options at the same time, he added.

Mr. Palmer asked if the Commission liked that the trigger or scope of the current de minimis variance is such that it is only applicable for setbacks, and it is up to 25 percent of the setback for that specific zone district.

Mr. Voelckers said he has seen de minimis applied to items such as rise, and run of stairs.

Mr. Steedle said that is a different subject. He said that is a determination by the building official. That is what is called a code modification, he added.

This currently does not apply to height, said Mr. Palmer.

Mr. LeVine noted that 25 percent setback is a significant amount. He asked Mr. Miller for his opinion on this.

Mr. Miller said the de minimis variance to which he applied was because a rebar stake had been inaccurately set. Twenty-five percent may be too generous, he added.

There have only been 16 of these de minimis variances granted, said Mr. Miller.

Mr. Palmer said it appeared to him the general consensus of the Commission is that 25 percent is a good starting point from which the staff can work. They will work on a draft for this, he said. It will be limited in scope solely to setbacks, he said. The staff's intent is that the administrative variance would apply to both before and after the fact, he said.

Ms. Boyce noted that the following code changes have occurred that provide additional flexibility regarding these items:

- ✓ Vegetative cover requirement for mixed use zoning districts reduced
- ✓ Accessory apartment code changes regarding design and an increase in apartment size
- ✓ Parking; the parking waiver is now in effect
- ✓ Shared Access; allows four or fewer lots to share access, and frontage on a publicly maintained right-of-way is not required
- ✓ Alternative Development Overlay Districts (ADOD's); the downtown Juneau and in the downtown Douglas overlay districts can provide flexibility regarding lot coverage, vegetative cover, and setbacks until zoning that "fits" the downtown residential areas is proposed

- ✓ Panhandle subdivision requirements; would be in effect

They are currently working on stream buffers, privately maintained access roads, sign standards, and vegetative cover, said Ms. Boyce, as well as other changes in code to provide all the flexibility they have experienced from the variance work, she said.

When the variance language comes back to the Commission, Mr. Dye requested that the upcoming code changes be listed against the percentages of previous variances applied for and that an estimated date of completion be provided. He said this would help with providing information as to when these changes would be coming into effect and it would be balanced against how many times these have occurred in the past with previous variances.

They also have a proposed set back exception to add to the code regarding energy efficiency efforts which should be before the Commission at its January 23, (2018) meeting, said Ms. Boyce. That would amend the section of code that would allow up to six inches to encroach into the setback, she said.

Mr. LeVine said there will be a period of years during which people will not be able to obtain variances according to rules that they know need more flexibility. He said no doubt the very first variance application they get will be for something that people used to be able to obtain a variance for, which can no longer be varied, and for which they know needs more flexibility. Mr. LeVine said this strikes him as unfair. He said he did not know how to address this basic question of fairness.

Mr. Miller said maybe they could do that with a seventh criterion. They could ask if this is on the list of upcoming code changes that need more flexibility, he said.

When the draft ordinance comes back before the Commission, Mr. LeVine asked if the staff could make an attempt to address that foreseeable issue.

VIII. BOARD OF ADJUSTMENT - None

IX. OTHER BUSINESS - None

X. DIRECTOR'S REPORT

Mr. Steedle said the next regular Planning Commission meeting will be January 23, (2018).

Mr. Palmer said the Supreme Court affirmed the Assembly's rejection of the Yankee appeal. The case presents a very unique description of what enforcement powers the director has over land use questions, and the Supreme Court did an incredible favor to the citizens of the state and to local governments in explaining what that scope of enforcement power encompasses, said Mr. Palmer.

XI. REPORT OF REGULAR AND SPECIAL COMMITTEES - None

XII. PLANNING COMMISSION COMMENTS AND QUESTIONS

Mr. Miller asked if the AME2017 0013 rezone request was for D-10 transitioning to LC.

Mr. Palmer suggested that they make a notice of reconsideration, and have a conversation with the staff about this in between, so perhaps that could be reviewed and brought up at the next meeting. That would preserve the opportunity for the Commission to revisit this issue, he said.

Mr. LeVine said he understands that if Mr. Miller makes a motion to reconsider, the Commission would then have until the end of its next meeting to vote on a motion for reconsideration should it be made. If the motion for reconsideration is made and it is approved, the current vote would be stricken and it would be taken back up again, he said.

Mr. Greene asked what a D-10 transitioning to a Light Commercial zone would be.

There currently exist transition zones said Mr. Miller, that are in place for example, when sewer and water arrive to an area that it would automatically transition to the named transition zone, he said.

MOTION: *by Mr. LeVine, to extend the meeting to 11:05 p.m.*

The motion passed with no objection.

Mr. Dye asked how much conversation the commissioners could have before they voted on the motion of reconsideration at the next meeting should it be made.

The commissioners cannot discuss it at all, said Mr. Palmer.

NOTICE: *by Mr. Voelckers, that AME2017 0013 be reconsidered at the next regular meeting.*

Mr. Voelckers said this is a good opportunity to form a special committee to work with the staff on the Auke Bay rezone planning issue. He said he felt a very specific, focused committee working with the staff would be very beneficial to accelerate this process.

Mr. Steedle said he has concerns about the staff workload and that he thinks it would be beneficial to form a working group comprised of staff and Commission members.

Chairman Haight appointed Commissioners Miller, Hickok, Dye and Voelckers to the ad hoc Auke Bay Plan Implementation Committee.

XIII. ADJOURNMENT

The meeting was adjourned at 11:04 p.m.

DRAFT

Additional Materials

Regular Planning Commission Meeting

Assembly Chambers

7:00pm

Meeting Date: January 23, 2018

1. CSP2017 0018:

- a. Memo from Allison Eddins, Planner, re: corrections to staff report



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CDD_Admin@juneau.org
www.juneau.org/CDD
155 S. Seward Street • Juneau, AK 99801

Date: January 23, 2018

To: CBJ Planning Commission

From: Allison Eddins, Planner

A handwritten signature in black ink, appearing to read 'A. Eddins'.

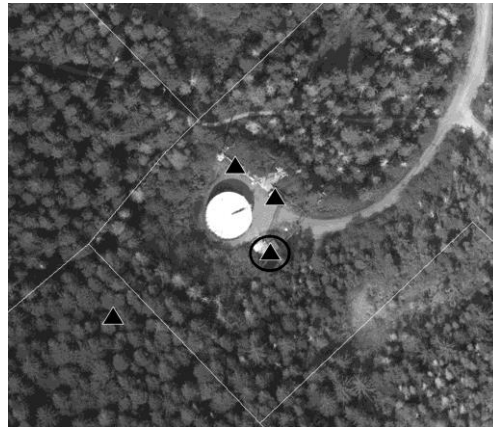
Subject: CSP2017-0018 – Minor corrections to staff report

It was brought to staff's attention that the location of the White Oak Tower that was cited in the staff report is incorrect.

Location of Tower as cited in Staff Report



Actual Location of Tower



The staff report incorrectly states that there are three towers located on the subject lot and one tower located on an abutting lot. All four towers are located on the subject lot.

Also, the staff report cites *CBJ 53.20.090 Renewal of Lease* as the process that will be used for the White Oak Towers lease. This is not correct. The CBJ Lands Department will treat the White Oak Towers lease as a new lease, and therefore, the applicable lease process is *CBJ 53.09.260 Negotiated sales, leases and exchanges*.

The analysis and recommendations are not affected by these corrections.



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TO: Planning Commission

FROM: Teri Camery, Senior Planner 

DATE: January 10, 2017

CASE NO.: AME2017 0013 A request for a zone change from D-10 (residential) to LC (Light Commercial)

SUBJECT: Supplementary information on the reconsideration process and findings, rezone review standards, and Auke Bay Area Plan policies

At the December 12, 2017, Planning Commission meeting, the Commission recommended denial of AME2017 0013, a request for a zone change from D10 (residential) to LC (light commercial). At the end of the meeting, a notice of reconsideration was made.

The purpose of this memo is to provide additional information regarding Planning Commission review of rezones in general, to provide additional information on the Auke Bay Area Plan scenic viewpoint protections, and to provide clarification on the reconsideration process. Staff will also provide a proposed condition for the Commission to consider if the Commission chooses to approve the proposed rezone.

Attachments

- Attachment 1 July 20, 2012 Interoffice Memo from Ben Lyman, Senior Planner, to Mary Becker, Chair, Assembly Lands Committee
- Attachment 2 Minutes, Assembly Lands Committee, July 23, 2012
- Attachment 3 Auke Bay Area Plan Appendix C page 63, Viewpoints Map
- Attachment 4 Auke Bay Area Plan Appendix C page 61, Maximum Allowable Heights Map

Reconsideration and Findings

At the end of the December 12, 2017, meeting, a notice of reconsideration was made. The next scheduled meeting is January 23, 2018. At this meeting, Commissioners have several options:

- 1) If a motion for reconsideration is made, it is fully debatable, and a vote is required.
 - a. A majority approval (i.e. five 'yes' votes) cancels the denial recommendation from December 12, 2017, and re-opens USE2017 0013 for further debate and a new vote on a recommendation. (Another vote—approved by six members—would be required to reopen public participation, if desired).
 - b. If the motion for reconsideration does not obtain a majority approval, then the denial recommendation from December 12, 2017, is final.
- 2) If a motion for reconsideration is not made, then the denial recommendation from December 12, 2017, is final.

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Rezone Review Standards

Page 7 of the December 1, 2017, staff report describes Comprehensive Plan guidance and Land Use Code requirements regarding rezone requests. The report specifically discusses the CBJ 49.75.120 requirement that rezones may only be approved upon a finding of “substantial conformance with the land use maps of the Comprehensive Plan.”

The language regarding substantial conformance was adopted into code with Ordinance 2012-31. The change was requested by the Planning Commission in response to AME2011 0002, the Atlin Drive rezone. The July 2012 staff memo and Assembly Land Committee minutes provide useful guidance regarding the intent of the ordinance change.

The July 20, 2012, staff memo states:

The purpose of this Ordinance is to improve the ability of staff, the Planning Commission, and the Assembly to consider the intent of the Comprehensive Plan land use maps in rezoning requests without requiring strict application of those maps to the zoning map set. (Attachment 1)

The July 23, 2012 Assembly Lands Committee meeting minutes provide further explanation. An excerpt follows:

Mr. Smith asked about the term “substantial conformance” in Ordinance 2012-31. Mr. Lyman explained that this allows the Assembly to handle “gray areas” in code and to make a decision based on many factors, more than just the Comprehensive Plan Land Use map. (Attachment 2)

The December 1, 2017, AME2017 0013 staff report addressed both Comprehensive Plan Land Use Maps and policies, however the staff recommendation was based primarily on conformance with the Comprehensive Plan Land Use Map designation of Medium Density Residential. After review of the intent behind the ordinance change regarding substantial conformance, it appears that staff, the Commission, and the Assembly have considerably more discretion to base findings on conformance with policies, as well as land use map designations.

Auke Bay Area Plan Viewpoint Protections

Pages 16-17 of the December 1, 2017, staff report discusses Auke Bay Area Plan policies. At the December 12, 2017, Planning Commission meeting, Commissioners expressed particular concern regarding conformance of the rezone with Goal 8, and Policy 8.1, which state:

- Preserve unique views that make Auke Bay a truly special place. (Goal 8)
- Identify, map, and preserve key viewpoints in the Auke Bay area, as depicted in Appendix C. (Goal 8, Policy 8.1)

As described in the staff report, Viewpoint One in Appendix C of the Auke Bay Area Plan is a view of the harbor (Attachment 3). The requested zone change to Light Commercial would increase the D-10 height limit of 35 feet to 45 feet and has the potential to impact this viewpoint.

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The Auke Bay Area Plan Appendix C also includes a map with recommendations on the maximum allowable height (Attachment 4). This map recommends a 35-foot height limit for the proposed rezone area.

If the Commission chooses to recommend approval of the rezone, the Commission may wish to consider the following condition to ensure conformance with the Auke Bay Area Plan viewpoint policy:

- 1) Any construction which creates a new structure or increases the height of an existing structure beyond a height of 35 feet shall require a Conditional Use Permit to specifically evaluate conformance with Auke Bay Area Plan Policy 8.1 regarding protection of Viewpoint One, a view of the harbor, as shown in the Auke Bay Area Plan Appendix C. This condition applies to all four properties in the rezone application.

The intent of this condition is to address the total height, as measured per 49.25.420, of any building, new or existing. For example:

- 1) If someone had a building measuring 30' tall and wanted to add 5', no Conditional Use Permit would be required.
- 2) If someone had a building measuring 30' tall and wanted to add 6', then a Conditional Use Permit would be required.
- 3) If someone constructed a new building proposed to be 36'tall, then a Conditional Use Permit would be required.



COMMUNITY DEVELOPMENT DEPARTMENT

230 South Franklin Street, Marine View Center, Fourth Floor
Mailing Address: 155 South Seward Street, Juneau, Alaska 99801

INTEROFFICE MEMO

DATE: July 20, 2012

TO: Mary Becker, Chair
 Assembly Lands Committee

FROM: Ben Lyman, Senior Planner

FAX # (907)586-3365
VOICE # (907)586-0758

SUBJECT: Serial Number 2012 – Rezoning Restrictions

The proposed ordinance would amend CBJ 49.75.120 to clarify that rezonings must be in substantial conformance with the land use maps of the Comprehensive Plan, but that rezonings need not exactly match the designations or the boundaries of the land use maps of the Comprehensive Plan. The purpose of this Ordinance is to improve the ability of staff, the Planning Commission, and the Assembly to consider the intent of the Comprehensive Plan land use maps in rezoning requests without requiring strict application of those maps to the zoning map set.

This amendment was requested by the Planning Commission in the wake of AME2011 0002 and Ordinances 2011-18 and 2011-23, wherein a property was re-zoned and then subsequently un-re-zoned after a legal opinion that the re-zoning was illegal, as it violated the Comprehensive Plan land use maps.

During their Regular Meeting of May 22, 2012, Planning Commissioners discussed rezonings and the Comprehensive Plan land use maps; Chair Satre stated that “Title 49 has to be revised because the Commissioners would never be able to review the Comp Plan maps in enough detail to ensure that they could take into account every potential rezone consideration. They need to look at the Comp Plan maps in sufficient detail for potential conflicts in terms of boundaries within zoning districts.”

The Comprehensive Plan states (Page 1): “This is not to say that the Plan will be infallible or that it is cast in concrete”. Staff has interpreted this to mean that land use designation boundaries shown on the Comprehensive Plan land use maps are general in their boundaries, and that zoning district boundaries will differ from Comprehensive Plan land use map boundaries as needed to accommodate existing development and to recognize the intricate pattern of development that is generally expected on the ground, and that cannot be described exactly on maps intended to be as general as those of the Comprehensive Plan land use maps.

The Planning Commission forwarded the draft ordinance to the Assembly for review on June 12, 2012.

Minutes
Assembly Lands Committee
Monday, July 23, 2012, 5:00 p.m.
Assembly Chambers

I. Call to Order

Chair Becker called the meeting to order at 5:00 p.m.

Members Present: Mary Becker, Jesse Kiehl, Carlton Smith.

Members Absent: Johan Dybdahl

Also attending: Karen Crane, Ruth Danner.

Liaisons Present: Jeff Wilson, Parks and Recreation Advisory Committee;
Nathan Bishop, Planning Commission.

Liaisons Absent: Mike Williams, Docks and Harbors.

Staff Present: Heather Marlow, Lands & Resources Manager; Rob Steedle, Deputy City Manger; Brent Fischer, Parks and Recreation Director, Greg Chaney, Acting Community Development Director; Ben Lyman, Senior Planner; John Vowell, Interim CEO, Bartlett Regional Hospital; Laurie Sica, Municipal Clerk.

II. Agenda Changes – None.

III. Approval of minutes

Hearing no objection, the minutes of July 2, 2012 were approved.

IV. Public Participation – non-agenda items.

No one from the public requested an opportunity to speak. Ms. Marlow asked the committee if it would like Brent Fischer, Parks and Recreation Director, to follow up on the public testimony at the previous meeting about the funding for a second ice rink. Chair Becker asked Mr. Fischer to speak to the committee.

Brent Fischer said he understood that Steve Baseden discussed his concerns about the need for conversations between Parks and Recreation and the Juneau Community Foundation about land use at Dimond Park and its availability for an ice rink. Mr. Fischer had a discussion with Reed Stoops and Eric Kueffner of the Juneau Community Foundation (JCF) regarding the current CBJ projects and the negotiations with the Juneau School District (JSD). Under review are location of a new valley library, the valley Parks and Recreation operations shop, and the questions about use and maintenance of the ball fields with the JSD. With resolution of those issues, he could give JCF more information about a site for an

ice rink. Mr. Fischer also spoke with Cathy Munoz and JCF has applied for the grant for the designated state funds.

Ms. Crane asked if CBJ had committed itself to providing a location at Dimond Park for this project. Mr. Fischer said no. The JCF would accept a grant to look at the design and a feasibility study for an ice arena to be located at Dimond Park. CBJ's first step would be to say if there was room, where it would be. Whether or not the JCF would then move forward with getting money for construction and who would manage the facility was a separate issue. We will review user groups, the type of rink they are looking for, and if there is space available.

Ms. Becker asked about Mr. Kiehl's previous comment about a five-year time span for the project funding. Mr. Fischer said he thought that five years was correct and JCF was moving forward with the grant paperwork. JCF understands our needs and that the entire Assembly would be involved before moving forward.

Mr. Wilson asked if the state funding was restricted to the Dimond Park area, or if other valley locations could be considered. Mr. Fischer said the grant paperwork specifically referred to the "Dimond Park Complex." He did not know if there was another site in the valley with the space needed.

Ms. Becker asked Mr. Fischer how much time he needed to do his study. Mr. Fischer said he had to resolve issues with the JSD regarding the ball fields first. He is moving forward with JCF as if there is property available to keep the project moving forward and it was the top priority for his office.

Ms. Crane asked if Mr. Fischer would also do a cost analysis of siting a second sheet of ice adjacent to the Treadwell Arena. Mr. Fischer said his staff would do a comparison of all scenarios, and he would provide that information to the Assembly.

V. Action Items

A. Treadwell Mine Historic Park – Ordinance 2012-20(C)

Ms. Marlow said that staff was looking for a motion from the Lands Committee to support this appropriating ordinance.

Mr. Gillette said that former City Manager Rod Swope had appointed him as liaison for CBJ to the Treadwell Historic Preservation and Restoration Society. There were many improvements to the Treadwell area – new signs were installed throughout the complex and the next proposed project is a shelter to protect the 5 Stamp Mill as an entryway into the historic mine park. The Juneau Historic Resources Advisory Committee would review draft and final product of the project. The total cost was estimated to be \$27,500. Sixty percent of that would

be provided by a grant from the Federal Historic Preservation Fund and the balance would be in-kind services by the volunteers of the Historic Society. The grant appropriating ordinance would be before the Assembly at the next regular meeting.

MOTION, by Kiehl, to support the grant ordinance and move it forward to the Assembly. Hearing no objection, it was so ordered.

B. Rezoning Restrictions

Ben Lyman reviewed a proposed Ordinance, 2012-31, and asked the Lands Committee for a motion to forward to the full Assembly with a recommendation for adoption. He said this ordinance was in the wake of Ordinance 2011-18 and 2011-23 in which a property on the corner of Atlin Drive and Loop Road was a medium-density residential designation in the comprehensive plan, applied for rezoning from D-5 to Light Commercial. The Planning Commission recommended against the rezoning. The Assembly approved the rezoning, and following a legal interpretation by the Law Department that the rezoning could not be approved because it was not consistent with the Comprehensive Plan Land Use maps; a subsequent ordinance repealed that rezoning. This ordinance is meant to open up the language in Title 49 to allow the Planning Commission and the Assembly to consider more factors beyond just the Comprehensive Plan Land Use maps when looking at rezoning.

Mr. Lyman showed an example by explaining the Comprehensive Plan Land Use maps and the zoning maps in downtown Douglas, and a mock application for a rezoning could be affected by the current interpretation of the code and an interpretation based on the application of Ordinance 2012-31.

Mr. Smith asked about the term “substantial conformance” in Ordinance 2012-31. Mr. Lyman explained that this allows the Assembly to handle “gray areas” in code and to make a decision based on many factors, more than just the Comprehensive Plan Land Use map. He provided examples of a rezoning regarding a lot near the Federal Building for a union office and rezoning to allow a buffering commercial corridor on Old Dairy Road that was previously zoned industrial, which had spurred significant new development.

Mr. Kiehl said he was concerned about the term “substantial conformance” and said he understood the interest in getting away from hard and fast rules for more discretion, but he was concerned that it was “mushy” language

Ms. Danner asked how this change in the code would protect property owners who had purchased property and expected the rules to be applied consistently. She said with more discretion, what would provide the decision makers with the knowledge to make a change that might benefit one property owner over another.

Mr. Lyman said most of the review regarding a zone change happened before the matter was before the Assembly and he explained the rezoning process from the beginning with staff review, public notice, Planning Commission review, and public hearing, and then Assembly action.

Ms. Crane asked if a zoning change could start a chain reaction with the zoning district boundaries extending beyond the original designations. Mr. Lyman said that would be allowed to be a call of the Assembly who represented their constituents.

Greg Chaney said the wording in Ordinance 2012-31 was not a radical change but it was codifying the way the Community Development staff and the Planning Commission had been applying the rules up until the recent opinion from the Law Department regarding the Comprehensive Plan Land Use maps. This ordinance would not give the Assembly untold power to make a decision that was out of compliance with the Comprehensive Plan.

Mr. Bishop said the Planning Commission reviewed Ordinance 2012-31 and was unanimous in support of the ordinance. This did not substantially change the code. The Planning Commission would like to allow a level of gray in order for public discourse to take place on projects. The Planning Commission did not want to see a planning document ruling the situation and binding the political body to a course of action.

MOTION, by Smith, to forward Ordinance 2012-31 to the full Assembly for review. Hearing no objection, it was so ordered.

VI. Information Item

A. Bartlett Regional Hospital – Acquisition Proposal

Bartlett Regional Hospital (BRH) Board Members Linda Thomas and Nathan Piemann, and Interim BRH CEO John Vowell spoke about BRH's interest in purchasing the Juneau Medical Center Building. BRH is interested in this property as it is the last space on the hospital campus with development potential. There is an existing lease of the building on the property, which extends out by 20 years. BRH was moving toward greater outpatient services and this property would give them room to expand those services. The present owners were willing to divest themselves of the property and they spoke about the benefits of purchasing the property now rather than in the future.

Ms. Becker asked about BRH doctors renting off campus space. Ms. Thomas said that BRH did employ doctors that used off campus rental space and this site could be a place for their relocation.

Mr. Wilson asked about the projected life of the building and asked if BRH anticipated removing the building in the future. Ms. Thomas said there were two appraisals that provided a serviceable life of the facility ranging from 15 – 25 years. The Board anticipated removing the building in the future and building outpatient facilities.

Mr. Kiehl asked about the situation of the present tenants. Ms. Thomas said the Board did not anticipate asking them to leave immediately, and a few would be retiring. Their plans are 5 – 10 years out at this point. In response to questions from Mr. Kiehl, Mr. Vowell discussed the rental rates of the property and said that there was a shortage of this type of rental space in the community.

Ms. Crane asked about the current undesignated cash balance of \$17.2 million and if the money for the new youth treatment facility was included in those funds or had been set aside separately. Mr. Vowell said that the undesignated funds had not been slated for a purpose.

Ms. Marlow said this was an opportunity for BRH to present their information and if there were an interest in seeing this item move forward it would be introduced as an Assembly appropriating ordinance for the purchase of the property. Otherwise, this could come back to the Lands Committee as an action item on the next meeting's agenda.

Hearing no objection, the Lands Committee forwarded the matter to the Assembly for introduction of an appropriating ordinance, for the amount identified in the memo from BRH.

VII. Liaison Reports

Mr. Wilson reported that the Parks and Recreation Advisory Committee (PRAC) had met with the whale sculpture committee, which would like to locate the sculpture at the “under bridge” park site.

PRAC also reviewed Dock Project 16b and was looking for ways to increase recreational opportunities within the project.

PRAC heard a presentation from the “Chair Project” which would like to locate a bronzed chair sculpture in Capital Park to honor the Japanese community which were removed from Juneau during WWII. The sculpture would have names of those citizens engraved on the chair.

PRAC reviewed snowmobile issues on Mt. Troy and conflicts with skiers. This situation was similar to ATV users and hikers, boaters, and swimmers, the PRAC was reviewing motorized and non-motorized uses and how to establish and enforce boundaries.

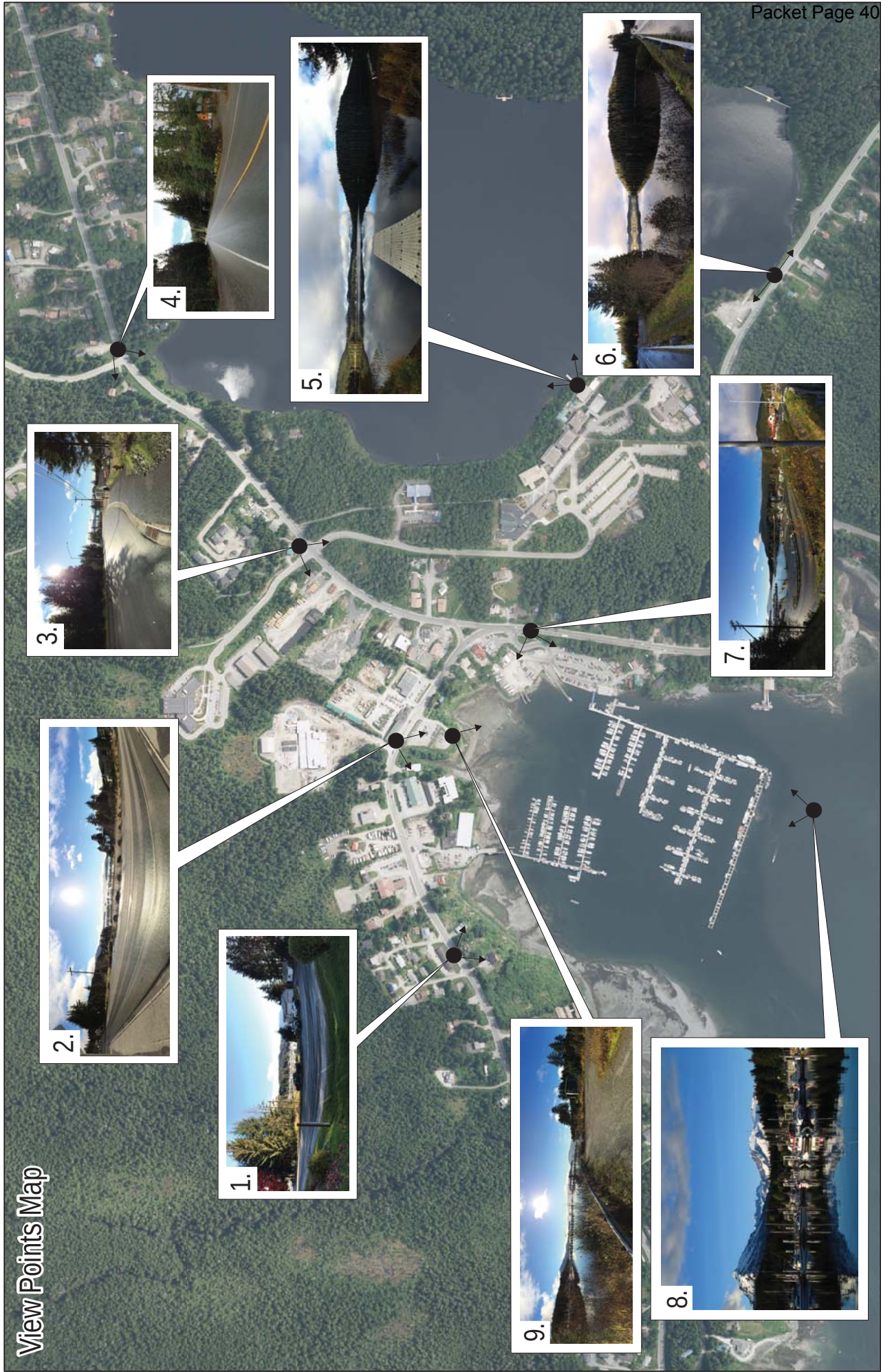
Mr. Bishop said the Planning Commission was continuing its review of the Comprehensive Plan. The economic development section continues to take up a significant portion of time and the Assembly should expect a letter from the Planning Commission recommending that the city develop an economic development plan.

VIII. Next Meeting

August 20, 2012, 5:00 p.m., Assembly Chambers

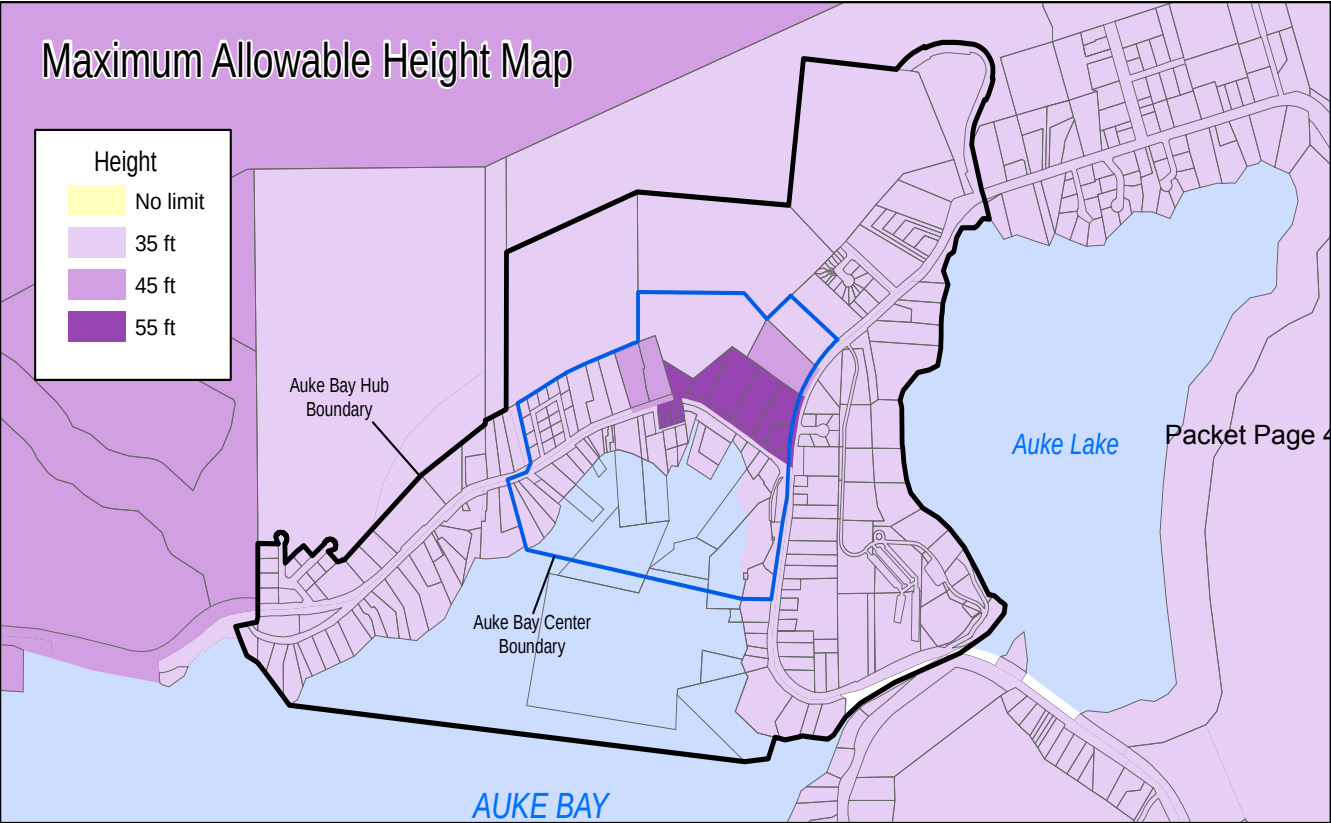
VIX. Adjournment – 6 p.m.

Submitted by
Laurie Sica, MMC
Municipal Clerk

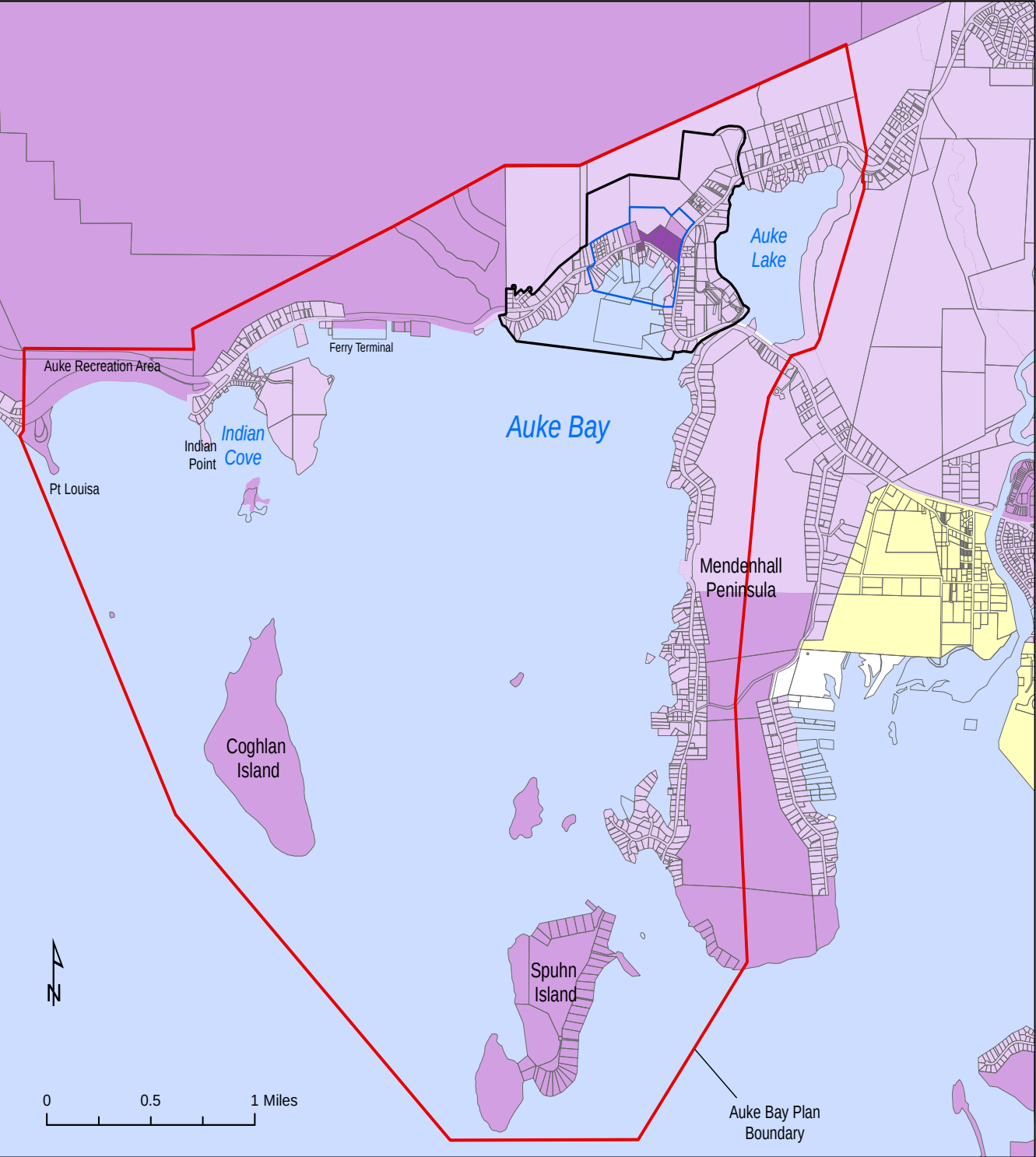


View Points Map

Attachment 3: Viewpoints Map



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Attachment 4: Maximum Allowable Height Map



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

DATE: December 1, 2017

TO: Planning Commission

FROM: Teri Camery, Senior Planner
 Community Development Department

CASE NO.: AME2017 0013

PROPOSAL: A request for a zone change from D10 (residential) to LC (light commercial).

Applicant: Douglas Island Development LLC

Property Owners: Douglas Island Development LLC
 R. Jeffry and Leanne Pilcher
 Gospel Missionary Union Inc. (dba Echo Ranch Bible Camp)
 Auke Bay Bible Church

Property Addresses: 11950 Glacier Highway
 11998 Glacier Highway
 12020 Glacier Highway
 3853 Bayview Ave

Legal Description: USS 2391 Tanner Terrace Lot C Fraction (eastern portion)
 USS 2391 Tanner Terrace Lot C Fraction (western portion)
 Lot 1A, Block D, USS 2391 Tanner Terrace
 Lots 1, 2, 7, & 8, Block C, USS 2391 Tanner Terrace

Parcel Code Numbers: 4B2801040050; 4B2801040060; 4B2801040070; 4B2801040170

Site Size: 7.06 acres

Zoning: D-10 Residential

Utilities: CBJ Water and Sewer

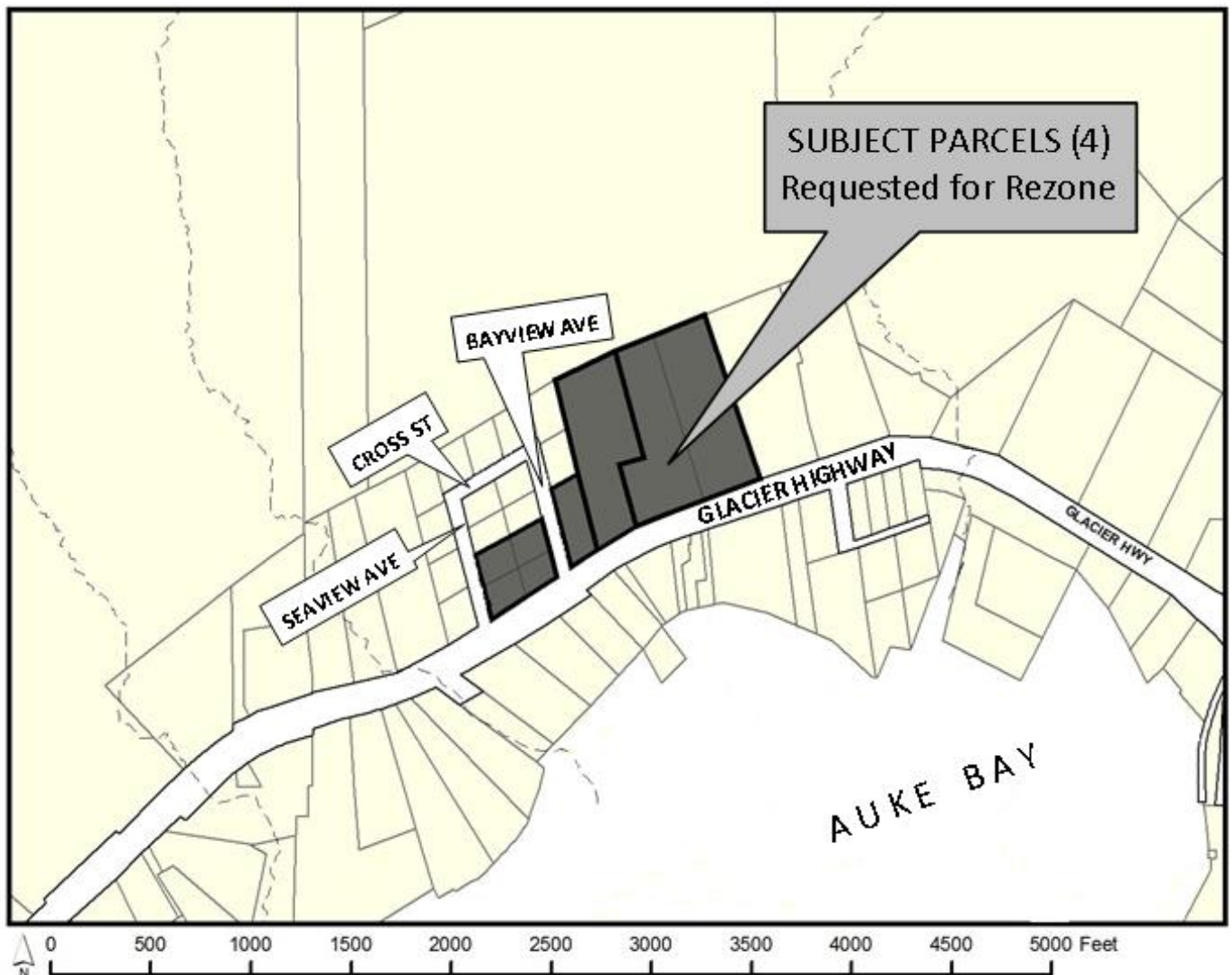
Access: Glacier Highway

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Existing Land Use: Eight-plex; tri-plex; Echo Ranch Bible Camp office; Auke Bay Bible Church

Surrounding Land Use:
North - D-10 Residential; CBJ vacant property
South - Glacier Highway; Waterfront Commercial residential and commercial use
East - Mobile Home Park; Light Commercial
West - D-10 residential

Vicinity Map



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ATTACHMENTS

Attachment 1	Development Permit Application
Attachment 2	Rezone Application
Attachment 3	Revised Project Narratives
Attachment 4	Rezone Parcel Map
Attachment 5	Satellite Image
Attachment 6	Site photos
Attachment 7	CBJ Code 49.25.300 Table of Permissible Uses and Dimensional Standards, with D-10, Light Commercial, MU, and MU2 Zoning Districts highlighted
Attachment 8	Pilcher comments
Attachment 9	Currier comments
Attachment 10	Quigg comments
Attachment 11	Barry comments
Attachment 12	Flint comments
Attachment 13	Schwan/Ballum comments

INTRODUCTION

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

PROPOSAL

The applicant requests a rezone of 7.06 acres from D-10 Residential to Light Commercial zoning. The rezone request addresses four properties facing Glacier Highway in the center of Auke Bay, including an 8-plex, tri-plex, Gospel Missionary Union (Echo Ranch Bible Camp office), and Auke Bay Bible Church. In the Project Narrative, Attachment 3, the applicant states the property owners do not have specific development plans. The zone change is requested to “achieve the highest and best use of the properties” and to allow development of the properties in a manner aligned with the Comprehensive Plan and Auke Bay Area Plan. The narrative includes a detailed analysis of Comprehensive Plan and Auke Bay Area Plan policies and maps.

BACKGROUND

Neighborhood meetings

A neighborhood meeting was held on September 27, 2017. Approximately 15 people attended. A second neighborhood meeting was held on October 17, 2017 due to an error in the maps in the first meeting notice. Five people attended the second meeting. For both meetings, notice

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was mailed to property owners within 500 feet of the proposed zone change. Additionally notice was given in the Juneau Empire's Your Municipality section.

Staff notes that the Auke Bay Area Plan Steering Committee no longer exists, however staff spoke with several former committee members during the neighborhood meetings. A new Auke Bay Neighborhood Association was formed in November 2017. The association received notice of the rezone through email.

The Agency Review Period and Agency Comments are addressed in the Land Use Code section of this report.

Relevant rezone approvals

Staff reviewed several rezone approvals from the last few years for background regarding conformance with the Medium Density Residential and Traditional Town Center land use designations addressed in this review. Following is a brief summary, which will be addressed in detail in the Comprehensive Plan section of this report:

AME2011 0002 and AME2013 0006: two requests, two years apart, to rezone a 2.68 acre parcel on Atlin Drive from D-10 to Light Commercial, with a Comprehensive Plan Land Use designation of Medium Density Residential. Staff and the Planning Commission recommended denial of the rezone in part because the parcel was separated from the closest Light Commercial zoning district by Mendenhall Loop Road. The Assembly approved the rezone as requested. The Assembly's decision established that Light Commercial zoning substantially conforms with the Medium Density Residential Comprehensive Plan designation.

AME2016 0008: a request to rezone 4.19 acres with a Comprehensive Plan Land Use designation of Traditional Town Center at Vintage Park from Light Commercial to Mixed Use. Staff and the Planning Commission recommended approval and the Assembly approved the rezone. This rezone established that Mixed Use zoning substantially conforms with the Traditional Town Center Comprehensive Plan designation.

AME2017 0002: a request to rezone .9 acres in downtown Juneau from D-18 to Mixed Use (MU), with a Comprehensive Plan Land Use designation of Medium Density Residential, also adjacent to Traditional Town Center. Staff and the Planning Commission recommended approval and the Assembly approved the rezone. This rezone established that Mixed Use zoning substantially conforms with the Medium Density Residential Comprehensive Plan designation. (Staff notes that a Comprehensive Plan map amendment was later approved by the Planning Commission and Assembly for this parcel, to change the designation from Medium Density Residential to Traditional Town Center. The Assembly and Planning Commission determined that the original Medium Density Residential designation was made in error.)

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ZONE CHANGE INITIATION

CBJ 49.75.110. INITIATION. *A rezoning may be initiated by the director, the commission or the assembly at any time during the year. A developer or property owner may initiate a request for rezoning in January or July only. Adequate public notice shall be provided by the director to inform the public that a rezoning has been initiated.*

1. Was the proposed zone change initiated by the property owner during the appropriate time frame OR was the zone change initiated by the commission or director?

Yes. The application for the subject zone change was initiated by the property owner in July 2017.

2. Has the director provided adequate public notice through newspaper advertising, property owner mailings and by requiring a public notice sign to be posted on-site?

Yes. Neighborhood meetings were held on September 27 and October 17, 2017, with mailed notice to property owners within 500 feet of the proposal. Notice was provided in the Juneau Empire's Your Municipality section on December 1 and December 11, 2017. A public notice sign was posted on the property, visible from the right-of-way, on Wednesday November 22, 2017, six days longer than the two weeks required by code. In addition, email notice of the public hearing date was given to those who provided email addresses at the two neighborhood meetings. Email notice of the public hearing was also given to the Auke Bay Neighborhood Association.

RESTRICTIONS AND PROCEDURE

CBJ 49.75.120. RESTRICTIONS ON REZONINGS. *Rezoning requests covering less than two acres shall not be considered unless the rezoning constitutes an expansion of an existing zone. Rezone requests which are substantially the same as a rezoning request rejected within the previous twelve months shall not be considered. A rezoning shall only be approved upon a finding that the proposed zoning district and the uses allowed therein are in substantial conformance with the land use maps of the comprehensive plan.*

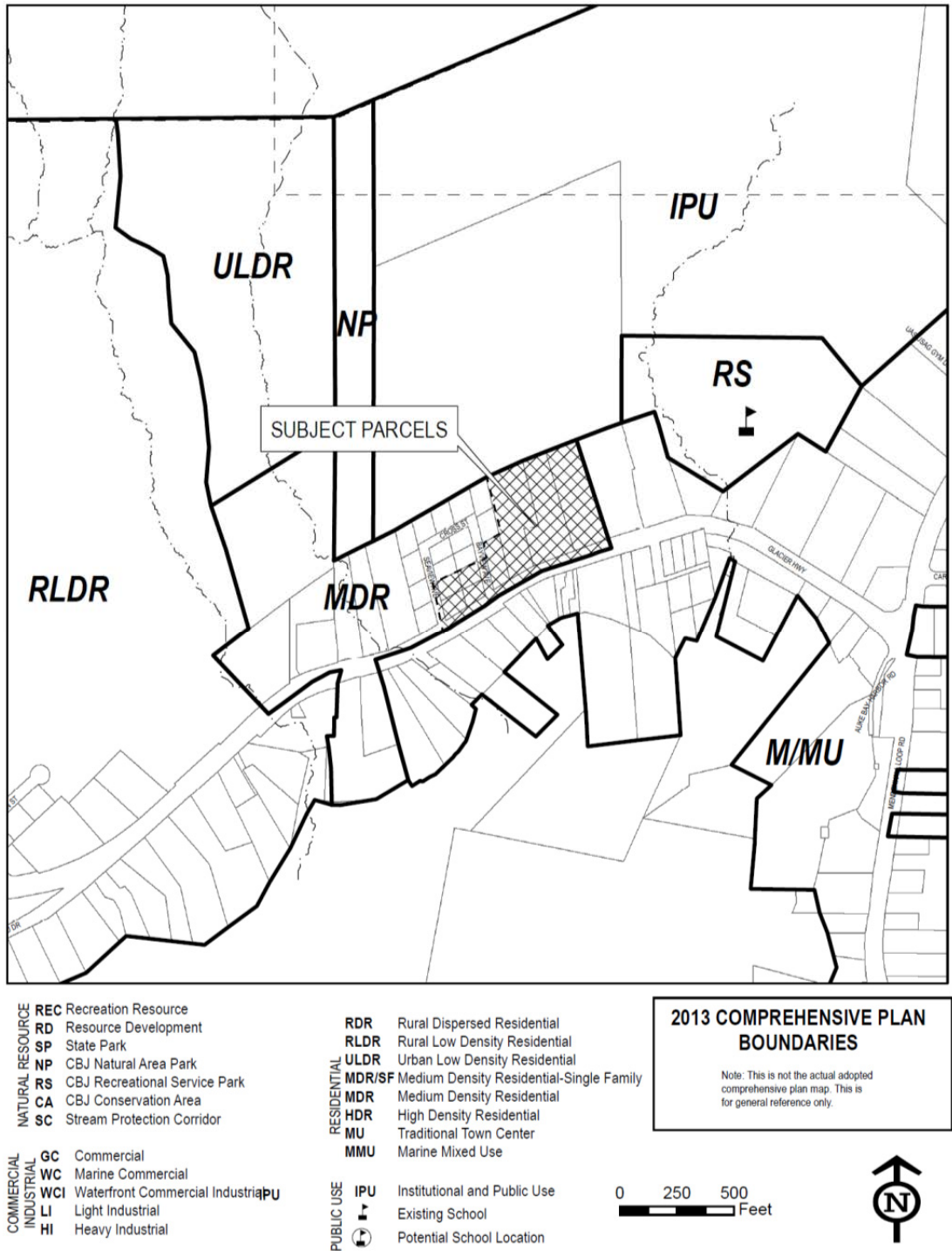
The CBJ Land Use Code provides minimum restrictions for zone change requests. This proposal conforms to these restrictions as follows:

1. The request is for 7.06 acres, which exceeds the two acre minimum requirement. In addition, the rezone is an expansion of the adjacent, existing Light Commercial zone.
2. No similar request has been made in the past year.

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COMPLIANCE WITH THE 2013 CITY AND BOROUGH OF JUNEAU COMPREHENSIVE PLAN

Comprehensive Plan designations are shown in the map below:



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In Chapter 11, Comprehensive Plan Land Use Maps, the following guidance is offered in regard to rezoning:

In considering a re-zoning request, the Planning Commission and Assembly should aim to promote the highest and best use of the land under consideration and all new zoning or re-zoning designations are required to be substantially consistent with the Comprehensive Plan and associated land use maps. In some cases, the highest and best use may be increased density or more intensive use of the land; in other cases, the highest and best use may be preservation in an undisturbed state for purposes of habitat preservation, flood control, or providing a buffer between development and areas subject to natural hazards (p.143).

Chapter 1 of the Comprehensive Plan further supports the flexibility of the plan, but emphasizes that it should be used when considering community growth, along with other current information. Specifically, the Plan states:

Discussions related to community growth, redevelopment, capital and social improvements, or budget, must occur in consultation with the Plan.[The Plan] should...bring into focus sufficient information and data so that the best possible considered and objective judgments can be made, using the most current data available when the data in the Plan is out of date. [The Plan]....provides a logical, consistent, and purposeful approach to managing community growth and development (p. 1).

When considering this request it is important to understand what the Comprehensive Plan intends with land use designations. The Plan states that the designations are intended to describe the overall character of development for each land use category. The Plan definitions are not intended to be firm or restrictive definitions. However, in contrast, zoning uses that are allowed outright, or allowed through a Conditional Use Permit, are firm and restrictive. The designations are to be used to guide the formation of zoning regulations. The land use designations and their allowed uses reflect cultural values and economic and societal needs, and over time, the Comprehensive Plan descriptions of land use categories will change to reflect changing values and circumstances (p. 144).

CBJ 49.75.120 partially incorporates those Comprehensive Plan policies and directs that, “A rezoning shall only be approved upon a finding that the proposed zoning district and the uses allowed therein are in substantial conformance with the land use maps of the Comprehensive Plan.” Thus, the issue is whether this rezone request substantially conforms with the land use maps of the Comprehensive Plan.

“Substantial conformance with the land use maps of the Comprehensive Plan” means the proposed zoning district (Light Commercial) needs to substantially conform with the

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Comprehensive Plan land use map designation (Medium Density Residential). The term “substantial conformance” means that the proposed zoning district may deviate slightly from the Comprehensive Plan land use map designation but must be materially the same. The Auke Bay Area Plan is an adopted element of the Comprehensive Plan; therefore the rezone must substantially comply with that designation as well, which is Traditional Town Center. The Auke Bay Area Plan will be addressed later in this report.

Comprehensive Plan Land Use Designations

The four rezone properties are located in Subarea 3 of the 2013 Comprehensive Plan (map E). The plan designates these lots as MDR, Medium Density Residential. Page 147 of the 2013 Comprehensive Plan describes MDR as follows:

These lands are characterized by urban residential lands for multifamily dwelling units at densities ranging from 5 to 20 units per acre. Any commercial development should be of a scale consistent with a single-family residential neighborhood, as regulated in the Table of Permissible Use (CBJ 49.25.300).

The parcels immediately east and south of the subject parcels, which are zoned Light Commercial and Waterfront Commercial respectively, are designated in the Comprehensive Plan as Marine Mixed Use (M/MU). M/MU is described as:

These lands are characterized by high density residential and non-residential land uses in areas in and around harbors and other water-dependent recreational or commercial/industrial areas. Typically, neighborhood-serving and marine-related retail, marine industrial, personal service, food and beverage services, recreational services, transit and transportation services should be allowed and encouraged, as well as medium and high-density residential uses at densities ranging from 10 to 60 residential units per acre. Ground floor retail space facing roads with parking behind the rail and housing above would be an appropriate and efficient use of the land. Float homes, live-a-boards, and house boats, if necessary services (such as sewer) are provided to berthing locations, are appropriate for these areas (p. 148).

The CBJ Land Use Code defines the proposed Light Commercial zoning district as follows:

The LC, light commercial district, is intended to accommodate commercial development that is less intensive than that permitted in the general commercial district. Light commercial districts are primarily located adjacent to existing residential areas. Although many of the uses allowed in this district are also allowed in the GC, general commercial district, they are listed as conditional uses in this district and therefore require commission review to determine compatibility with surrounding land uses. A lower level of intensity of

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development is also achieved by stringent height and setback restrictions. Residential development is allowed in mixed- and single-use developments in the light commercial district (49.25.230(a)).

The proposed Light Commercial (LC) zoning district allows residential use at 30 units per acre, a 45-foot height limit, and less-intensive commercial use. This density is higher than the Medium Density Residential range of 5-20 units per acre, but may be appropriate as an expansion of the adjacent Light Commercial zoning district and the adjacent Marine Mixed Use Comprehensive Plan designation which recommends high densities of 10-60 units per acre.

Most commercial uses in the LC zoning district require a Conditional Use Permit, with notice to neighbors and a public hearing before the Planning Commission, which allows the Commission to specifically address neighborhood harmony, a key component of ensuring that, “Any commercial development should be of a scale consistent with a single-family residential neighborhood,” as noted in the Medium Density Residential designation definition. The Background section of this report describes the Atlin Drive rezone, AME2013 0006, which established that Light Commercial “substantially conforms” with the Medium Density Residential designation.

AME2017 0002, the Vintage Park rezone from Light Commercial to Mixed Use zoning, established that the Mixed Use zoning district substantially conforms with the Medium Density Residential Comprehensive Plan designation. Staff will address conformance with alternate zoning districts of Mixed Use and Mixed Use Two, as options for the Planning Commission to consider.

Mixed Use is defined as:

The MU, mixed use district, reflects the existing downtown development pattern and is intended to maintain the stability of the downtown area. Multifamily residential uses are allowed and encouraged.

The MU2, mixed use 2 district, is intended to place a greater emphasis on residential development than is the case in the MU district. A range of residential development types is allowed. Multifamily residential uses are allowed at a density of up to 80 units per acre (CBI 49.25.220).

The Mixed Use zoning district has no maximum density, and no maximum height. The Mixed Use 2 zoning district has a maximum density of 80 units per acre and a 45 foot height limit. Both districts have fewer commercial options than the Light Commercial zoning district, but have the odd quirk of allowing Medium Manufacturing with a Conditional Use Permit where Medium Manufacturing is not allowed in Light Commercial zoning districts. These differences will be discussed in depth in the Land Use Code section of this report.

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As noted earlier, Chapter 11, Comprehensive Plan Land Use Maps, states that “In considering a re-zoning request, the Planning Commission and Assembly should aim to promote the highest and best use of the land....In some cases, the highest and best use may be increased density or more intensive use of the land...” The requested LC zone would allow for increased use of the property with higher residential densities, up to 30 units per acre, in a central area adjacent to Glacier Highway. While this is higher than the 5-20 units per acre noted in the Medium Density Residential designation, it follows the Comprehensive Plan directive of highest and best use, and is in substantial conformance with the designation. In addition, the Auke Bay Area Plan, an adopted component of the Comprehensive Plan, designates this area as Traditional Town Center, suitable for higher density. The Auke Bay Area Plan designation and policies will be addressed later in this report.

As noted earlier, AME2017 0002 concluded that MU zoning did substantially conform with Medium Density Residential. However the MU and MU2 zoning districts may not substantially conform with the Medium Density Residential designation in this location due to the much higher densities (no maximum density for MU, and 80 units/acre for MU2) adjacent to a residential neighborhood with much lower densities. The 13 residential lots closest to the rezone area, along Seaview Avenue, Cross Street, and Bayview Avenue, are zoned D-10 with typical lot sizes of 8-11,000 square feet. Most of these lots are eligible for two units, but have only one.

Comprehensive Plan Policies, Guidelines, and Considerations

While CBJ Title 49 specifically requires a proposed rezone to substantially conform with the Comprehensive Plan **maps** (CBJ 49.70.120), a number of policies, guidelines, and considerations in the plan also provide some context.

Subarea 3 Guideline 1 calls for development of an area plan for the Auke Bay area “with a goal of creating a...transit and pedestrian oriented village.” This has been completed with the adopted Auke Bay Area Plan.

Subarea 3 Guideline 3 states, “Encourage high-density, transit-oriented residential and/or mixed use developments in the Auke Bay “village area” and around the University, particularly for student and faculty affordable housing.”

Subarea 3 Guideline 12 states, “Allow development of in-fill residential development, such as apartments, condominiums, efficiency or Single Room-Occupancy (SRO) units, and loft-style housing within new and existing shopping centers.”

These policies substantially support the increased residential density, combined with retail use, which the proposed LC zoning district would allow, particularly in the Auke Bay “village area” which includes the subject parcels.

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The applicant has provided an analysis of Comprehensive Plan policies relevant to the proposal in the Project Narrative, Attachment 3, pages 2-4. In addition to the policies mentioned above, the applicant has noted a paragraph from Chapter 10, Land Use, under the “Residential Land Availability and Density” section which states, in part:

“Higher density residential developments along public transit routes are needed to satisfy affordable housing needs, to make the most efficient use of a limited amount of buildable land, and to provide public services efficiently therein.”

This again supports the higher residential density allowed by the proposed Light Commercial zoning, as well as the highest densities of the MU and MU2 zoning districts.

The Mixed Use Development section of Chapter 10 (page 140) states that:

Mixed use development is also seen as an avenue to implement several Comprehensive Plan policies, notably those pertaining to compact development, energy efficiency/sustainability, efficient transit services, and affordable housing. Locations outside of the downtown core that are suitable for mixed use development include downtown Douglas, the village center of Auke Bay near the University, and areas in and around shopping malls and near major employment centers.

Implementing action 10.13-IA3 states that an Auke Bay area plan should be conducted to create an attractive, pedestrian-oriented Marine Mixed Use village that promotes affordable housing and accommodates the space and livability needs and objectives of residents, fishermen and women, business operators, property owners and area fish and wildlife. As stated above, the Auke Bay Area Plan has been adopted as an element of the comprehensive plan, and designates the area of the requested rezone as Traditional Town Center.

The applicant states that light commercial development of the properties would conform to the standards of Comprehensive Plan Policy 10.4, which states:

To minimize conflicts between residential areas and nearby recreational, commercial, and industrial uses that would generate adverse impacts to existing residential areas through appropriate land use locational decisions and regulatory measures.

The applicant further cites Development Guideline 10.4 DG1 which states:

New development...should be designed in such a way as to promote compatibility in scale and massing as the adjacent or nearby built environment.

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This is followed by Implementing Action 10.4-1A1:

Seek to reduce or eliminate conflicts between medium or high-density residential uses in established low density residential neighborhoods by encouraging the design of higher density housing to be compatible in scale, massing, and orientation with the adjacent, lower-density housing and to hide or screen the parking behind or within the structure.

The applicant states that if commercial development is restricted to parcels immediately adjacent to the roadway and waterfront properties, as allowed by the proposed zone change to LC, “conflicts will be minimal and likely non-existent” (attachment 3, p. 3).

Chapter 8, Transportation, has two general implementation items about working with the Alaska Department of Transportation and Public Facilities (ADOT/PF) to follow recommendations in the Auke Bay Area Plan, including extension of sidewalks and other safety projects (8.8 – 1A15 and 1A17, pages 119-120). The chapter also says the CBJ should continue to explore the feasibility of the Auke Bay Bypass Road. The 2009 Juneau Non-Motorized Transportation Plan, adopted as part of the Comprehensive Plan, also includes general language promoting sidewalks and pedestrian safety measures in the Auke Bay area. This issue is discussed further in the Auke Bay Area Plan section of this report.

Chapter 3, Community Form, mentions the village area of Auke Bay as an urban area, described as:

Urban areas are represented by downtown Juneau and Douglas, West Juneau, medium-density areas of Lemon Creek and Switzer Village, the mixed use area around and between the Mendenhall Mall and Nugget Mall, and the village area around Auke Bay Harbor and the University. In these urban areas, residential, commercial, mixed use and/or public facilities share land and utilities in a compact area. Urban areas are characterized by low- to mid-rise residential and commercial structures, often with the uses mixed within the same structure or with commercial uses lining the edges of residential neighborhoods. Typical mass and scale of these urban neighborhoods are 2 to 3-story structures separated by parking lots, roads, sidewalks and landscaping or small yards. Medium to high residential densities of 10 to nearly 400 residential uses per acre can be found in the downtown Juneau area; densities of 14 units per acre can be found in the West Juneau Area; densities of seven units per acre can be found in the Lemon Creek and Switzer Creek areas and in the Auke Bay area.

Low to mid-rise structures of two to three stories are generally more indicative of LC zoning or MU2 zoning, which each have a 45-foot height limit, as opposed to unlimited height in MU zones. However as noted in the definition, MU2 focuses more on residential development, with

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more residential options and a density of 80 units/acre. LC zoning, at 30 units/acre and many commercial options with a Conditional Use Permit, would seem to match the Auke Bay Village urban area more closely regarding both density and height.

In summary, the proposed zone change to LC substantially conforms with the Comprehensive Plan land use designation of Medium Density Residential, and is further supported by several Comprehensive Plan policies. Staff concludes that the MU and MU2 ZONING districts may not substantially conform, due to high residential densities and the unlimited height allowance in MU.

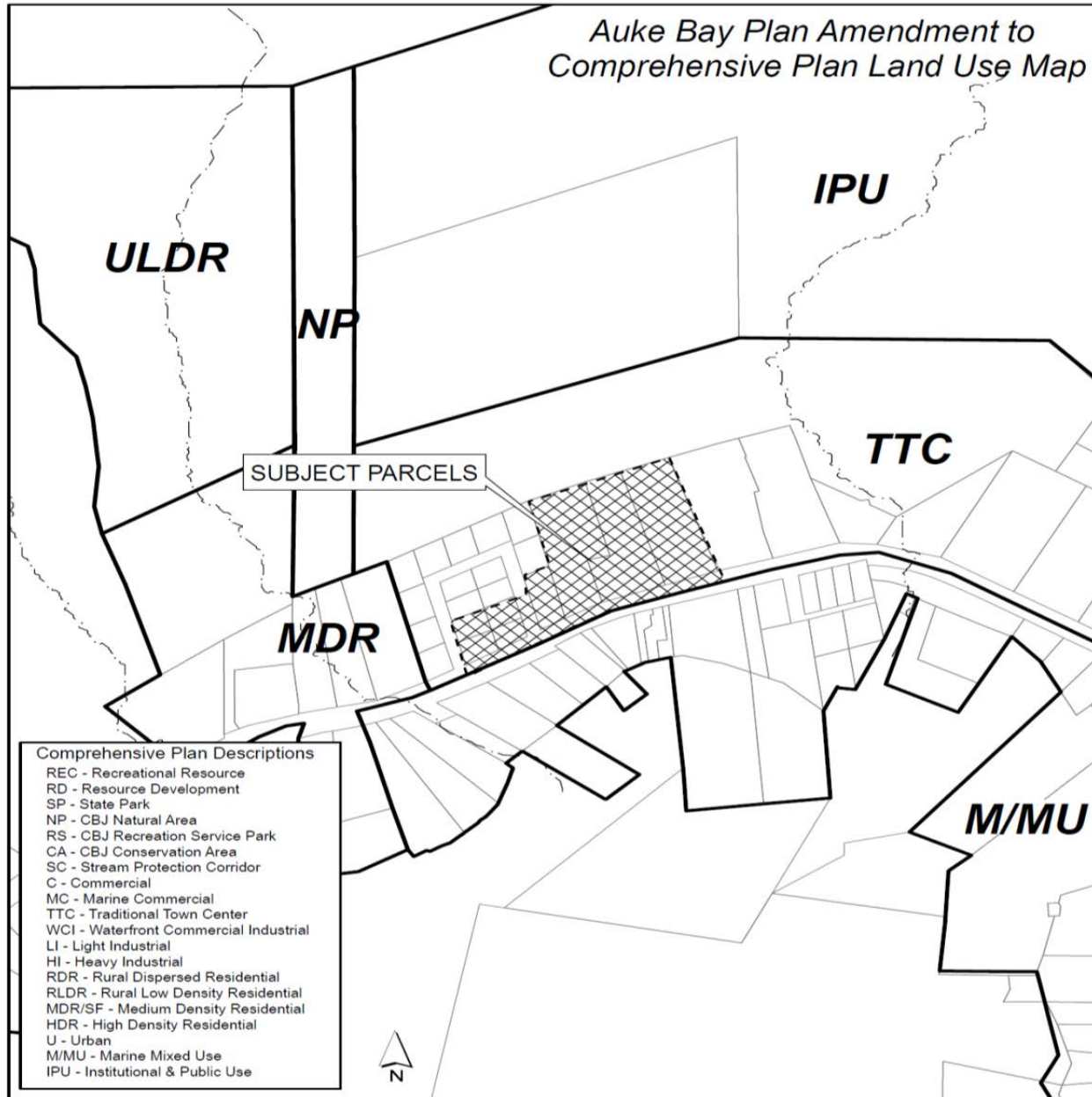
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Compliance with the Auke Bay Area Plan

The Auke Bay Area Plan was adopted by ordinance (Serial No. 2015-13) as part of the Comprehensive Plan, effective April 16, 2016.

Auke Bay Area Plan designations are shown in the map below:



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As shown above, the Auke Bay Area Plan land use designation for the subject properties is Traditional Town Center, which is defined on page 147 of the Comprehensive Plan as:

These lands are characterized by high density residential and non-residential land uses in downtown areas and around shopping centers, the University, major employment centers and public transit corridors, as well as other areas suitable for a mixture of retail, office, general commercial, and high density residential uses at densities at 18 or more residential units per acre. Residential and non-residential uses could be combined within a single structure, including off-street parking. Ground floor retail space facing roads with parking behind the retail and housing above would be an appropriate and efficient use of the land.

The Traditional Town Center designation applies to the Auke Bay Area Plan “center” on the area plan maps. Page 11 of the plan states that:

The Auke Bay Center should be designed for higher residential density to create a town center setting that would attract a mix of shopping, dining, arts, music, and marine and education related services and events. Without high density, the Center could not attract certain desirable types of uses nor achieve a desirable town center lifestyle and quality.

The Traditional Town Center designation continues past the subject properties to the east, and for just one street past the subject properties to the west, where it becomes Medium Density Residential.

The parcels immediately east and south of the subject parcels are designated as M/MU (Marine Mixed Use) described as:

These lands are characterized by high density residential and non-residential land uses in areas in and around harbors and other water-dependent recreational or commercial/industrial areas. Typically, neighborhood-serving and marine-related retail, marine industrial, personal service, food and beverage services, recreational services, transit and transportation services should be allowed and encouraged, as well as medium and high-density residential uses at densities ranging from 10 to 60 residential units per acre. Ground floor retail space facing roads with parking behind the rail and housing above would be an appropriate and efficient use of the land. Float homes, live-a-boards, and house boats, if necessary services (such as sewer) are provided to berthing locations, are appropriate for these areas (p.148).

The proposed rezone to LC substantially conforms to the Traditional Town Center land use designation, as well as the plan’s description of the Auke Bay Center. Light Commercial zoning

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would support higher residential densities of 30 units/acre, as well as a mixture of office and commercial space.

As noted in the Background Section, AME2016 0008 established that the MU zoning district may substantially conform with the Traditional Town Center designation. However the MU and MU2 zoning districts may not substantially conform with the Traditional Town Center designation in this location, for several reasons. The Auke Bay Area Plan articulates a desire to preserve views, which is most easily accomplished through height limitations. The Traditional Town Center designation is described as suitable for a mixture of uses such as high density (18 units or more/acre), office, general commercial, and retail. The plan describes parking in the rear, non-residential uses on the ground floor, and residential above. MU and MU2 zones can accommodate this mixture of uses, but the absence of a height limit in MU is problematic. Further, the high densities of both MU and MU2 zones, at unlimited and 80 units/acre respectively, have a greater emphasis on residential development than commercial.

Staff notes that though LC zoning may “substantially conform” with the Traditional Town Center designation and seems to be a better option than MU or MU2 zoning in this location, it is not a perfect fit. It lacks the requirements in the Table of Permissible Uses and Table of Dimensional Standards to specifically promote key elements of the Traditional Town Center definition regarding mixed use, with retail below and housing above, and parking in the rear. In addition, the 45-foot height limit may present implementation challenges for the Community Development Department (CDD) when CDD must enforce the specific views the Auke Bay Area Plan identifies for protection. CDD recognizes that a new zoning district is needed, specifically in response to this designation in the Auke Bay Area Plan. However until that district is developed and adopted, LC may be the closest fit.

Auke Bay Area Plan Goals and Policies

Relevant goals and policies in the Auke Bay Area Plan include the following:

- Goal 4: Ensure zoning changes in the Auke Bay area conform to the goals and policies of the Auke Bay Area Plan.
- Goal 5, Policy 5.1: Review the Auke Bay Area Plan when considering zone changes in the area.
- Goal 5, Policy 5.2: Promote zone changes that conform to the Plan and further advance the goals and policies of the plan.
- Goal 8: Preserve unique views that make the Auke Bay area a truly special place.
- Goal 8 Policy 8.1: Identify, map, and preserve key view points in the Auke Bay area, as depicted in Appendix C.
- Goal 8 Policy 8.3: New development should be evaluated for its impact on the viewpoints shown on the map.

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Regarding Goal 4 and 5, the proposed zone change to LC substantially conforms to the Traditional Town Center designation for the properties. Regarding Goal 8 and Policies 8.1 and 8.3, the proposed zone change would change the D-10 residential height limit of 35 feet to the Light Commercial height limit of 45 feet. This increase has the potential to negatively impact Viewpoint One in Appendix C of the Auke Bay Area Plan, which is a view of the harbor. However, this review addresses the proposed zone change, not a development plan. Any proposed development on the subject properties would be separately evaluated for conformance with these policies and potential impacts on Viewpoint One.

Chapter Five, Transportation, addresses traffic and pedestrian safety in the Auke Bay Area. This chapter contains a number of recommendations to address safety issues, including intersection improvements, a new grid street network, speed limit reductions, traffic calming measures, and more. Many residents have expressed concern about these issues at the two neighborhood meetings and in public comments. CDD and the ADOT/PF will address traffic and pedestrian safety issues when a new development proposal is proposed. Any development that significantly increases traffic will require a Traffic Impact Analysis, which may lead to implementation of some of the recommendations noted in the plan.

ADOT/PF's Fritz Cove Road to Seaview Avenue project will provide 6-foot wide sidewalks and 8-foot wide shoulders westbound and eastbound. The project will be constructed in the 2018 building season. Seaview Avenue is the westernmost boundary of the proposed rezone, so the project would significantly improve pedestrian, bicycle, and vehicle safety throughout the area.

The applicant has addressed conformance with the Auke Bay Area Plan designation and policies in the Project Narrative, Attachment 3. The Project Narrative includes an explanation of mixed use development to promote affordable housing and retail/commercial development, supported in the Plan and by the proposed Light Commercial zoning designation.

In summary, the proposed rezone conforms to the policies in the Auke Bay Area Plan, to the extent that it can be determined in absence of a development proposal.

2015 Juneau Economic Development Plan

The 2015 Juneau Economic Development Plan is incorporated into the Comprehensive Plan in CBJ Code 49.05.200(b)(1)(N). The proposed rezone does not specifically address any of the eight economic development initiatives identified in the plan. However the rezone indirectly addresses one of the economic development planning concepts and practices listed in Chapter Two, as follows:

Land availability - an adequate supply of appropriately zoned land is available for commerce and industry, as well as residential development. This includes access to the land needed to support commercial, industrial, and other development. This also includes zoning that supports neighborhood- based small

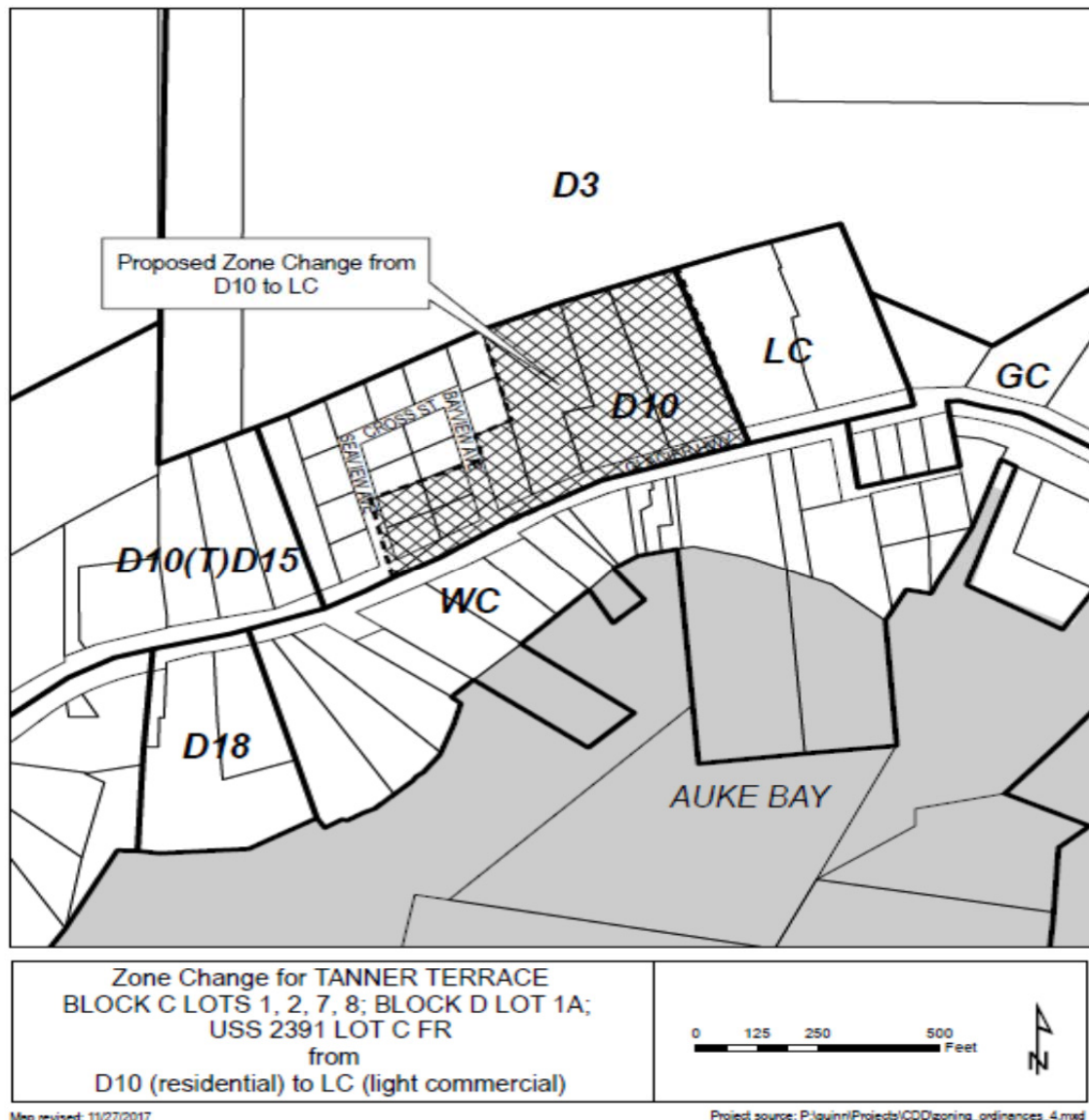
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business growth that creates jobs and provides services which area residents and the community need. This type of small business development and growth also supports quality of life and walkable mixed-use neighborhoods.

The proposed zone change from D-10 to LC may create more opportunities for higher density residential development and low impact commercial use, in substantial conformance with the plan.

COMPLIANCE WITH TITLE 49 LAND USE CODE

The map below shows existing zoning in the area:



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The subject parcels are surrounded by D-10 residential zoning to the west, D-10 and D-3 residential zoning to the north, LC zoning to the east, and Waterfront Commercial (WC) to the south. The proposed rezone would expand the existing LC zoning district.

As noted earlier, the CBJ Land Use Code describes Light Commercial zoning as:

The LC, light commercial district, is intended to accommodate commercial development that is less intensive than that permitted in the general commercial district. Light commercial districts are primarily located adjacent to existing residential areas. Although many of the uses allowed in this district are also allowed in the GC, general commercial district, they are listed as conditional uses in this district and therefore require commission review to determine compatibility with surrounding land uses. A lower level of intensity of development is also achieved by stringent height and setback restrictions. Residential development is allowed in mixed- and single-use developments in the light commercial district (49.25.230(a)).

The Land Use Code states that rezones must substantially comply with the Comprehensive Plan maps, which designates the subject properties as Medium Density Residential. The Auke Bay Area Plan, adopted as part of the Comprehensive Plan, designates the subject properties as Traditional Town Center. As discussed in the preceding analysis, the LC zoning district substantially complies with both the Medium Density Residential and Traditional Town Center designations on the Comprehensive Plan and Auke Bay Area Plan maps. In addition, the proposed zone change meets the intent of many Comprehensive Plan and Auke Bay Area Plan policies which encourage commercial, mixed use development and higher residential densities. The MU and MU2 zoning districts have also been evaluated, however these zoning districts may not substantially conform due to the high residential density allowed and the unlimited height for MU zones and a greater emphasis on residential development instead of commercial. These issues will be addressed in detail in the Discussion section of this report.

Agency Review

An agency review period was conducted from August 4, 2017 through August 25, 2017. Staff received the following comments:

- CBJ Engineering and Public Works: “It is reasonable to zone property that borders a highway as Light Commercial. Utilities exist or upgraded if needed that are adequate for a Light Commercial Zone. GE has no objection to the zone change.”
- CBJ Assessors Office: “Completely makes sense to me. No questions.”
- CBJ Fire Department: “I do not think there are any fire dept. or fire code concerns with this at this time.”
- Alaska Electric Light & Power (AEL&P): “No objection from electric.”

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- Alaska Department of Environmental Conservation (ADEC): “The Department of Environmental Conservation, Division of Water, Non-Point Source section has no issues with this rezone application from the D10 zoning district to the Light Commercial zoning district, on these properties along Glacier Highway in Auke Bay. However, I have the same questions raised during the previous rezone application in Auke Bay. Please see the attached email.” [ADEC’s additional email asked whether the rezone conforms with the Auke Bay Area Plan, and whether the application was provided to the Auke Bay Steering Committee. These questions have been addressed in the Public Notice and Comprehensive Plan sections of this report.]
- Alaska Department of Transportation and Public Facilities (ADOT/PF): “DOT does not have any comments regarding the proposed rezone for these four properties. If any development (new or a modification to existing) is proposed, we may require permits that could include the requirement of a TIA. At this point, the change in the rezone does not prompt any further review or new permits from our end.”

DISCUSSION

Uses in the D-10 Residential, Light Commercial, Mixed Use, and Mixed Use Two Zones

The subject properties are located along Glacier Highway, with commercial uses such as an RV park, restaurants, and retail located to the south and east. Low to medium density residential properties are located to the west, in addition to a few single family homes to the south in the Waterfront Commercial zoning district. The properties are within the Auke Bay Center as defined by the Auke Bay Area Plan.

The residences in closest proximity to the rezone area, along Bayview Avenue, Seaview Avenue, and Cross Street, include 13 lots that are zoned D-10. These lots all have single-family dwellings on lots of 8,000-11,000 square feet. Staff notes that most of these properties are eligible for two units, but have only one.

The table below illustrates a variety of uses that might be permitted in the current D-10 zoning district, as well as the Light Commercial, Mixed Use, and Mixed Use Two zones. This table does not include all uses that may be permitted in these zoning districts. The full Table of Permissible Uses, CBJ Code 49.25.300, has been attached for reference with these zoning districts highlighted (Attachment 7).

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A Sample of Permissible Uses in the D-10, LC, MU, and MU2 zones

	D-10	Light Commercial (LC)	Mixed Use (MU)	Mixed Use Two (MU2)
Duplex	1	1		
Hotel		1, 3		
Light manufacturing		1, 3		
Medium manufacturing			3	3
Heavy manufacturing				
Restaurant/bar		1		
Restaurant with drive-through		1,3		3
General Retail		1	1	1
Marijuana Retail		3	3	3
Marijuana Cultivation		3		
Gas station		3		
Motor vehicle sales		1,3		
Veterinary clinic		3	3	3
Commercial greenhouse	3	1, 3	1	1
Health care clinic		1,3	1, 3	1, 3
Child care	1	1	1	1

Blank space - Use not allowed

1 – Allowed with a building permit

3 – Allowed with an approved Conditional Use Permit

The table illustrates that some commercial uses, such as day care and commercial greenhouses, are allowed in all four zones with building permits and Conditional Use permits respectively. Retail use is not allowed in D-10, but is allowed in LC, MU, and MU2 zones with a building permit. All manufacturing is prohibited in D-10. Light Manufacturing is allowed in LC zones with

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a Conditional Use Permit, while Medium and Heavy Manufacturing are prohibited. Curiously, Medium Manufacturing is allowed in MU and MU2 zones. Gas stations and motor vehicle sales are allowed in LC with a Conditional Use Permit, but are not allowed in MU or MU2 zones.

In general, the LC zoning district allows some higher impact commercial uses through the Conditional Use Permit process and allows a broader variety of commercial uses, consistent with the Land Use code definition of commercial development near residential areas. MU and MU2 zones focus more on housing, but still allow for many commercial uses.

Some uses in LC, such as gas stations, do not conform with the Auke Bay Area Plan vision of a mixed use, walkable community and as such are not a perfect fit with the Traditional Town Center designation. A new zoning district needs to be developed to promote the village atmosphere of the Auke Bay Plan.

Another way to evaluate the differences between the current zoning district and the requested zoning district, as well as the MU and MU2 zoning districts, is to review dimensional standards, vegetative cover, and density as shown below:

	D-10	LC	MU	MU2
Setbacks*				
Front	20'	25'	0	5'
Rear	20'	10'	0	5'
Side	5'	10'	0	5'
Street side	13'	17'	0	5'
Minimum Lot Size	6,000 sq. ft.	2,000 sq. ft.	4,000 sq. ft.	4,000 sq. ft.
Lot coverage				
Permissible uses	50%	None	None	80%
Conditional uses	50%	None	None	80%
Building Height	35'	45'	none	45
Vegetative cover	30%	15%	None	5%

*Where one zoning district abuts another, the greater setback applies.

The chart demonstrates that the LC zoning district has half the minimum lot size of the Mixed Use and Mixed Use Two zoning districts, as well as significantly greater setbacks and vegetative cover requirements. These features may be more supportive of the pedestrian-friendly village atmosphere that the Auke Bay Area Plan seeks to promote.

As noted earlier, adjacent property owners have expressed concern about potential impacts to their view if the zone change is approved. The Auke Bay Area Plan specifically protects Viewpoint One, a view of the harbor. The Light Commercial zoning district allows a building height of 45' versus 35' in the existing zoning district. The MU zoning district has unlimited

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height, while MU2 is 45'. If the rezone is approved, CDD will specifically evaluate any new development to determine if the Viewpoint One in Appendix C of the Auke Bay Plan is negatively impacted, which may be challenging. However the MU zoning district, with unlimited height, creates the potential for unacceptable conflict between the Auke Bay Plan and the Land Use Code.

PUBLIC COMMENTS

Residents who attended the neighborhood meetings expressed concerns regarding vehicular and pedestrian safety and the need to preserve the adjacent residential area. In addition to verbal comments, staff have received six written and phone comments which are included in Attachments 8-13.

One commenter, who is the owner of one of the properties proposed for the zone change, wrote in support of the proposal to allow upgrades of the properties (Attachment 8).

The comments in Attachments 9-13 are from residents opposed to the rezone. Several of these letters are quite detailed and staff encourages the Commission to read each letter individually. In general, residents have noted impacts to views and property value and the need to preserve the character of the existing residential neighborhood. Many residents feel that increased development in this area will bring traffic, noise, and congestion. Several commenters specifically disagreed with the Auke Bay Area plan approach of creating a retail town center with mixed use, noting the vacant retail spaces throughout town and the population decline.

As described in the preceding analysis, traffic impacts will be specifically addressed by CDD and ADOT/PF when a development is proposed. In addition, ADOT/PF plans to develop sidewalks and shoulders along this section of Glacier Highway in 2018. Developments must also be evaluated for conformance with the Auke Bay Area Plan, including potential impacts to the viewsheds listed in Appendix C of the Auke Bay Area Plan. The proposed LC zoning district is the zoning district most compatible with the Auke Bay Area Plan designation of Traditional Town Center, until such time as CDD develops a new zoning district that more closely supports the Auke Bay Area Plan. By code definition (49.24.230(a)), LC zoning districts are intended to be adjacent to residential neighborhoods, to promote low intensity development.

Residents often ask for specific development plans when a rezone is under review. For the benefit of the public as well as the Planning Commission, an explanation regarding why CDD does not review development plans with rezones, and why the applicant is not required to state their intentions for development, may be helpful.

CDD is required to evaluate rezones based on all development that can be permitted within the requested zoning district and their conformance with the Comprehensive Plan maps and the Land Use Code. While residents' concerns about not knowing the specific development

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proposal are understandable, CDD must evaluate the proposal based on potential uses of the proposed zoning district. As noted in the previous section, each zoning district has a list of uses that are permitted “outright” and others that require a Conditional Use Permit. Conditional Use Permits require a public hearing and notices to property owners within 500 feet of the proposed development. Some uses may require a traffic impact analysis, and other approvals such as driveway permits.

In this rezone, the applicant has provided a general statement about how the proposed rezone would allow the property owners to “achieve the highest and best use of their properties,” along with a description of the Auke Bay area and mixed use developments. CDD’s analysis has focused on the code requirement of “substantial conformance” with the Comprehensive Plan and Auke Bay Area Plan land use designations, along with a review of relevant policies, rather than specific uses allowed within the LC zoning district. Specific developments would be evaluated on a case by case basis in accordance with review requirements in code.

RESTRICTIONS AND PROCEDURE

CBJ 49.75.120. RESTRICTIONS ON REZONINGS. Rezoning requests covering less than two acres shall not be considered unless the rezoning constitutes an expansion of an existing zone. Requests which are substantially the same as a rezoning request rejected within the previous twelve months shall not be considered. A rezoning shall only be approved upon a finding that the proposed zoning district and the uses allowed therein are in substantial conformance with the land use maps of the comprehensive plan.

The intent of the Land Use Code 49.05.100 is shown below.

- (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.*

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The request meets the two requirements to be considered for rezoning, in accordance with CBJ 49.75.120, because request is greater than 2 acres, constitutes an expansion of the existing LC zoning district, and the request is not substantially the same as a rezone request rejected in the past 12 months.

As discussed in the preceding analysis, the rezone request meets the intent of the Land Use Code, item 1, because it substantially conforms with the Comprehensive Plan and the Auke Bay Area Plan designations of Medium Density Residential and Traditional Town Center, and meets the intent of many Comprehensive Plan and Auke Bay Area Plan policies. There are no habitat issues or coastal management program policies relevant to the request. Code setbacks and the Conditional Use Permit process for the LC zone ensures the beneficial impacts of growth while minimizing the negative impacts. The rezone request meets the intent of the Land Use Code, item 6, by recognizing the economic value of the subject property and allowing potentially expanded development within a zoning district that meets the intentions of Comprehensive Plan and Auke Bay Area Plan maps and policies.

ZONE CHANGE OPTIONS AND ALTERNATIVES

The applicant has requested to have 7.06 acres rezoned to Light Commercial.

Options are to approve the request as submitted, deny the request as submitted, or recommend an alternative to the Assembly.

FINDINGS

After review of the application materials, the CBJ Land Use Code, and the CBJ 2013 Comprehensive Plan the Director makes the following findings:

1. The proposal meets the submittal requirements and the rezoning initiation, zone change restrictions, and procedural requirements of the CBJ Land Use Code, as the application was submitted timely, is not similar to a request made in the previous two years, is greater than 2 acres, and is an expansion of an existing zoning district.
2. Based on the preceding analysis, rezoning 7.06 acres from D-10 to the LC zoning district is in substantial conformance with the Land Use maps of the Comprehensive Plan and Auke Bay Area Plan.

STAFF RECOMMENDATION

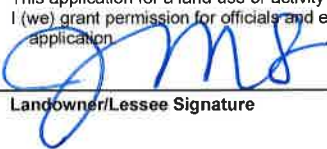
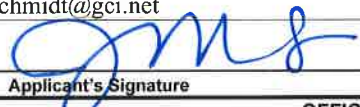
Staff recommends that the Planning Commission concur with the Director's analysis and findings and recommend approval to the Assembly for a rezone request to change 7.06 acres

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located at 3853 Bayview Avenue, 12020 Glacier Highway, 11998 Glacier Highway, and 11950 Glacier Highway from D-10 to LC (Light Commercial).

DEVELOPMENT PERMIT APPLICATION

Project Number AME 17-13	CITY and BOROUGH of JUNEAU	Date Received: 7/31/2017
Project Name (City Staff to Assign Name)		

PROJECT / APPLICANT INFORMATION	Project Description Request for rezone from D10 to LC.		
	PROPERTY LOCATION		
	Street Address 3853 Bayview Avenue	City/Zip Juneau, AK 99801	
	Legal Description(s) of Parcel(s) (Subdivision, Survey, Block, Tract, Lot) USS 2391 Tanner Terrace BLC, LTS 1, 2, 7 & 8		
	Assessor's Parcel Number(s) 4B2801040170		
	LANDOWNER/ LESSEE		
	Property Owner's Name Douglas Island Development LLC	Contact Person: Joanne Schmidt	Work Phone: 907-723-6803
	Mailing Address 5405 North Douglas Highway Juneau, AK 99801	Home Phone: 907-723-6803	Fax Number:
	E-mail Address joanne.schmidt@gci.net	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  7/31/2017 Landowner/Lessee Signature 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 Douglas Island Development LLC	Contact Person: Joanne Schmidt	Work Phone: 907-723-6803	
Mailing Address 5405 North Douglas Highway Juneau, AK 99801	Home Phone: 907-723-6803	Fax Number:	
E-mail Address joanne.schmidt@gci.net	Other Contact Phone Number(s):		
X  07/31/2017 Applicant's Signature Date of Application			

OFFICE USE ONLY BELOW THIS LINE					
STAFF APPROVALS	☒	Permit Type	***SIGN	Date Received	Application Number(s)
		Building/Grading Permit			
		City/State Project Review and City Land Action			
		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		7/31/17	AME 2017 0013	
	Other (Describe)				
***Public Notice Sign Form filled out and in the file.					
Comments:				Permit Intake Initials ANE	

NOTE: DEVELOPMENT PERMIT APPLICATION FORMS MUST ACCOMPANY ALL OTHER COMMUNITY DEVELOPMENT DEPARTMENT APPLICATIONS
 I:\FORMS\2010 Applications

Attachment 1

Revised November 2009

Applicant has spoken w/ Beth.
 This communication will count

ZONE CHANGE APPLICATION

TO BE COMPLETED BY THE APPLICANT

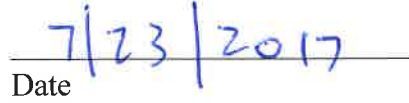
Project Number	Project Name (15 characters)	Case Number AME 20170013	Date Received 07/31/2017																																			
LEGAL DESCRIPTION(S) AND LIMITS OF PROPERTY TO BE REZONED: <u>See Attached</u>																																						
IS THIS AN EXPANSION OF AN EXISTING ZONE? ☒ Yes ☐ No																																						
Total Land Area of Proposed Change <u>7.06</u> acres		Comp Plan Designation <u>TTC</u>																																				
Current Zone(s) <u>D10</u>		Comp Plan Map _____																																				
New Zone Requested <u>Light Commercial</u>																																						
TYPE OF ZONE CHANGE REQUESTED: ☒ Regular ☐ Transition																																						
HAS THIS OR A SIMILAR ZONE CHANGE BEEN REQUESTED IN THE PREVIOUS 12 MONTHS? ☐ Yes ☒ No																																						
UTILITIES AVAILABLE: WATER: ☒ Public ☐ On Site SEWER: ☒ Public ☐ On Site																																						
PURPOSE OF THE REQUESTED ZONE CHANGE: <u>Conform with Duke Bay Sub-area Plan (2015) proposed zoning designation of Traditional Town Center (TTC) and expand the zoning designation of the area of Light Commercial.</u>																																						
IS THERE A PROPOSED USE OF THE LAND? ☐ Yes ☒ No																																						
PROPOSED BUFFERS TO ADJACENT ZONES? ☐ Yes ☒ No																																						
DESCRIBE (INCLUDING TYPE AND DENSITY OF PROPOSED DEVELOPMENT): _____ _____ _____																																						
DESCRIBE ANY POTENTIAL IMPACTS TO PUBLIC INFRASTRUCTURE: STREETS: <u>Increased Use</u> WATER: <u>Increased Use</u> SEWER: <u>Increased Use</u>																																						
For more information regarding the permitting process and the submittals required for a complete application, please see the reverse side. If you need any assistance filling out this form, please contact the Permit Center at 586-0770.	<table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">ZONE CHANGE FEES</th> <th style="text-align: center;">Fees</th> <th style="text-align: center;">Check No.</th> <th style="text-align: center;">Receipt</th> <th style="text-align: center;">Date</th> </tr> </thead> <tbody> <tr> <td>Application Fees</td> <td style="text-align: right;">\$ <u>600</u></td> <td>_____</td> <td>_____</td> <td style="text-align: right;"><u>07/31/2017</u></td> </tr> <tr> <td>Admin. of Guarantee</td> <td style="text-align: right;">\$ _____</td> <td>_____</td> <td>_____</td> <td style="text-align: right;">_____</td> </tr> <tr> <td>Adjustment</td> <td style="text-align: right;">\$ _____</td> <td>_____</td> <td>_____</td> <td style="text-align: right;">_____</td> </tr> <tr> <td>Pub. Not. Sign Fee</td> <td style="text-align: right;">\$ <u>50</u></td> <td>_____</td> <td>_____</td> <td style="text-align: right;">_____</td> </tr> <tr> <td>Pub. Not. Sign Deposit</td> <td style="text-align: right;">\$ <u>100</u></td> <td>_____</td> <td>_____</td> <td style="text-align: right;">_____</td> </tr> <tr> <td>Total Fee</td> <td style="text-align: right;">\$ <u>750.00</u></td> <td>_____</td> <td>_____</td> <td style="text-align: right;"><u>07/31/2017</u></td> </tr> </tbody> </table>			ZONE CHANGE FEES	Fees	Check No.	Receipt	Date	Application Fees	\$ <u>600</u>	_____	_____	<u>07/31/2017</u>	Admin. of Guarantee	\$ _____	_____	_____	_____	Adjustment	\$ _____	_____	_____	_____	Pub. Not. Sign Fee	\$ <u>50</u>	_____	_____	_____	Pub. Not. Sign Deposit	\$ <u>100</u>	_____	_____	_____	Total Fee	\$ <u>750.00</u>	_____	_____	<u>07/31/2017</u>
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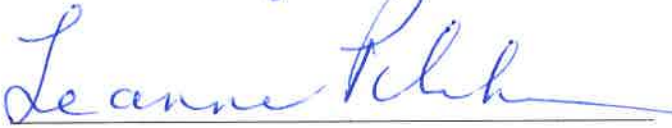
NOTE: MUST BE ACCOMPANIED BY DEVELOPMENT PERMIT APPLICATION FORM

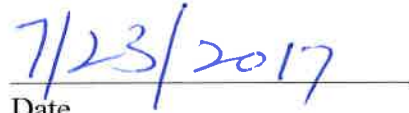
ADDENDUM TO ZONE CHANGE APPLICATION

1) 12020 Glacier Highway, Parcel No. 4B2801040070, USS 2391 Tanner Terrace BL D, LT


R. Jeffry Pilcher

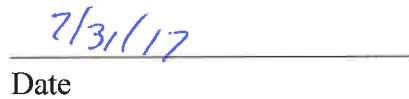

Date


Leanne Pilcher


Date

2) 11998 Glacier Highway, Parcel No. 4B2801040060, USS 2391 LT C FR


Gospel Mission Union, Inc.

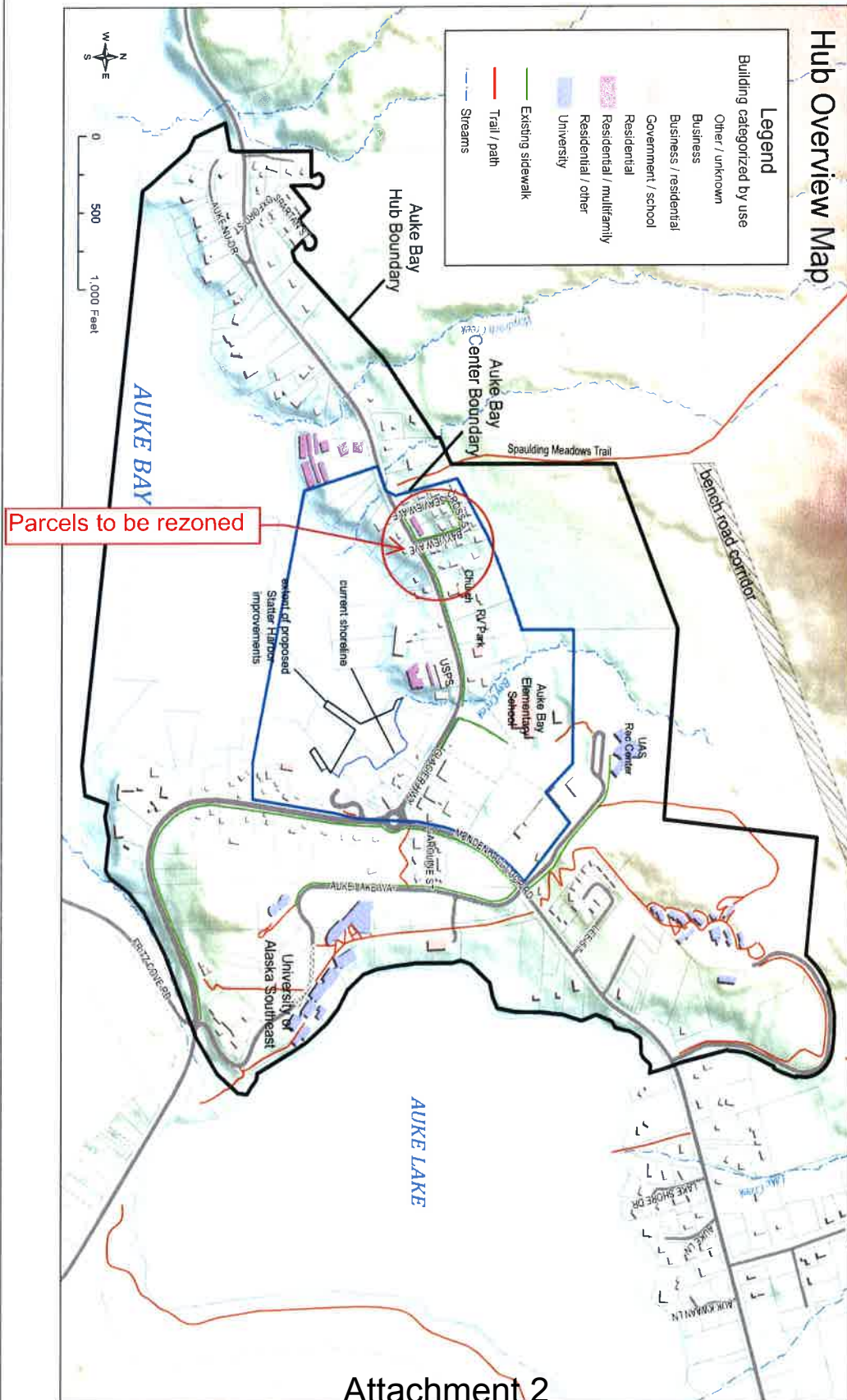

Date

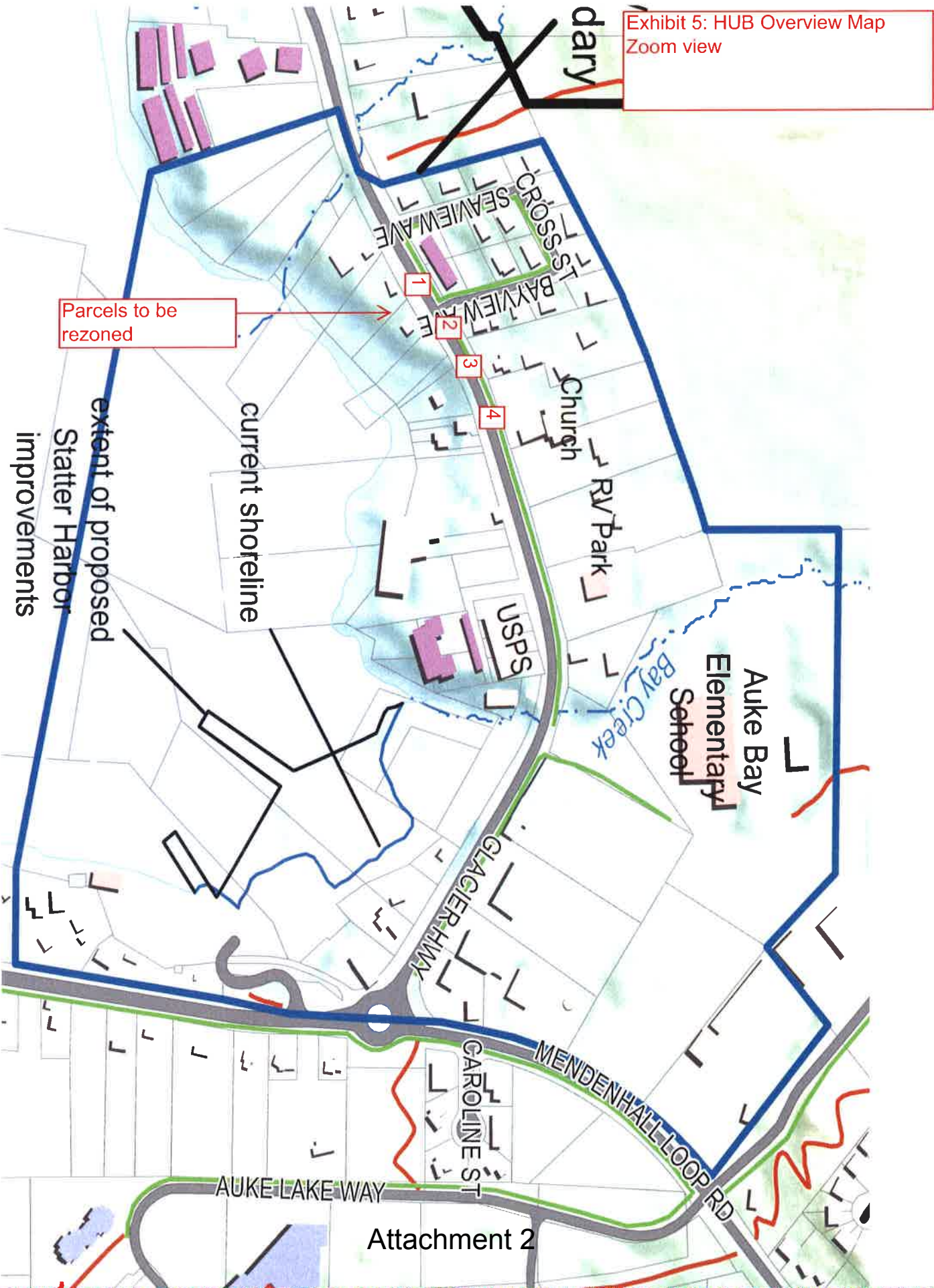
3) 11950 Glacier Highway, Parcel No. 4B2801040050, USS 2391 LT C FR


Auke Bay Bible Church
Deacon Chairmen


Date

Exhibit 4: Auke Bay Area Plan
HUB Overview Map





ADDENDUM TO ZONE CHANGE APPLICATION

Introduction

The applicants submitting this Zone Change Application and requesting that their properties to be rezoned from D10 to Light Commercial are: Douglas Island Development, LLC, Jeff and Leanne Pilcher, Gospel Missionary Union, Inc. (dba Echo Ranch Bible Camp), and Auke Bay Bible Church. All properties lie adjacent to each other and along Glacier Highway between 11950 Glacier Highway to 3853 Bayview Avenue, and all are on the road side of Glacier Highway (see Exhibit 1, Rezone Parcels Map and Exhibit 2: Auke Bay Area satellite image, enlarged). The total acreage of land subject to this request is 7.06 acres.

Legal Descriptions/Limits on Property to be Rezoned

The Property Owner names and addresses, parcel numbers, legal descriptions and lot sizes of the properties included in the rezone request are listed in the table below.

	Property Owner/Address	Parcel Number	Legal Description	Lot Size
1	Douglas Island Development LLC 3853 Bayview Avenue	4B2801040170	USS 2391 Tanner Terrace BL C, LTS 1, 2, 7, & 8	0.73 acres
2	R Jeffry and Leanne Pilcher 12020 Glacier Highway	4B2801040070	USS 2391 Tanner Terrace BL D, LT 1A	0.36 acres
3	Echo Ranch Bible Camp 11998 Glacier Highway	4B2801040060	USS 2391 Tanner Terrace LT C FR	1.79 acres
4	Auke Bay Bible Church 11950 Glacier Highway	4B2801040050	USS 2391 Tanner Terrace LT C FR	2.94 acres

Plans and Diagrams

The following plans, diagrams and images are included in this application and incorporated by reference or as an Exhibit:

- Auke Bay Area (ABA) Plan, 2015
- Comprehensive Plan of the City and Borough of Juneau (CBJ Comp Plan), 2013 Update
- Exhibit 1: Rezone Parcels Map, satellite image
- Exhibit 2: Auke Bay Area satellite image enlarged
- Exhibit 3: CBJ Comp Plan Map F, Subarea 3
- Exhibit 4: ABA Plan, Hub Overview Map
- Exhibit 5: ABA Plan, Hub Overview Map, enlarged
- Exhibit 6: ABA Plan, Amendment to Comp Plan Zoning Map

Project Description

The applicants seek to have their properties rezoned from D10 to Light Commercial. While the applicants do not yet have any specific development plans for their properties, the change in zoning designation will allow them to develop their properties in a manner aligned with the goals and objectives of both the CBJ Comp Plan and the ABA Plan and achieve the highest and best use of their properties. Rezoning these properties will make the zoning designations consistent with the other Auke Bay area properties with direct road frontage along Glacier Highway.

It was determined that the residential properties north of 3853 Bayview Avenue and residing on Bayview Avenue, Seaview Avenue and Cross Street would not be included in the rezone request in accordance with Policy 10.3 from Chapter 10: LAND USE of the CBJ Comp Plan, under the Avoiding Residential Land Use Conflicts section, which states:

“A major concern expressed by Juneau residents is the need to protect the character of existing neighborhoods from incompatible uses. Their primary concern is to minimize the intrusion of heavy traffic on neighborhood streets and avoid conflicts related to parking congestion, noise, glare, loss of privacy and other factors associated with higher intensity uses.”

To be responsive to this concern, light commercial development of the subject parcels should conform to the standards set out in Policy 10.4, TO MINIMIZE CONFLICTS BETWEEN RESIDENTIAL AREAS AND NEARBY RECREATIONAL, COMMERCIAL AND INDUSTRIAL USES THAT WOULD GENERATE ADVERSE IMPACTS TO EXISTING RESIDENTIAL AREAS THROUGH APPROPRIATE LAND USE LOCATIONAL DECISIONS AND REGULATORY MEASURES, Development Guidelines 10.4-DG1 which states,

“New development, particularly in-fill development on vacant land within established neighborhoods, should be designed in such a way as to promote compatibility in scale and massing as the adjacent or nearby built environment.”

The Implementing Action for this same section, under 10.4-1A1 further supports this approach with a recommendation to

“seek to reduce or eliminate conflicts between medium or high density residential uses in established low density residential neighborhoods by encouraging the design of higher density housing to be compatible in scale, massing and orientation with the adjacent, lower-density housing....”¹

¹ 2013 CBJ Comprehensive Plan Update, Chapter 10, pp 131-132.

If commercial development is restricted to parcels immediately adjacent to the roadway and waterfront properties only, conflicts will be minimal and likely non-existent.

Land Use and Facilities: Existing Conditions

Auke Bay currently offers a mixture of land uses ranging from condominiums and single family housing to fish-processing facilities and educational centers. During the 20th century, Auke Bay started to develop into a key population node of the community. Three major roads converge in Auke Bay (Glacier Highway (north- and south-bound and Mendenhall Loop Road) and bring people from all over the Borough. These roads carry a high volume of traffic. Commercial businesses, places of residence and boat harbors have all been developed along this highway.

Auke Bay also receives high marine traffic from commerce, private yachts, the State ferry dock, and recreational boaters. These facilities attract residents, workers and tourists from all over the state and beyond. Current educational opportunities in Auke Bay include the University of Alaska Southeast, a public and a private elementary school, and a pre-school co-op. Land use regulations in Auke Bay are fragmented due to the many different districts. This has resulted in some property's regulations promoting a suburban, auto-dependent setting with large parking lots and limited uses; while others promote a small downtown feel with a mix of uses and pedestrian-emphasized designs. Because of this, neighboring uses may easily conflict which can make coordination for future planned growth between land owners challenging. Taking a balanced approach by ensuring that zoning designations are consistent is a key step in reducing conflict and promoting sensible, planned growth that meets the needs of the adjacent property owners and the broader community of Juneau.

Conformance to the CBJ Comp Plan, 2013

The 2013 Comprehensive Plan for the City and Borough of Juneau describes Auke Bay and UAS as "Urban" in form, "characterized by low- to mid-rise residential and commercial structures, often with the uses mixed within the same structure or with commercial uses lining the edges of residential neighborhoods. Typical mass and scale of these urban neighborhoods are 2 to 3-story structures separated by parking lots, roads, sidewalks and landscaping or small yards." The CBJ Comprehensive Plan encourages in-fill development within the Urban Service Area in order to take advantage of existing urban services and utilities.

The CBJ Comp Plan, 2013 Update, in Chapter 10: LAND USE, under the RESIDENTIAL USE OF LAND, "Residential Land Availability and Density" Section recommends that

"The CBJ government should continue to conduct re-zoning processes to reflect the land use designations and densities recommended in this 2013 update. Most specifically, higher density residential developments along public transit routes are needed to satisfy affordable housing needs, to make the most efficient use of a limited amount of buildable

land, and to provide public services efficiently therein. Availability of lands for residential use should continue to be monitored and adequate public service and facilities provided to accomplish the objectives of assuring safe, sanitary and affordable housing for all income levels and household types in the community.”

The CBJ Comp Plan also identifies in Chapter 10 LAND USE, under the Mixed-Use Development section, that

“Mixed use development is also seen as an avenue to implement several Comprehensive Plan policies, notably those pertaining to compact development, energy efficiency/sustainability, efficient transit services, and affordable housing. Locations outside of the downtown core that is suitable for mixed use development include downtown Douglas, the village center of Auke Bay near the University, and areas in and around shopping malls and near major employment centers. It should be noted that in mixed use areas around the airport, owners should be required to notify prospective tenants and buyers of aircraft noise impacts.”

The Implementing Action that provides the basis for this Rezone Application request is in 10.13-1A3, which recommends [that CBJ]:

“Conduct an area plan for the Auke Bay community to create an attractive, pedestrian-oriented marine mixed-use village that promotes affordable housing and accommodates the space and livability needs and objectives of residents, University students and faculty, recreational enthusiasts, fishermen and women, business operators, property owners, and area fish and wildlife.”

The CBJ Comp Plan, under Chapter 11: LAND USE MAPS depict the subject parcels as being located within the Medium Density Residential (MDR) boundary (see Exhibit 3: CBJ Comp Plan Map F, Subarea 3). These lands are characterized by urban residential lands for multifamily dwelling units at densities ranging from 5 to 20 units per acre. Any commercial development should be of a scale consistent with a residential neighborhood, as regulated in the Table of Permissible Uses (CBJ 49.25.300).

The MDR designation provides support for rezoning the subject parcels from D10 to Light Commercial, and would create opportunities for the applicants to achieve the highest and best use of their properties in accordance with the intended designations as identified in the CBJ comp Plan and consistent with the uses of other adjacent MDR properties.

Future Vision: An Active Auke Bay Center

Auke Bay has grown from its early years as being home to the Áak’w Kwáan tribe and a fisheries port to a much larger and more diverse economic hub of Southeast Alaska. Significant

growth in the tourism industry, boating and fisheries commerce, marine transportation, education, and housing developments has resulted in increased demands in services, varied land regulations, a mixture of new transportation challenges, and pressures on the environment. Coordinating and addressing these demands and challenges through the creation of an Auke Bay Area Plan, led by Auke Bay citizens and property owners, will ensure future growth is responsible, sustainable, and desirable.

Auke Bay is home to many businesses, residents, students, and transient guests. The public and private harbors establish a strong and unique maritime component for not only commercial fisherman, but also local sport fisherman, sailors, and those traveling through Southeast Alaska. Auke Bay boasts a rich mixture of densities that can accommodate many housing needs, from detached homes to condominium. There continues to be a strong housing demand in the Auke Bay area. Businesses are attracted to meet the growing demands of Auke Bay by way of engineering, marine use, transportation, retail/restaurants, services, and more. As Auke Bay grows, it will be important to attract businesses that not only supply the demand in the area but also compliment the design of growth.”²

Conformance to the (CBJ) Auke Bay Area Plan, 2015

The Auke Bay Area Plan, 2015 was a multi-year community wide effort to further clarify the goals, objectives and future vision for the Auke Bay area in accordance with the development guidelines set out in the CBJ Comp Plan, 2013 Update.

There are three planning areas of the ABA Plan: (1) the Planning Area Boundary, (2) the Hub and (3) the Center (see Exhibit 4: Hub Overview Map, and Exhibit 5: Hub Overview Map, enlarged). Each planning area represents a different type of anticipated growth based on public services, land use demands, and future needs of Auke Bay.

The subject parcels are all located within the “Center”, and are identified in the Plan as “the focal point of Auke Bay”. The Small-Town Center is an area intended to create a setting for a new ‘Small Town Center’ containing multi-story buildings with a mixture of uses, with an emphasis of ground floor commercial and residential above. This area provides efficient vehicular access and safe and accessible pedestrian access to nearby uses such as Statter Harbor, UAS, and nearby neighborhoods. This same area was identified in the CBJ Comp Plan as M/MU, and in the ABA Plan was designated as Traditional Town Center (TTC) with the recommendation that the CBJ Comp Plan be updated to reflect this designation (see Exhibit 6: Proposed Amendment to Comprehensive Plan Land Use Map).

² Auke Bay Area Plan. Adopted March 16, 2015. City and Borough of Juneau, Community Development Department, Planning Division.

Traditional Town Center (TTC) lands are characterized by high density residential and non-residential land uses in downtown areas and around shopping centers, the University, major employment centers and public transit corridors, as well as other areas suitable for a mixture of retail, office, general commercial, and high density residential uses at densities at 18 or more residential units per acre. Residential and non-residential uses could be combined within a single structure, including off-street parking. Ground floor retail space facing roads with parking behind the retail and housing above would be an appropriate and efficient use of the land.

The ABA Plan identified that the Auke Bay Center area should be designed for higher density to create a town center setting that would attract a mix of shopping, dining, arts, music, and marine and education-related services and events. Without high density, the Center cannot not attract certain desirable types of uses nor achieve a desirable town center lifestyle.

Mixed-use development having ground floor restaurant/retail/offices and upper floor residences will be critical for establishing a small-town center setting, and will potentially be the scope and focus of any new development of the subject parcels. The ground floor uses can create a vibrant and energetic street atmosphere. The upper floors provide a separated use away from street noise and activity that is more appropriate for residential use. Mixed-use development may provide more affordable housing opportunities as density increases. Higher-density, in-fill development reflecting an appropriate mix of residential and light commercial uses will offer more housing choices for Juneau residents, create jobs in the area, stimulate the local economy, and will breathe life into an area well-poised for growth and change.

Rezoning the subject parcels from a D10 residential designation to Light Commercial supports the CBJ's goal of creating an active Auke Bay Center that reflects a mix of residential and commercial uses that will meet the future development needs of the area. The subject parcels are all located within the designated Traditional Town Center (TCC) and are well-situated to modify or expand upon existing uses which would conform well with the intended character and mixed residential and commercial uses desired for this up and coming area of Auke Bay.

Exhibit 1: Rezone Parcels Map



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AUKE BAY REZONE REQUEST – SITE PHOTOS



Fig 1: Douglas Island Development LLC - 3853 Bayview Avenue



Fig 2: Jeff and Leanne Pilcher - 12020 Glacier Highway



Fig 3: View from 3853 Bayview and Pilcher Properties



Fig 4: Road frontage *west to east* view



Fig 5: Echo Ranch Bible Camp - 11998 Glacier Highway



Fig 6: Auke Bay Bible Church - 11950 Glacier Highway



Fig 7: Road frontage, east to west view



Fig 8: View from Echo Ranch-Auke Bay Church properties

TABLE OF PERMISSIBLE USES - CBJ 49.25.300

			Zones														
Use Description			RR	D-1	D-3	D-5	D-10 SF	D-10	D-15	D-18	LC	GC	MU	MU2	WC	WI	I
1.000	RESIDENTIAL																
1.100	Single-family dwellings:																
	1.110	Single-family detached, one dwelling per lot	1	1	1	1	1	1	1	1	1	1	1	1	1	1 A	1 A
	1.120	Single-family detached, two dwellings per lot	1	1	1												
	1.130	Single-family detached, accessory apartments X	1, 3	1, 3	1, 3	1, 3	1, 3	1, 3	1, 3	1, 3	1, 3	1, 3	1, 3	1, 3	1, 3		
	1.140	Single-family detached, two dwelling per lot, accessory apartment X	1, 3	1, 3	1, 3												
1.200	Duplex		1	1	1	1		1	1	1	1	1	1	1	1		
1.300	Multifamily dwellings							1, 3	1, 3	1, 3	1, 3	1, 3	1, 3	1, 3	3		
1.500	Child and Day care homes:																
	1.510	Child; 12 or fewer children under the age of 12	1	1	1	1	1	1	1	1	1	1	1	1			
	1.520	Reserved															
	1.530	Adult; 12 or fewer people, 12 years and older	1	1	1	1	1	1	1	1	1	1	1	1			
	1.540	Reserved															
1.550	Child care residence, 6 to 9 children under 18 years of age			3	3	3	3	3	3	3	3	3	3	3			

1.600	Miscellaneous, rooms for rent situations:																	
	1.610	Rooming, boarding houses, bed and breakfasts, single room occupancies with shared facilities, transitional housing, and temporary residences. Owner or manager must live on site.	3	3	3	3	3	1, 3	1, 3	1, 3	1, 3	1, 3	1	1	3 N			
	1.620	Hotels, motels	3							1, 3	1, 3	1, 3	1, 3	3 N	3 N			
	1.630	Single room occupancies with private facilities						1, 3	1, 3	1, 3	1, 3	1, 3	1, 3	1, 3				
1.700	Home occupations		1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
1.800	Mobile homes:																	
	1.810	Residential mobile homes on individual lots E	3	3	3													
	1.815	Caretakers mobile homes on individual lots E	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3
	1.820	Mobile home parks E				3	3	3	3	3	3							
	1.830	Mobile home subdivision E				3	3	3	3	3	3							
	1.840	Recreational vehicle parks F	3 F	3 F	3 F													
1.900	Common wall development:																	
	1.910	Two dwelling units				1	1	1	1	1								
	1.911	Accessory apartments X	1, 3	1, 3	1, 3	1, 3	1, 3	1, 3	1, 3	1, 3	1, 3	1, 3	1, 3	1, 3	1, 3			
	1.920	Three or more dwelling units				1, 3	1, 3	1, 3	1, 3	1, 3	1, 3	1, 3	1, 3	1, 3				
	1.930	Two dwelling unit structures allowed under special density considerations, subsections 49.25.510(h)			3	3	3	3	3	3	3			3				
2.000	SALES AND RENTAL GOODS, MERCHANDISE OR EQUIPMENT G																	

2.100	With less than 5,000 square feet and less than 20 percent of the gross floor area of outside merchandising of goods:																	
	2.110	Reserved																
	2.120	Miscellaneous									1	1	1	1	3 N	3 N	3	
	2.130	Marine merchandise and equipment	3 T								1, 3	1, 3	1, 3	1, 3	1, 3	3 N	3	
2.200	Storage and display of goods with greater or equal to 5,000 square feet and/or 20 percent of the gross floor area of outside merchandising of goods										1, 3	1, 3	1, 3	1, 3	3 N	3 N	3	
2.300	Marijuana retail store		3								3	3	3	3	3	3	3	
3.000	PROFESSIONAL OFFICE, CLERICAL, RESEARCH, REAL ESTATE, OTHER OFFICE SERVICES G																	
3.050	Offices of not more than 1,000 square feet			3	3	3	3	3	3	3	1	1	1	1	1 N			
3.100	Offices greater than 1,000 but not more than 2,500 square feet							3	3	3	1	1	1	1	3 N			
3.200	Reserved																	
3.300	Research, laboratory uses		3 T								1, 3	1, 3	1, 3	1, 3	1 N, 3 N	1 N, 3 N	1, 3	
3.400	Offices greater than 2,500 square feet										1, 3	1, 3	1, 3	1, 3	1 N, 3 N		3 S	
3.500	Marijuan testing facility		3								3	3	3	3				3
4.000	MANUFACTURING, PROCESSING, CREATING, REPAIRING, RENOVATING, PAINTING, CLEANING, ASSEMBLING OF GOODS G																	
4.050	Light manufacturing		3 T						3	3	1, 3	1, 3	1, 3	1, 3	1 N, 3 N	1 N, 3 N	1, 3	
4.070	Medium manufacturing		3 T									3	3	3	3 N	1 N, 3 N	1, 3	

4.100	Heavy manufacturing	3 T	3 Q													3 N	3
4.150	Rock crusher	3 T	1 Q	1 Q												3 N	3
4.200	Storage of explosives and ammunition	3														3 N	3
4.210	Seafood processing	3 T													3	1, 3	1, 3
4.220	Marijuana product manufacturing facility	3 AC									3	3					3
5.000	EDUCATIONAL, CULTURAL, RELIGIOUS, PHILANTHROPIC, SOCIAL, FRATERNAL USES																
5.100	Schools:																
	5.110	Elementary and secondary schools including associated grounds and other facilities		3	3	3	3	3	3	3	3	3	3	3			
	5.120	Trade, vocational schools, commercial schools	3 T								3	3	3	3	3 N	3 N	3
	5.130	Colleges, universities	3 T	3	3	3	3	3	3	3	3	3	3	3	3 N	3 N	3
5.200	Churches, synagogues, temples	3 T	3	3	3	3	3	3	3	3	1, 3	1, 3	1, 3	1, 3	1 N, 3 N	3 N	1, 3
5.300	Libraries, museums, art galleries	3 T	3	3	3	3	3	3	3	3	1, 3	1, 3	1, 3	1, 3	3 N		
5.400	Social, fraternal clubs, lodges, union halls, yacht clubs	3 T									1, 3	1, 3	1, 3	1, 3	1 N, 3 N	3 N	1, 3
6.000	RECREATION, AMUSEMENT, ENTERTAINMENT																
6.100	Indoor activity conducted entirely within building or substantial structure:																
	6.110	Bowling alleys, billiard, pool halls									1, 3	1, 3	1, 3	1, 3			3
	6.120	Tennis, racquetball, squash courts, skating rinks, exercise facilities, swimming pools, archery ranges				3	3	3	3	3	1, 3	1, 3	1, 3	1, 3			3

	6.130	Theaters seating for 200 or fewer	3	T							3	3	1	1	1	1	3	N		3	
	6.135	Theaters seating from 201 to 1,000											3	1	1	1	3	N		3	
	6.140	Coliseums, stadiums, and other facilities in the 6.100 classification seating more than 1,000 people												3	3	3	3	N			
	6.150	Indoor shooting range	1, 3											3						3	
6.200	Outdoor activity conducted outside enclosed buildings or structures:																				
	6.210	Recreational facilities such as golf, country clubs, swimming, tennis courts not constructed pursuant to a permit authorizing the construction of a school	3		3	3	3	3	3	3	3	3	3	1, 3				3	N		3
	6.220	Miniature golf courses, skateboard parks, water slides, batting cages	3		3	3	3	3	3	3	3	3	3	1, 3	3	3	3	N		3	
	6.240	Automobile, motorcycle racing tracks; off-highway vehicle parks	3											3						3	
	6.250	Reserved																			
	6.260	Open space	1		1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	
	6.262	Parks with improved facilities, not approved in conjunction with a major subdivision																			
	6.264	Capacity for up to 20 people W	1	T	1	1	1	1	1	1	1	1	1	1	1	1	1	3	N		
	6.266	Capacity for more than 20 people W	3	T	3	3	3	3	3	3	3	3	3	3	3	3	3	3	N	3	N
	6.270	Aerial conveyances and appurtenant facilities	3		3	3	3	3	3	3	3	3	3	3	3	3	3	3	N	3	N
	6.280	Shooting ranges	3																	3	
7.000	INSTITUTIONAL DAY OR RESIDENTIAL CARE, HEALTH CARE FACILITIES, CORRECTIONAL FACILITIES																				
7.100	Hospital												3	3	3	3					

7.150	Health care clinics, other medical treatment facilities providing out-patient care							3	3	1, 3	1, 3	1, 3	1, 3			
7.200	Assisted living		3	3	3	3	3	3	3	3	1, 3	1, 3	1, 3			
7.300	Day care centers						3	3	3	1, 3	1, 3	1, 3	1, 3			
7.310	Child care centers	3	3	3	3	3	3	3	3	1, 3	1, 3	1, 3	1, 3			
7.500	Correctional facilities	3	3	3	3	3	3	3	3	3	3	3	3			
8.000	RESTAURANTS, BARS, NIGHTCLUBS															
8.050	Small restaurants, less than 1,000 ft 2 without drive through service	3 T						3	3	3	1	1	1	1	1 N	3
8.100	Restaurants, bars without drive through service	3 T									1, 3	1	1, 3	1, 3	1 N, 3 N	3 N 3
8.200	Restaurants, coffee stands with drive through service										1, 3	1		3	1 N, 3 N	3 N 3
8.300	Seasonal open air food service without drive through	3									1, 3	1	1, 3	1, 3	1 N, 3 N	3 N
9.000	BOAT OR MOTOR VEHICLE, SALES AND SERVICE OPERATIONS															
9.050	Motor vehicle, mobile home sale or rental										1, 3	1, 3	3	3		1, 3
9.100	Motor vehicle repair and maintenance, including body work											3				1
9.200	Automotive fuel station	3 T									3	1				1
9.300	Car wash										3	1				1
9.400	Boat sales or rental	3 T									3	1			1	1 1
9.450	Boat repairs and maintenance	3 T										3			1	1 1

9.500	Marine fuel, water sanitation	3 T													1, 3	1, 3	1, 3
9.600	Marine commercial facilities including fisheries support, commercial freight, passenger traffic	3													3	3	
10.000	STORAGE, PARKING, MOORAGE																
10.100	Automobile parking garages or parking lots not related to a principal use on the lot									3	1	1, 3	1, 3				1
10.200	Storage and handling of goods not related to sale or use of those goods on the same lot on which they are stored:																
	10.210 All storage within completely enclosed structures	1, 3	3							3	1	1 U, 3 U	1 U, 3 U	1 N, 3 N	1 N	1	
	10.220 General storage inside or outside enclosed structures	1, 3	3								1, 3			1 N, 3 N	1 N	1	
	10.230 Snow storage basin																
	10.232 Neighborhood, less than ½ acre	3	3	3 Z	3 Z	3 Z	3 Z	3 Z	3 Z	3 Z	1			3 Z	1	1	
	10.235 Regional, ½ to 1 acre	3	3	3 Z						3 Z	3			3 Z	1	1	
	10.237 Area wide, over 1 acre	3	3 Z	3 Z							3 Z				3	3	
10.300	Parking of vehicles or storage of equipment outside enclosed structures where they are owned and used by the user of the lot and parking and storage is more than a minor and incidental use of the lot	1, 3	3								1, 3			1 N, 3 N	1 N, 3 N	1	
10.400	Temporary contractor's storage connected with construction project off-site for a specified period of time	1, 3	3	3	3	3	3	3	3	3	1, 3	3	3	3	1 N	1	
10.500	Moorage:																
	10.510 Public, commercial	3	3	3						3	3	3	3	1, 3	1, 3	1, 3	

12.310	Wild animal rehabilitation facilities without a visitor component	3	3	3	3					3	3			3 N		3
12.400	Horseback riding stables, dog team yards	3	3							3	3					3
13.000	EMERGENCY SERVICES															
13.100	Fire, police, ambulance	3	3	3	3	3	3	3	3	3	3	3	3	3 N	3 N	1, 3
14.000	AQUACULTURE, AGRICULTURE, SILVICULTURE, MINING, QUARRYING OPERATIONS, SPRING WATER BOTTLING															
14.100	Aquaculture	3	3	3						3	3	3	3	1	1	3
14.150	Weirs, channels, and other fisheries enhancement	1, 3	1, 3	1, 3	1, 3	1, 3	1, 3	1, 3	1, 3	1, 3	1, 3	1, 3	1, 3	1	1	1
14.200	Commercial agricultural operations:															
	14.210 Excluding farm animals	1, 3	1, 3	3	3	3	3	3	3	3	3					1, 3
	14.220 Including farm animals M	1, 3	3													1, 3
	14.230 Stabling of farm animals M	3	3	3	3					3	3					1, 3
	14.240 Marijuana cultivation (500 square feet or more under cultivation)	3								3	3					3
	14.245 Marijuana cultivation (fewer than 500 square feet under cultivation)	3	3 AB							3	3					3
14.250	Personal use agriculture:															
	14.253 Hens, 6 maximum	1	1	1	1	1	1	3	3	1	1	3	3	1	1	1
14.300	Silviculture and timber harvesting J	3	3													3

14.400	Mining operations						2, 3 K	3	3							3 N	3 N	2			
14.500	Sand and gravel operations I						3	3	3				3	3			3 N	3 N	3		
14.800	Spring water bottling						3	3			3	3	3	3	3			1, 3			
15.000	MISCELLANEOUS PUBLIC AND SEMIPUBLIC FACILITIES																				
15.100	Post office						3	3	3	3	3	3	1, 3	1, 3	1, 3	1, 3	3 N	3 N	1, 3		
15.200	Airport						3											1, 3			
15.400	Military reserve, National Guard centers						3	3	3				3	3			3 N	3 N	3		
15.500	Heliports, helipads						3							3			3 N	3 N	3		
15.600	Transit facilities:																				
	15.610	Transit center							3	3	3	3	3	3	1, 3	1, 3	1, 3	1, 3	3		1, 3
	15.620	Transit station						1	1	1	1	1	1	1	1	1	1	1	1	1	1
	15.630	Park and ride not associated with transit station					3	3	3	3	3	3	3	3	1	1	3	3			1
15.700	Public works facility						3	3	3	3				3	3					1, 3	
16.000	DRY CLEANER, LAUNDROMAT																				
16.100	Drop off and pickup only, no onsite laundry or dry cleaning process												1, 3	1, 3	1, 3	1, 3	1, 3	1, 3	1 N, 3 N	1 N, 3 N	1, 3

16.200	Full service onsite laundry and/or dry cleaning										3	1, 3	3	3	3 N	1 N , 3 N	1, 3
17.000	UTILITY FACILITIES																
17.100	Minor	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
17.150	Intermediate	3	3	3	3	3	3	3	3	3	1, 3	3	3	1, 3	1	1	
17.200	Major	3	3	3	3	3	3	3	3	3	3			3	3	3	
17.300	Driveways and private roads																
18.000	TOWERS AND RELATED STRUCTURES																
18.100 AA	Towers and antennas 35 feet or less	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
18.200 AA	Towers and antennas 35 to 50 feet	1	3	3	3	3	3	3	3	1	1	1	1	1	1	1	1
18.300 AA	Towers and antennas more than 50 feet in height	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	1
18.400	Amateur (ham) radio towers and antennas more than 35 feet in height R	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
18.500	Wireless Communication Facilities	See CBJ 49.65, Wireless Communication Facilities															
19.000	OPEN AIR MARKETS, NURSERIES, GREENHOUSES																
19.100	Open air markets (farm, craft, flea, and produce)	1, 3	1, 3								1, 3	1	1, 3	1, 3	1 N , 3 N	1 N , 3 N	1, 3
19.200	Nurseries, commercial greenhouses:																
	19.210	Retail sales	3	3	3	3	3	3	3	3	3	1	1 V	1 V			1

19.220	Nonretail sales	1, 3	1, 3	1, 3	1, 3	1, 3	1, 3	1, 3	1, 3	1, 3	1, 3	1	1 V	1 V			1
19.230	Marijuana cultivation (500 square feet or more under cultivation)	3									3	3					3
19.240	Marijuana cultivation (fewer than 500 square feet under cultivation)	3	3 AB								3	3					3
20.000	CEMETERY, CREMATORIUM, MORTUARY																
20.100	Cemetery	1, 3	3	3	3	3	3	3	3	3	3	3					
20.200	Crematorium	3															1, 3
20.300	Funeral home	3	3	3	3	3	3	3			1, 3	1	3	3			
21.000	VISITOR-ORIENTED, RECREATIONAL FACILITIES																
21.100	Resort, lodge	3	3														
21.200	Campgrounds	1, 3	3														
21.300	Visitor, cultural facilities related to features of the site	3	3								3	3	3	3	3 N		
22.000	TEMPORARY STRUCTURES ASSOCIATED WITH ONSITE CONSTRUCTION																
22.100	Temporary structures used in connection with construction	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1

KEY:

1	Department approval requires the department of community development approval only
1, 3	Department approval required if minor development, conditional use permit required if major development
2	Allowable use permit requires planning commission approval
3	Conditional use permit requires planning commission approval
2, 3	Allowable use permit required if minor development, conditional use permit required if major development

NOTES:

- A. A single-family residence is allowed as an owner or caretaker residence that is accessory to an existing permitted use in the industrial zone.
- B. Reserved.
- C. Reserved.
- D. Reserved.
- E. See special use regulations for mobile homes, chapter 49.65, article III.
- F. See special use regulations for recreational vehicles, chapter 49.65, article IV. This use allowed by service area designation not zoning district.
- G. All uses subject to additional performance standards, chapter 49.65, article VIII.
- H. Reserved.
- I. Reserved.
- J. Applies to over 2 acres of harvest area.
- K. See special use regulations, chapter 49.65, article I. Mining operations are a conditional use in the urban mining district and an allowable use in the rural mining district.
- L. See special use regulations, chapter 49.65.200, article II.
- M. Only applicable to the commercial or private stabling of more than three farm animals, or where the running or stabling area is closer than 100 feet to the nearest residence other than the owner for any number of farm animals.
- N. Use must be water-dependent, water-related, or water-oriented.
- O. Standards for collection structures: containers must be well maintained and allow no spillage of contents; a specific person or group must be responsible for maintenance of the structure and that person or group shall have a contact telephone number posted on the collection structure; collection structure must be situated so as to not affect traffic or parking; directional signs shall be limited to six square feet and identification signs shall be limited to 24 square feet; such signs will not be included in total sign area allowed for a complex; and the structure shall not exceed a height of six feet. Identification is to be in the following format: greater prominence, the City and Borough recycling logo and the recyclable material identification; lesser prominence, the sponsor name and the contact phone number.

P. Preexisting allowable or conditional use permit: If recycling activity is determined by the director to be an accessory use to a use previously permitted under either an allowable or a conditional use permit, the activity may be approved by the department. Other conditions may be required before recycling activity is permitted.

Q. Must be in conjunction with an approved state or municipal public road construction project, and must be discontinued at the completion of the project. Road construction by private parties for subdivision development is excluded except as provided in this title. Rock crushed on-site must be used on-site. Crushing shall be limited to 8:00 a.m.—5:00 p.m. unless the director authorizes otherwise.

R. Towers shall: be for amateur use only; meet the setback requirements of the zoning district; be unlit except as required by the Federal Aviation Administration. Towers shall be installed in conformance with a valid building permit, application for which shall include a copy of the applicant's amateur station license.

S. Limited to lots directly fronting on Glacier Highway West of Industrial Boulevard.

T. Must be associated with a unique site specific feature in order to function. Example: Glacier research station - Juneau Icefield location.

U. No storage permitted on the first floor of a building.

V. Primarily intended for rooftop locations in urban areas.

W. The capacity of a park shall be determined by the Director of the Community Development Department or designee in consultation with the Director of the Parks and Recreation Department.

X. Special requirements apply to accessory apartment applications. See CBJ § 49.25.510(k).

Z. Snow storage may be permitted for a maximum of five years. After five years a new application must be filed.

AA. Does not apply to wireless communication facilities.

AB. Use is prohibited in the urban service area but allowed outside the urban service area. An owner or manager must live on site.

AC. Use is prohibited within 1,000 feet of recognized neighborhood association established in accordance with CBJ chapter 11.35.

TABLE OF DIMENSIONAL STANDARDS – CBJ 49.25.400

Zoning Regulations	RR	D-1	D-3	D-5	D-10 SF	D-10	D-15	D-18	MU	MU2	LC	GC	WC	WI	I
Minimum Lot Size ¹															
Permissible Uses	36,000	36,000	12,000	7,000	3,600 ₁₀	6,000	5,000	5,000	4,000	4,000	2,000	2,000	2,000	2,000	2,000
Bungalow ⁹		18,000	6,000	3,500	2,500	3,000	3,000	2,500							
Duplex	54,000	54,000	18,000	10,500											
Common Wall Dwelling				7,000	3,600 ₁₀	5,000	3,500	2,500		2,500					
Single-family detached, two dwellings per lot	72,000	72,000	24,000												
Minimum lot width	150'	150'	100'	70'	40'	50'	50'	50'	50'	50'	20'	20'	20'	20'	20'
Bungalow ⁹		75'	50'	35'	25'	25'	25'	25'							
Common wall dwelling				60'	40'	40'	30'	20'		20'					
Minimum lot depth	150'	150'	100'	85'	85' ¹⁰	85'	80'	80'	80'	80'	80'	60'	60'	60'	60'

Maximum lot coverage																
Permissible uses	10%	10%	35%	50%	50%	50%	50%	50%	None	80%	None	None	None	None	None	None
Conditional uses	20%	20%	35%	50%	50%	50%	50%	50%	None	80%	None	None	None	None	None	None
Maximum height permissible uses	45'	35'	35'	35'	35'	35'	35'	35'	None	45' ⁴	45'	55'	35' ⁴	45' ⁴	None	None
Accessory	45'	25'	25'	25'	25'	25'	25'	25'	None	35'	35'	45'	35' ⁴	45' ⁴	None	None
Bungalow ⁹		25'	25'	25'	25'	25'	25'	25'								
Minimum front yard setback ³	25'	25'	25'	20'	20' ¹⁰	20'	20'	20'	0'	5' ^{5,8}	25'	10'	10'	10'	10'	10'
Minimum street side yard setback	17'	17'	17'	13'	10'	13'	13'	13'	0'	5'	17'	10'	10'	10'	10'	10'
Minimum rear yard setback ³	25' ²	25'	25'	20'	10'	20'	15'	10'	0'	5'	10'	10'	10'	10'	10'	10'
Minimum side yard setback ³	15' ²	15'	10'	5'	3'	5'	5'	5'	0'	5'	10'	10'	10'	10'	10'	0'
Common wall dwelling				10' ⁶	3'	5' ⁷	5' ⁷	5' ⁷		5' ⁷						

Notes:

1. Minimum lot size is existing lot or area shown on chart in square feet.
2. Sixty feet between nonresidential and designated or actual residential site; 80 feet between industrial, extractive and other uses.
3. Where one district abuts another the greater of the two setbacks is required for both uses on the common property line.

4. (Height Bonus) Reserved.
5. (Pedestrian Amenities Bonus) Reserved.
6. Zero-foot setback for the portion of the dwelling with a common wall, five-foot setback or five-foot wide easement for the portion of the dwelling at the common lot line without a common wall, and ten-foot setback for the remaining side yards of the lot.
7. Zero-foot setback for the portion of the dwelling with a common wall, five-foot setback or five-foot wide easement for the portion of the dwelling at the common lot line without a common wall, and five-foot setback for the remaining side yards of the lot.
8. On corner lots, buildings shall be set back 15 feet from a street intersection. The area in which buildings shall be prohibited shall be determined by extending the edge of the traveled ways to a point of intersection, then measuring back 15 feet, then connecting the points.
9. Special restrictions apply to construction on bungalow lots. See special use provisions 49.65.600.
10. For lots adjacent to an alley, the following reductions to the dimensional standards apply:
 - (a) Minimal lot area includes 50% of adjacent alley (see graphic).
 - (b) Minimal lot depth includes 50% of the width of adjacent alley.
 - (c) Minimum front yard setback of ten feet.

From: Pilcher
To: [Teri Camery](#)
Subject: rezone request AME2017 0013
Date: Thursday, September 28, 2017 4:27:47 PM

I support rezone request AME2017 0013.

The action will allow the owner to upgrade the 8-plex property within the scope of the Auke Bay Plan.

Our home in the Tanner Terrace neighborhood joins the others in this high-demand residential area.

The bay view Southeast of Bayview Street is the #1 scenic view recommended for continuance in the Auke Bay Plan.

The efforts of the new owner to improve the property is noted.

Thank you. Leanne Pilcher

Sent from [Mail](#) for Windows 10

From: Richard A. Currier <ricklisa@gci.net>
Sent: Monday, November 13, 2017 9:00 PM
To: PC_Comments
Subject: Re-zoning Request:Case umber AME2017 0013

Hello Teri,

Lisa and I would like to make some on the record comments about the proposal to re-zone the properties at 3853 Bayview Ave and 11950, 11998, and 12020 Glacier Highway from D10 to LC.

While we don't consider ourselves NIMBYs, we do have concerns about commercial development at the foot of our neighborhood:

- Over the years, we have spent nearly \$10,000.00 to remove trees on our downslope neighbors' lots to improve our water view. We like looking at the water as well as our sailboat at Statter Harbor, and we believe that our investment has raised the eventual sale value of our property. Current building codes allow for a forty-five foot maximum height for commercial buildings. A four-and-a-half story building will adversely effect the view that we have paid a lot of money to improve and negatively affect our property's value.
- Even though the existing apartment complex at the foot of Bayview and Seaview Avenues isn't an upscale building, a commercial retail operation such as liquor store, pot store, or restaurant would change the character of the neighborhood. The views and residential quiet of our downslope property owners would be adversely affected.
- The recently enacted Auke Bay neighborhood plan considers the Auke Bay "town center" to extend from the the former Horton's Hardware/Dehart's buildings at the Glacier Highway--Back Loop roundabout to the west side of Seaview Avenue. We consider that definition to be faulty. A town center is a retail district. We are a residential neighborhood. This isn't like other town centers such as the Mendenhall Hall Mall/ Valley Chevron area. It also isn't downtown Douglas, where commercial buildings have long resided on Douglas Highway with residential properties one or two blocks up or downslope. This proposal involves creating NEW commercial buildings in a long existing neighborhood.
- We are not opposed to replacing the apartments with an upscale condo complex as long as it doesn't interfere with our view or those of our neighbors. Water view property is precious and expensive; please don't ruin our investment or that of our neighbors.
- There are empty commercial buildings all over town. There are currently long term vacancies at the Horton's Hardware and Squire's Rest buildings. The financial news shows that we watch frequently discuss the Retail Ice Age" that is becoming more apparent as consumers shop online rather than in physical stores. Why would CBJ authorize projects that will potentially ruin the quality of life in long term residential neighborhoods when there is decreasing demand for commercial space?
- The community planner's ideal of pedestrian friendly neighborhoods with retail shops on the first floor and residential space on upper floors may work in urban places such as Brooklyn, New York, but this isn't Brooklyn. Auke Bay may be a destination, but it is not a retail destination. The shops in the Squire's Rest building and DeHarts meet what retail needs are desired. If there was more demand, there wouldn't be the empty spaces in the core Auke Bay "city center."
- The seawalk that will be developed during the summer of 2018 sounds like just another expensive boondoggle project that the State and City can't afford and probably won't meet projected use estimates. Some independent travelers may use it. However, cruise ship passengers are shuttled to and from shore

side excursions. They won't have time to do the sea walk and visit retail shops before or after whale watching or charter fishing. It's not going to generate much traffic or potential revenue in the Auke Bay corridor. However, It will be an effective incinerator of State funds.

- Bottom Line: Please don't authorize this proposed zoning change. Let us continue to live in our quiet neighborhood. We've paid a lot of money to do so; please don't ruin our biggest investment and quality of life.

Rick and Lisa Currier
12020 Cross Street
Juneau, 99801
907-789-3977

From: [Teri Camery](#)
To: [Teri Camery](#)
Subject: phone message in opposition to the AME20170013 Schmidt Rezone
Date: Monday, November 13, 2017 12:44:31 PM

Resident Jerry Quigg called today to say that he is opposed to the proposed rezone to Light Commercial because any upgrade to the zoning will bring more traffic to Bayview Avenue and Seaview Avenue on substandard roads.

Teri Camery, Senior Planner
City and Borough of Juneau
Community Development Department
155 S. Seward
Juneau, AK 99801
(907) 586-0755

From: John Barry <jbarrycak@gmail.com>
Sent: Sunday, November 19, 2017 2:08 PM
To: PC_Comments
Cc: Sheri Barry; marna@summitrealtyak.com
Subject: Case no. AME2017 0013

Dear Ms. Camery,

We received the notice inviting comment regarding Case no. AME2017 0013 for the zone change from D10 to LC at 3853 Bayview Ave. and 11950, 11998, and 12020 Glacier Highway.

We request that the zoning classification does not change and that the parcels remain D10. If there was a proposal for the planned development of these properties then we would consider that and could possibly support the zoning change if the new development were to benefit the neighborhood. Until then, we request that the character of the neighborhood is not changed.

Thank you,

John and Sharon Barry
12175 Glacier Highway Unit A 203

Mailing address:
PO Box 25
Gustavus, AK 99826

From: Julie Flint <julie@nuggetoutfitter.com>
Sent: Monday, November 20, 2017 1:42 PM
To: PC_Comments
Subject: Case No.:AME2017 0013 Auke Bay

Teri Camery,

Sorry we couldn't make the last meeting. We have talked with several neighbors and are quite concerned about how changing the neighborhood that we live in to a light commercial.. We feel that our neighborhood is one of the few larger residential areas close to the harbor. Changing it to light Commercial use would impact all of us that live on this one small block! It would change the whole "neighborhood" feel. Several of the reasons we are not in favor are the following:

Parking would be an issue. With very limited parking already and **no** parking Nov.1st to May 1st. greatly impacts the whole neighborhood.

We feel it would make our homes less desirable and harder to sell if more commercial area is approved.

The reason we moved out here was to be away from car and foot traffic.

The other side of the highway is area zoned for commercial use and we don't think this is a necessary plan for a local neighborhood. Also, just down the highway are more commercial areas...bars, restaurants, DeHarts gas, etc.

With all the construction of the highway and roundabout, it has made us realize how much more traffic there really is already after seeing long lines both ways when traffic is stopped.

It is a dangerous corner to exit onto the highway already.

People use our streets as a turnaround often. Would this make more traffic?

More traffic means more issues with small children walking to Auke Bay Elementary. Our kids did and it was a dangerous situation. Not many incoming cars slow down UNTIL they are by the school. There are parents backed up to the highway when dropping off and picking up kids.

We already have a commercial area just a few blocks away...DeHarts, the Marinas, restaurants, post office, gas station, etc.

Those are just a few of our concern. Right now with our declining population, it's not really the right time for this proposition. Retail property all around town has seen a drop in rent and so have apartments. Until there is an upward swing in population, isn't it more appropriate to look at this if and when that happens?

It is of great concern and once again, would change the whole feel of this already small area.

Thank you for your time,

Ron and Julie Flint

1

12070 Cross St. in Auke Bay.

Dear Ms. Camery
Senior Planner
Community Development
155 S. Seward St.
Juneau AK 99801

November 20, 2017

These comments are in reference to the application of four property owners in Auke Bay to have their properties rezoned from D10 to LC: Case No. AME2017 0013.

We **strongly object** to the rezoning of two parcels (3853 Bayview Ave. and 12020 Glacier Highway) in this application from D10 Residential to Light Commercial.

My wife, Deborah Ballam, and I have lived at 12090 Cross Street for the past 28 years. We raised our two daughters in this house. Through our years living here, we have often heard from visitors that our small neighborhood is one of the nicest in Juneau, based on the small number of residents, quiet neighborhood, nice homes, the view shed, and local weather patterns. We certainly agree. We love it here.

Given the designation of our neighborhood as part of the "small town center" in the Auke Bay Plan (ABP), four adjacent landowners in our neighborhood have chosen to seek a rezoning of their properties from D10 residential to LC light commercial.

We only know the reason for one of the requests, that by the Douglas Island Development LLC, owner of the 8-unit apartment complex along Glacier Highway (3853 Bayview) between Bayview and Seaview Avenues. The owner wants to be part of taking the ABP to the next step and put in a new several-story complex with the ground level dedicated for commercial purposes and the upper levels for residences. This could triple the number of people residing there, and bring an array of people into our immediate neighborhood for commercial reasons. This will degrade the environment for the existing residents, increasing noise, congestion, degrading the view for the adjacent residents, thus decreasing our quality of life. The plan has forsaken our micro neighborhood aesthetics.

At the September 27th meeting we attended, the representative of Douglas Island Development said she and her family used to live in downtown Juneau, but escaped the congestion and now live on four acres on north Douglas Island. The implication was clear, they liked the quietness and relative solitude there. Then she said, "Oh wouldn't it be great to have all the hillside behind Auke Bay filled with homes." There is clearly hypocrisy here. She does not want noise and congestion in her backyard, but wants to build it in ours.

There is an abundance of unused retail space in this community now. The population is in decline, jobs are in decline. Why take a special small neighborhood and undermine the attributes that make it a special place? There is no current need to rezone beyond this developer's interest in making more money.

Regarding the other applicants, we can only surmise that rezoning their properties will increase their options, and possibly their property value when it comes time to sell. We **strongly object** to the

request by the owners of the 12020 Glacier Highway property because it is in our immediate cluster of homes with property extending well up Bayview Avenue.

The two church properties (11950 and 11998 Glacier Highway) represent the majority of lands in the combined application. These lands, as they are currently maintained obviously serve a profound need and sense of community for many people in Juneau. However, these parcels could also be considered optimal land for guided development in the future within the “city center” area. They are large, relatively open spaces that currently reduce the number of businesses and residents in an area close to our property, which we like. However, we are neutral on the rezoning of these two parcels.

We understand the ABP was developed with input from residents from throughout the Juneau area, not just residents of Auke Bay, and that is appropriate. That being said, it is clear many of the people that developed the ABP view Auke Bay as a “destination.” Let’s keep our small neighborhood a residential “refuge” rather than a “destination.”

Thank you for the opportunity to comment.

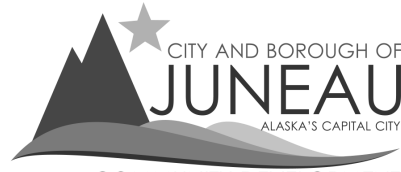
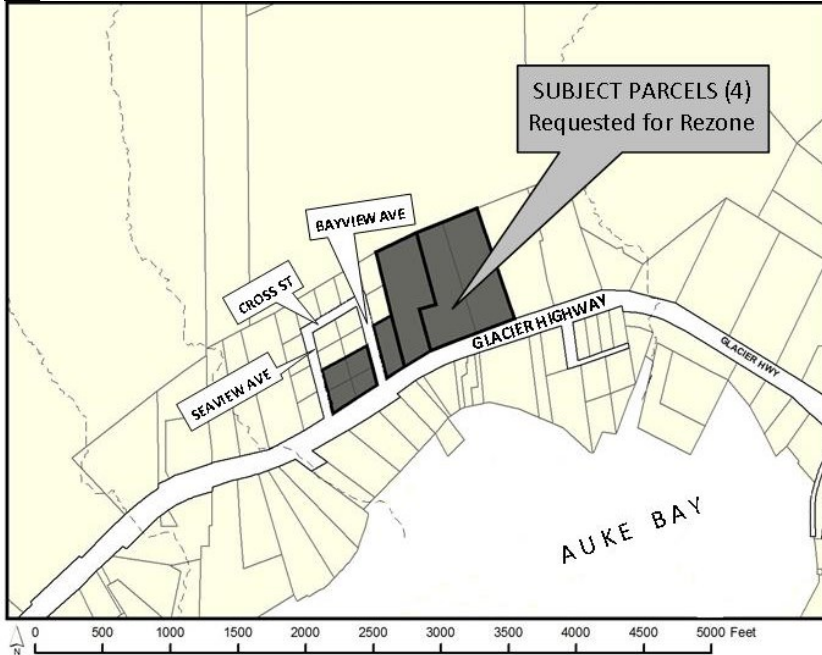
Sincerely,

Mark Schwan and Debi Ballam

12090 Cross Street

Invitation to Comment

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



COMMUNITY DEVELOPMENT

155 S. Seward Street Juneau, Alaska 99801

TO:

A request has been submitted for consideration and public hearing by the Planning Commission for a **zone change from D10** (multi-family residential, 10 dwelling units per acre) **to LC** (light commercial) **at 3853 Bayview Ave and 11950, 11998 & 12020 Glacier Highway.** 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 <http://www.juneau.org/assembly/novus.php>

Now through November 20, 2017

Your comments to the Planner, **Teri Camery**, will be included in the staff report.

Nov. 21 through 3 pm, December 12

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

HEARING DATE & TIME
7:00 pm, December 12, 2017

You may testify at the hearing in City Hall's Assembly Chambers, 155 S. Seward St., Juneau.

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: November 9, 2017

Case No.: AME2017 0013
Parcel Nos.: 4B2801040-050, -060, -070, -170
CBJ Parcel Viewer: <http://epv.juneau.org>



Planning Commission

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

PLANNING COMMISSION NOTICE OF REZONE DENIAL

Date: February 2, 2018
File No.: AME2017 0013

Douglas Island Development LLC
5405 N. Douglas Highway
Juneau, AK 99801

Proposal: A request for a zone change from D10 (residential) to LC (light commercial).

Property Addresses: 11950 Glacier Highway
11998 Glacier Highway
12020 Glacier Highway
3853 Bayview Ave

Legal Descriptions: USS 2391 Tanner Terrace Lot C Fraction (eastern portion)
USS 2391 Tanner Terrace Lot C Fraction (western portion)
Lot 1A, Block D, USS 2391 Tanner Terrace
Lots 1, 2, 7, & 8, Block C, USS 2391 Tanner Terrace

Parcel Code Numbers: 4B2801040050; 4B2801040060; 4B2801040070; 4B2801040170

Hearing Dates: December 12, 2017, and January 23, 2018

For reasons stated by Planning Commissioners at the Planning Commission's regular public meeting on December 12, 2017, the requested rezone from D10 to Light Commercial was denied. For reasons stated by Planning Commissioners on January 23, 2018, the motion for reconsideration failed.

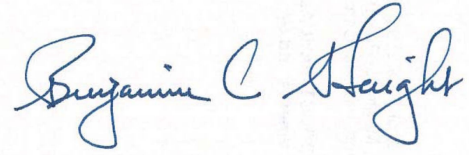
Attachments: Minutes from December 12, 2017; Minutes from January 23, 2018.

This recommendation to deny the rezoning constitutes a final legislative decision of the CBJ Planning Commission. A protest must be brought to the CBJ Assembly in accordance to CBJ 49.75.130(b). Protests must be filed by 4:30 P.M. on the date twenty days from the date the decision is filed with the City Clerk, pursuant to CBJ 49.75.130(b).

Douglas Island Development LLC
File No.: AME2017 0013
February 2, 2018
Page 2 of 2

Project Planner: _____

Teri Camery, Planner
Community Development Department



Benjamin Haight, Chair
Planning Commission



Filed With City Clerk

February 7, 2018

Date

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.



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

DATE: January 12, 2018

TO: Planning Commission

FROM: Allison Eddins, Planner *A. Eddins*
Community Development Department

FILE NO.: USE2017 0028

PROPOSAL: A Conditional Use Permit for a marijuana retail store.

GENERAL INFORMATION

Applicant: The Mason Jar, LLC

Property Owner: Building Pros Inc.

Property Address: 2771 Sherwood Lane

Legal Description: Lot 5B, Andsoh

Parcel Code Number: 4B1701104000

Site Size: 15,559 sq. ft.

Comprehensive Plan Future Land Use Designation: Heavy Industrial (HI)

Zoning: Industrial (I)

Utilities: City water & sewer

Access: Sherwood Lane

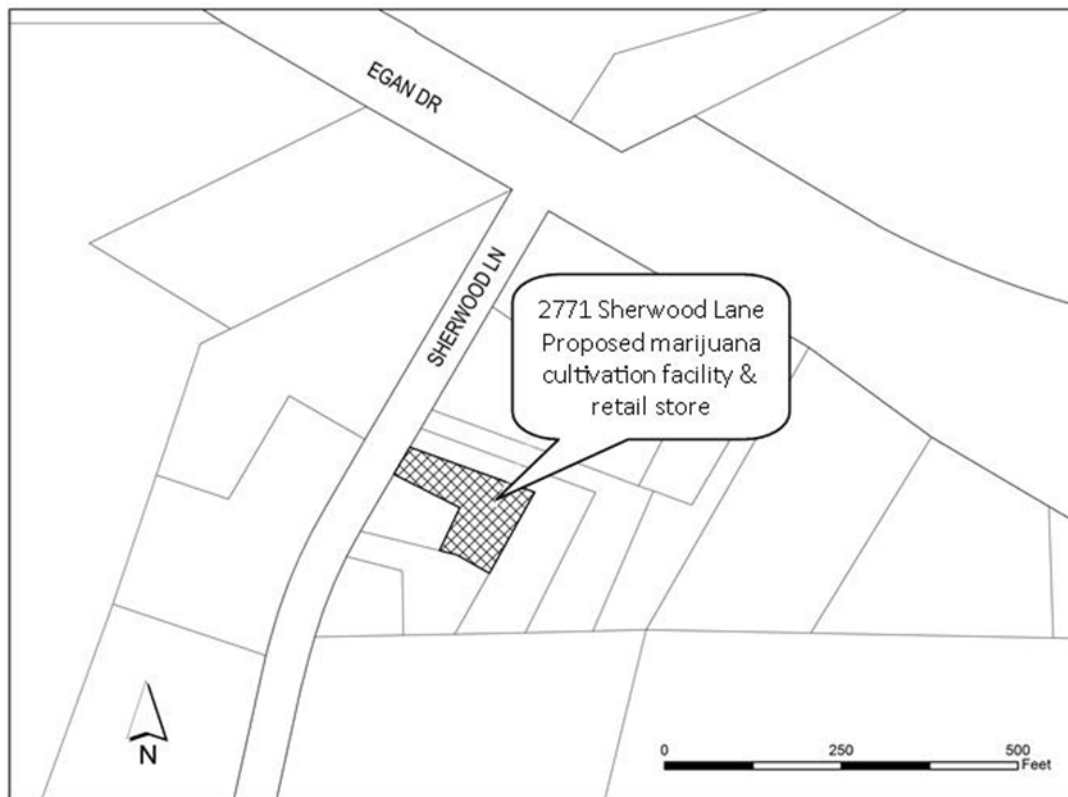
Existing Land Use: Storage and caretaker's unit

Planning Commission
File No.: USE 2017 0028 - retail
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Surrounding Land Use:

North	- Industrial (I)/ Vacant
South	- Industrial (I)/ Boat Condo and caretaker's unit
East	- Industrial (I)/ Vacant
West	- Industrial (I)/ State of Alaska Dept. of Motor Vehicles and State Trooper's Office

VICINITY MAP



ATTACHMENTS

Attachment A – Development Permit and Conditional Use Permit Applications
Attachment B – Project Narrative
Attachment C – Floor Plan & Surveillance and Lighting Plan
Attachment D – Public Notice

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PROJECT DESCRIPTION

The applicant requests a Conditional Use permit for the development of a 1,522 square foot marijuana retail facility located in an Industrial zoning district. There is a pending Conditional Use permit (USE2017 0029) for the development of an un-related 1,200 square foot marijuana cultivation facility that would be located on the same lot.

BACKGROUND

The subject lot, Lot 5B, is located in the ANDSOH Subdivision (Plat 2014-54). In 2015, a Variance (VAR2015 0016) was granted to allow for an access and utility easement to be within the 50 foot anadromous stream buffer for Pederson Hill/Casa del Sol Creek. A portion of this easement is on Lot 5B. The variance (VAR2015 0016) was approved with 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 Prior to issuance of a Building Permit and/or Grading and Paving Permit for Lots 5, 7, 8, and 9 of ANDSOH Subdivision, a Deed Restriction shall be placed on Lots 5, 7, 8, and 9 stating that the access and utility easement shall not be improved with impervious surfacing.
- 3 No development of primary or accessory buildings shall occur within 50 feet of Pederson Hill/ Casa del Sol Creek.
- 4 Prior to Plat Amendment, a Snow Storage Note shall be placed on the ANDSOH Subdivision Plat stating: "Snow storage shall be placed on the uphill side of the bioswale for Access and Utilities Easements within ANDSOH Subdivision, with runoff captured by the bioswale."

Conditions 2, 3 and 4 have been met. The building is still under construction and currently has an open building permit (BLD2017 0123). Condition 1 must be met prior to a Certificate of Occupancy being issued. Staff recommends this condition also be a condition of approval of this Conditional Use Permit.

The applicant has submitted an application with the State of Alaska Marijuana Control Board and will obtain a CBJ Marijuana License if both the state license and this Conditional Use Permit are approved. The inspection required for the CBJ marijuana license will ensure that the applicant is held to the plans proposed, to special use requirements found in CBJ 49.65.1200, and to any conditions required with this permit.

According to CBJ 49.65.1245(e), an approved Conditional Use Permit for marijuana establishments is subject to review by the Commission every five years from the date of issuance.

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ANALYSIS

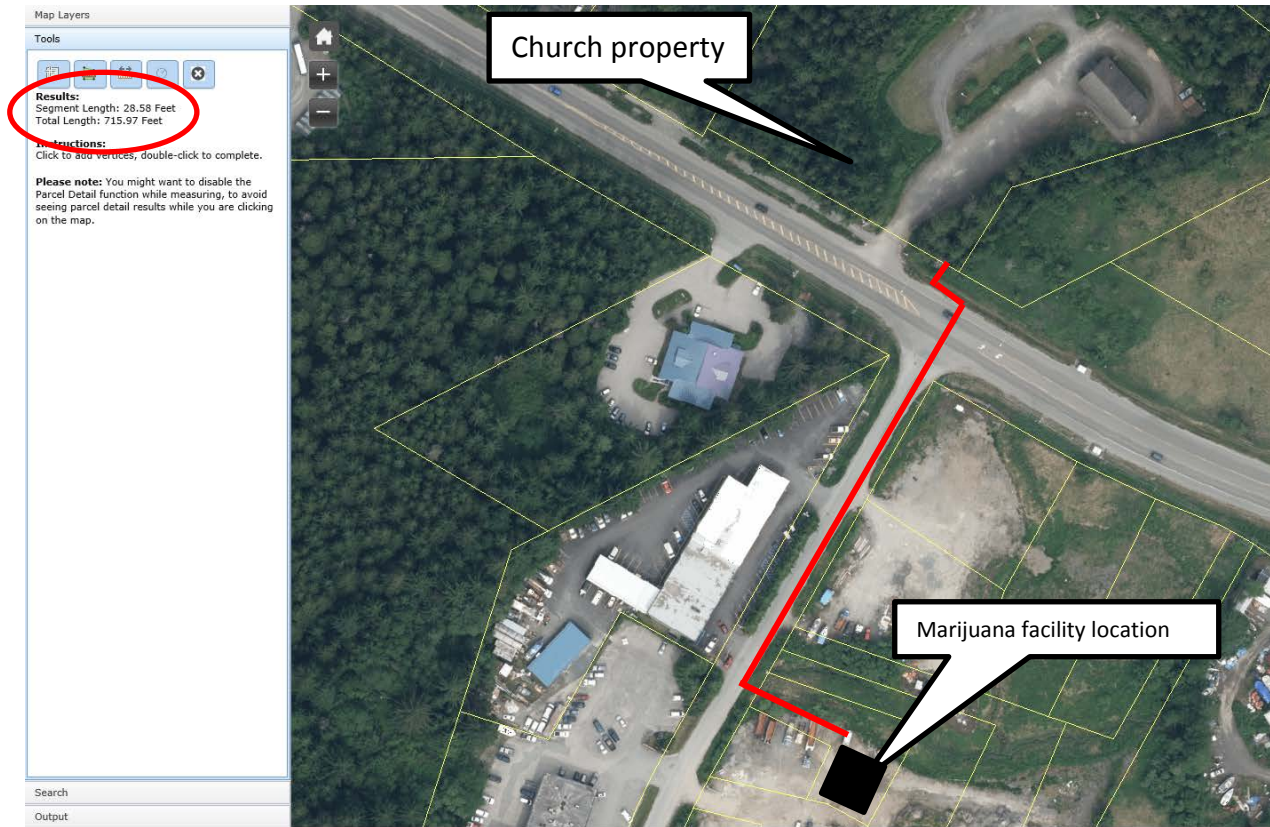
Project Site – The Industrially zoned subject lot is 15,559 square feet and meets the minimum lot width and depth requirements. It was platted in 2017 and is accessed via Sherwood Lane.

The State Marijuana Ordinance 3 AAC 306.010 *License restrictions* states that all marijuana facilities must be located more than 500 feet from school grounds, recreation or youth centers, building which regularly conduct religious services, and correctional facilities.

The State Department of Corrections recently announced the opening of a pre-trial services facility that will be located across the street from the subject lot in the State Trooper's Office building. CBJ 49.80 defines a correctional facility as *a facility providing for the imprisonment or physical confinement of persons under guard or 24 hour physical supervision such as a prison, jail, detention center, halfway house, and similar facilities*. According to public statements released by the Department of Corrections, the pre-trial facility will not be a holding facility and will serve persons who have been charged with a crime but have yet to appear in court or be convicted. Therefore, the facility is not a correctional facility.

Christ Evangelical Lutheran Church of Juneau is located at 10300 Glacier Highway. The State Marijuana Ordinance requires that the distance between a marijuana facility and a church be measured by the shortest pedestrian route from the public entrance of the building in which the licensed premises would be located to the outer boundary of the church. Using the measuring tool in ARC GIS, staff measured the distance as described by the state requirements. Using this tool, the entrance of the proposed marijuana retail business is 716 feet from the church property line. The location of the requested conditional use meets the requirements of 3 AAC 306.010. The aerial image below is from 2013, and as mentioned previously, the subject building is currently under construction and therefore does not appear in this image. The black square on the subject lot shows the approximate location of the building.

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Project Design – The existing building is a 7,200 square foot, two story structure with three storage units on the first floor and a caretaker's unit above. The 1,522 square foot marijuana retail facility will be located in storage unit A.

The retail space will be accessed directly through a window-less person door located on the western exterior wall of the unit. This will be the only entry into the retail facility. The retail space will be approximately 560 square feet and will contain one ADA compliant restroom. The facility will include a packaging room, a storage room, a small corridor, and a safe room. There is a 400 square foot mezzanine above the packaging room and office. The applicant plans to use this space as additional storage. Only the retail space and the restroom will be accessible to customers. The packaging, storage, and office/safe room will be restricted access areas only accessible with keys.

Customers will have their identification checked immediately upon entering the premises. State regulations require a sign to be posed at the entry stating "No One Under 21 Years of Age is Allowed." Customers will not be able to access products without a handler present. All products will be displayed in cases or on shelving behind a counter which will be staffed by permitted marijuana handler. Initially there will be four employees. Once the facility is fully operational 1 or 2 additional employees may be hired. The applicant anticipates that at least two employees will be on site at any given time. All employees will be required to obtain the certification and training that complies with State regulations.

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The applicant will use a marijuana tracking system that is compliant with state marijuana regulations.

The retail facilities' hours of operation will be Monday–Thursday 10:30am to 8:00 pm, Friday and Saturday 10:30 am to 10:00pm, and Sunday 11:00am to 6:00pm. These hours are consistent with State and local regulations. The applicant plans to install one exterior sign above the exterior entryway. The sign will require an approved CBJ sign permit.

CBJ 49.65.1245 identifies additional submittal requirements for marijuana establishments. Those items are reviewed in detail below.

Screening – CBJ 49.65.1245 (a) (4) prohibits marijuana product from being visible to the public from the right-of-way. The entry door into the facility, located on the western side of the building, does not have a window. There are also no windows on any of the exterior walls of the retail facility.

Security – According to CBJ 49.65.1245(a)(2), applicants are required to submit a security plan. State regulations require exterior lighting, alarm systems, video monitoring and commercial grade door locks. The entire building will have eleven (11) exterior lights – four 30 watt LED dark sky compliant fixtures and seven 12 watt LED down light fixtures. One of those lights will be focused on the entry door into the retail facility. The safe room will house the surveillance hardware and safe. Ten surveillance cameras will be installed in the interior space – five in the retail space, two in the corridor, and one each in the storage, packaging, and safe rooms. Five surveillance cameras will be installed along the exterior perimeter – two near the entry way, one on the southwest corner and two along the southern wall. Surveillance cameras will operate 24/7 and will have the capacity to hold up to 40 days of recordings. The exterior door will be alarmed and all motion and contact sensors will be activated when the facility is closed. The caretaker's unit above will add an extra layer of security (see Attachment C). In order to eliminate glare onto neighboring properties all exterior lighting fixtures shall be a full cut-off design. Staff recommends this as a condition of approval.

Ventilation and Filtration/Odor – The HVAC system will include carbon filters to scrub the air of odor before it exists the facility either through the ventilation system or through the entrance to the retail area (see Attachment B).

Waste Disposal – Any unsalable marijuana product will be disposed of according to the State waste disposal regulations, which include grinding up the waste and mixing it with another organic material in order to render the product unusable. Staff recommends, as a condition of approval, that all waste containing marijuana product shall be stored in a locked enclosure until transported to the CBJ landfill.

CBJ 49.15.330(g) identifies the general items that staff reviews for all Conditional Use Permits. Those items are reviewed below.

Traffic – Traffic to and from the site will consist mostly of employees, customers, and occasional deliveries. Although it cannot be certain at this time, the applicant anticipates purchasing most of their marijuana product from the proposed cultivation facility that will

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operate on-site (USE2017 0029). This will make delivery traffic minimal. As mentioned above, the applicant anticipates a total of four employees. The number of employees may increase to six once the facility is fully operational. However, the applicant has indicated that it is expected that two employees will work at the same time. The applicant anticipates approximately 3 to 5 customer trips per hour, for an average of 50 trips per day. For a previous marijuana retail proposal, staff determined the most similar use in the ITE Trip Generation Manual to be a pharmacy or drugstore, which is estimated to generate an average of 45 trips per day. CBJ 49.40.300 states that a traffic impact analysis is not required when a development is projected to generate less than 250 average trips per day.

Parking and Circulation – According to CBJ 49.40.210, the total number of parking spaces required for the existing and proposed uses on site is nine. The building contains three storage units; units A and B will be converted to accommodate marijuana facilities and unit C is serving as a garage and boat storage for the caretaker's unit. It should be noted that if, in the future, any of the proposed uses should change, the change could affect the number of required parking spaces.

Use	Parking Requirements	Size of Use	Parking spaces required
Marijuana Retail (proposed)	1 space/300 sq. ft.	1,500 sq. ft.	5
Marijuana Cultivation (proposed USE2017 0029)	1 space/1,000 sq. ft.	1,200 sq. ft.	1
Office in cultivation facility (proposed USE2017 0029)	1 space/300 sq. ft.	150 sq. ft.	1
Caretaker's Unit (existing)	2	N/A	2
Total			9

CBJ 49.40.210(b)(3) requires that sites with a parking requirement of 1 to 25 parking spaces, one ADA accessible space must be provided. The retail use does not require an off-street loading space because it is less than 5,000 square feet, per CBJ 49.40.210(c)(2). In order to ensure that all parking requirements are met, staff recommends the following condition:

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).

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Noise – Surrounding uses include the Department of Motor Vehicles, Alaska State Trooper's Office, and the CCFR training facility. All retail activity will take place inside. The noise level that will be generated by the proposed facility is not expected to be greater than the noise level from surrounding uses and is expected to be less than many other uses allowed in the Industrial zone.

Public Health or Safety – The applicant's proposal meets all of the state and local requirements for security including an alarm system, surveillance cameras, exterior lighting, commercial grade door locks, and the appropriate signage. Carbon filters will be used in the ventilation and filtration system to manage marijuana odor. The existing structure meets all zoning requirements for height and setback and will meet all applicable building code requirements for fire safety. Fire vehicle access to the property will be via city rights-of-way. No public health or safety concerns have been raised by this proposal and the Fire Marshal had no comments.

Vegetative Cover – CBJ 49.50.300 requires that five percent of the site be maintained with live vegetative coverage. For this site, 777 square feet must be covered with live vegetation. Staff recently visited the site and noted that the vegetative cover requirement has not been met. As mentioned previously, the building is still under construction. A condition of the building permit (BLD2017 0123) states that prior to issuance of a certificate of occupancy the vegetative cover requirement must be met. Staff recommends this condition be placed on this use as well.

Habitat – Pederson Hill/Casa del Sol Creek is identified as an anadromous stream. CBJ 49.70.310(a)(4) states that development within 50 feet of the banks of anadromous streams is prohibited. The closest exterior wall of the building is 63 feet from the bank of the creek. The subject lot did receive a Variance to allow a utility/access easement to be within the 50 foot stream side setback. A condition of the Variance approval restricts the easement from being developed with an impervious surface. No further development is allowed to happen within the buffer and none is proposed by this application.

Property Value or Neighborhood Harmony – The area is zoned Industrial and the proposed development is in keeping with expected activities in this zoning district. The applicant will comply with screening requirements, odor control, and waste management in conformance with CBJ Code. The CBJ Assessor has indicated that marijuana related uses do not appear to have a negative impact on surrounding property values. At the time of the writing of this staff report no comments were received from the public. There is no evidence to suggest that the proposed use will have a negative impact on property values or be out of harmony with the neighborhood.

Conformity with Adopted Plans – The proposed development is located in Subarea 3 (Auke Bay, Mendenhall Peninsula, West Mendenhall Valley) of the 2013 Comprehensive Plan's land use maps and has a land use designation of Heavy Industrial (HI). The 2013 Comprehensive Plan defines Heavy Industrial as follows:

Heavy Industrial (HI) – Land to be developed for heavy industrial uses such as large scale food production and/or processing; large scale or industrial related repair activities; metal fabrication; wholesale trade; manufacturing processes;

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 January 12, 2018
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warehousing; outdoor storage; trucking; animal kennels; crematoria; repair and maintenance uses; resource extraction and processing such as gravel pits, rock crushing facilities, cement batch plants, asphalt plants, fuel tanks, stump dumps, salvage yards, landfill sites; aircraft facilities; and other similar large scale or noisy and/or noxious industrial activities. Some recreational uses should be permitted, including sport vehicle, All Terrain Vehicle (ATV) or snowmobile motor course facilities, shooting ranges, and other similar noise-generating uses. Residential, office, retail, and personal service uses are not to be allowed, except that residential caretaker facilities should be permitted.

Although the Comprehensive Plan definition of the HI zone states that retail uses should not be allowed, the property is zoned Industrial and CBJ 49.25.300 *Table of Permissible Uses subsection 2.300 Marijuana retail store*, allows this use in this location.

Staff further reviewed the 2013 Comprehensive Plan for policies that may be relevant to the proposal:

POLICY 5.1. TO DEVELOP AND SUSTAIN A DIVERSE ECONOMY, PROVIDING OPPORTUNITIES FOR EMPLOYMENT FOR ALL RESIDENTS

POLICY 5.11 TO ENCOURAGE THE LOCATION AND GROWTH OF LOCALLY-BASED SECTOR INDUSTRIES THAT PROVIDE YEAR-ROUND, FULL-TIME EMPLOYMENT AND PROVIDE TAX REVENUES THAT SUPPORT PUBLIC SERVICES

POLICY 5.18. TO ENCOURAGE AND SUPPORT ENTREPRENEURSHIP AND INNOVATION IN THE ECONOMY OF JUNEAU AND SOUTHEAST ALASKA

The proposed development would help to diversify the economy and is a new business as encouraged by these policies. The applicant's proposed marijuana retail facility is in general conformity with the 2013 Comprehensive Plan.

FINDINGS

CBJ 49.15.330 (e)(1), Review of Director's Determinations, states that the Planning Commission shall review the Director's report to consider:

1. Whether the application is complete;
2. Whether the proposed use is appropriate according to the Table of Permissible Uses;
and,
3. Whether the development as proposed will comply with the other requirements of this chapter.

Planning Commission
 File No.: USE 2017 0028 - retail
 January 12, 2018
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The Commission shall adopt the Director's determination on the three items above unless it finds, by a preponderance of the evidence, that the Director's determination was in error, and states its reasoning for each finding with particularity.

CBJ 49.15.330(f), Commission Determinations, states that even if the Commission adopts the Director's determination, it may nonetheless deny or condition the permit if it concludes, based upon its own independent review of the information submitted at the public hearing, that the development will more probably than not:

1. Materially endanger the public health or safety;
2. Substantially decrease the value of or be out of harmony with property in the neighboring area; or,
3. Not be in general conformity with the comprehensive plan, thoroughfare plan, or other officially adopted plans.

Per CBJ 49.15.330(e) & (f), *Review of Director's & Commission's Determinations*, the Director makes the following findings on the proposed development:

1. *Is the application for the requested conditional use permit complete?*

Yes. Staff finds the application contains the information necessary to conduct full review of the proposed operations. The application submittal by the applicant, including the appropriate fees, substantially conforms to the requirements of CBJ Chapter 49.15.

2. *Is the proposed use appropriate according to the Table of Permissible Uses?*

Yes. The requested permit is appropriate according to the Table of Permissible Uses. The permit is allowed in the Industrial zoning district under CBJ 49.25.300, Section 2. .

3. *Will the proposed development comply with the other requirements of this chapter?*

Yes. The proposed development complies with the other requirements of this chapter. Public notice of this project was provided in the January 12, 2018 and January 22, 2018 issues of the Juneau Empire's "Your Municipality" section, and a notice of public hearing was mailed to all property owners within 500 feet of the subject parcel. Moreover, a public notice sign was posted on the subject parcel, visible from the public Right of Way. Additionally the proposed development complies with CBJ 49.65.1245.

4. *Will the proposed development materially endanger the public health or safety?*

No. Based on the preceding analysis and application materials, the applicant has proposed a surveillance and security system that meets the minimum state and local regulations. Further, all Title 19 and Title 49 requirements must be met prior to the issuance of a Certificate of Occupancy and a CBJ Marijuana License ensuring the public health, safety, and welfare. No evidence indicates that the proposed development will endanger the public health or safety.

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5. *Will the proposed development substantially decrease the value of or be out of harmony with property in the neighboring area?*

No. The proposed use will be located in an industrially zoned district near several large institutional uses. Based on the preceding analysis, the proposed marijuana retail facility is not expected to decrease the value of or be out of harmony with property in the neighborhood.

6. *Will the proposed development be in general conformity with the land use plan, thoroughfare plan, or other officially adopted plans?*

Yes. The development of private businesses in Juneau is supported by the CBJ 2013 Comprehensive Plan, specifically policies 5.1, 5.11, and 5.18. Further, the Industrial land use zoning district in CBJ Title 49 supports retail uses.

Per CBJ 49.70.900 (b)(3), General Provisions, the Director makes the following Juneau Coastal Management Program consistency determination:

7. *Will the proposed development comply with the Juneau Coastal Management Program?*

N/A

RECOMMENDATION

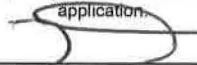
It is recommended that the Planning Commission adopt the Director's analysis and findings and grant the requested Conditional Use Permit. The permit would allow the development of a 1,500 square foot marijuana retail facility in the Industrial zoning district.

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.

DEVELOPMENT PERMIT APPLICATION

Project Number	CITY and BOROUGH of JUNEAU	Date Received: 12/18/17
Project Name (City Staff to Assign Name)		

PROJECT / APPLICANT INFORMATION	Project Description Converting a storage unit to a 1522 sq. ft. marijuana retail store		
	PROPERTY LOCATION		
	Street Address 2771 Sherwood Lane	City/Zip Juneau, 99801	
	Legal Description(s) of Parcel(s) (Subdivision, Survey, Block, Tract, Lot) ANDSOH LT 5 B		
	Assessor's Parcel Number(s) 4B1701104000		
	LANDOWNER/ LESSEE		
	Property Owner's Name Dan Miller	Contact Person: same	Work Phone: 907-723-2298
	Mailing Address PO BOX 32098 Juneau, AK 99803	Home Phone:	Fax Number:
	E-mail Address Dmiller@gci.net	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		12-15-17	
	Landowner/Lessee Signature	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 The Mason Jar LLC		Contact Person: Denny Lavigne	Work Phone: 907-723-6508
Mailing Address PO BOX 35264 Juneau, AK 99803		Home Phone:	Fax Number:
E-mail Address denny@akmasonjar.com, ali@akmasonjar.com		Other Contact Phone Number(s):	
X			
	Applicant's Signature	Date of Application	

-----OFFICE USE ONLY BELOW THIS LINE-----

STAFF APPROVALS	☒	Permit Type	***SIGN	Date Received	Application Number(s)
		Building/Grading Permit			
		City/State Project Review and City Land Action			
		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)		12/18/17	USE 20170028
		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

NOTE: DEVELOPMENT PERMIT APPLICATION FORMS MUST ACCOMPANY ALL OTHER COMMUNITY DEVELOPMENT DEPARTMENT APPLICATIONS



ALLOWABLE/CONDITIONAL USE PERMIT 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

Converting a storage unit to a 1,522 sq. ft. marijuana retail store

TYPE OF ALLOWABLE OR CONDITIONAL USE PERMIT REQUESTED

☐ Accessory Apartment – Accessory Apartment Application (AAP)

☒ Use Listed in 49.25.300 – Table of Permissible Uses (USE)

Table of Permissible Uses Category: 2.300 marijuana retail store

IS THIS A MODIFICATION or EXTENSION OF AN EXISTING APPROVAL?

☐ YES – Case # _____

☒ NO

UTILITIES PROPOSED

WATER: ☒ Public ☐ On Site

SEWER: ☒ Public ☐ On Site

SITE AND BUILDING SPECIFICS

Total Area of Lot 15,559 square feet

Total Area of Existing Structure(s) 7,200 square feet

Total Area of Proposed Structure(s) 1,522 square feet

EXTERNAL LIGHTING

Existing to remain

☐ No

☒ Yes – Provide fixture information, cutoff sheets, and location of lighting fixtures

Proposed

☐ No

☐ Yes – Provide fixture information, cutoff sheets, and location of lighting fixtures

ALL REQUIRED DOCUMENTS ATTACHED

☐ Narrative including:

- ☐ Current use of land or building(s)
- ☐ Description of project, project site, circulation, traffic etc.
- ☐ Proposed use of land or building(s)
- ☐ How the proposed use complies with the Comprehensive Plan

If this is a modification or extension include:

- ☐ Notice of Decision and case number
- ☐ Justification for the modification or extension
- ☐ Application submitted at least 30 days before expiration date

☐ Plans including:

- ☐ Site plan
- ☐ Floor plan(s)
- ☐ Elevation view of existing and proposed buildings
- ☐ Proposed vegetative cover
- ☐ Existing and proposed parking areas and proposed traffic circulation
- ☐ Existing physical features of the site (e.g.: drainage, habitat, and hazard areas)

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

ALLOWABLE/CONDITIONAL USE FEES				
	Fees	Check No.	Receipt	Date
Application Fees	\$ <u>500</u> ⁰⁰			
Admin. of Guarantee	\$ _____			
Adjustment	\$ _____			
Pub. Not. Sign Fee	\$ <u>50</u> ⁰⁰			
Pub. Not. Sign Deposit	\$ <u>100</u> ⁰⁰			
Total Fee	\$ <u>650</u> ⁰⁰			

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.

Case Number	Date Received

Attachment A

The Mason Jar LLC

PO Box 35264

Juneau, AK 99803

P: 907-723-6508

F: 907-789-8473

Project Description

We are requesting a Conditional Use permit for the development of a 1,522-square foot marijuana retail store on an industrial zoned lot in the Mendenhall Valley area.

The location of the proposed retail store is in a building located on Sherwood Lane off Glacier Highway. The specific unit being considered is one of four total units in the building. We will be converting a storage unit to a retail store front. Other occupants of this building would include the landlord/owner's personal residence above the proposed location, Building Pro's Inc company shop space next to us and a small cultivation facility behind us. This cultivation facility is NOT associated with our retail store.

The location of the proposed marijuana retail store meets state distance requirements from schools, recreation or youth centers, buildings in which religious services are regularly conducted, or correctional facilities.

Utilities

All utilities for the proposed building of the retail store will be city provided.

Hours of Operation

Our proposed hours of operation would be as follows:

M-THUR 1030-8PM

F-SAT 1030-10PM

SUN- 11-6PM

Sign(s)

We will have one sign only that will be placed above our main entrance. It will be approximately in size and will be illuminated but done in such a way that it will not negatively impact neighboring lots/businesses.

Employees

To start, only the owners and their spouses would be working in the store (a total of 4 people) but at different times. All of us would have obtained the required certification/training to comply with AMCO and CBJ regulations. When the store is at capacity and in need of more help we plan to hire 1-2 additional employees which would also be certified/trained. At any given time during business hours there would be a minimum of 2 employees at all times.

Parking/Traffic

Per CBJ title 49 parking requirements (retail - 1 space/300 sq. ft.) we will have a total of 5 spaces as our total square footage is 1,522. One of these will be a designated ADA space with the required 13ft. by 17ft. dimensions. There will also be one loading space as required.

There is only one street to the proposed building site. The parking and traffic entrance/exit is specified on attachment C.

CO2/Smoke detectors

The proposed unit for the retail store will have the required CO2 and smoke alarms to be in compliance with local and state regulations.

Security

The building security system will include commercial door hardware, surveillance cameras, extra exterior lighting and an alarm system to be installed and monitored by Doaks Lock and Key.

-Lighting

Exterior security lights will be installed above main/public entry and along front of the store/building. This is the only exterior entry to the retail store unit for both staff and public. The lighting will be installed to illuminate the entry way and will not negatively impact neighboring lots. Placement of these lights is specified on attachment A included with this application.

-Alarm system

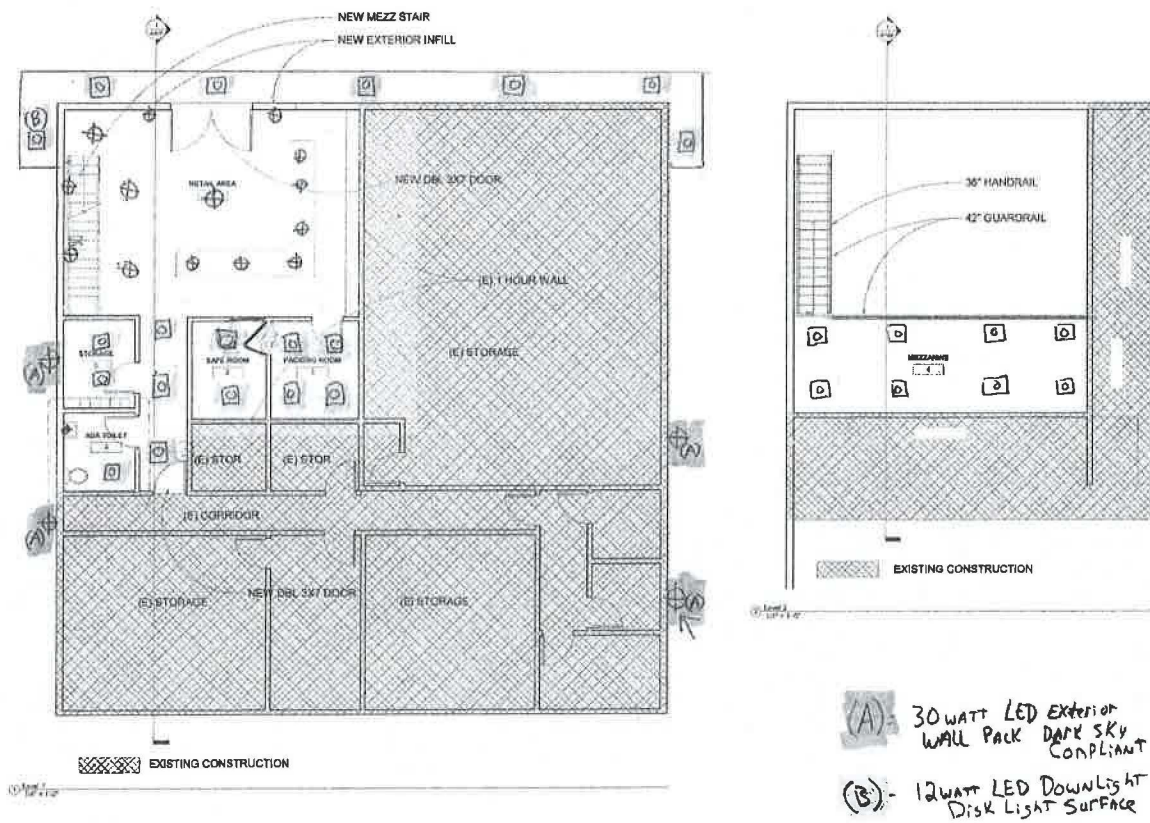
The alarm system will be installed by Doaks Lock and Key and will be monitored by LJ Alarm. This includes motion sensors in the store during non-business hours. All exterior doors will also have a sensor. There are no windows in the retail unit. A keypad will be installed to activate alarm system. If alarm is activated the owner and local law enforcement will be immediately notified.

-Video Surveillance System

Video surveillance cameras will be placed at the interior and exterior of the entrance of the retail unit with an unobstructed view of entrance. Camera placement has been specified on attachment B included with this application. Cameras will be placed in each of the rooms in the retail unit (safe, packaging and storage room, and main retail area) with the exception of the restroom. These cameras will be placed so that there is a clear view of the primary entrance to each room. Cameras will monitor all regular activity without any slight blockage. This will allow for the clear and certain identification of any person and activity in the areas where marijuana is present. Video recording equipment will be housed in a locked cabinet on site. Surveillance cameras will operate 24/7 and have the capability to hold 40 days' worth of footage. The video footage will be archived in a format that does not permit alteration of the recording images. All video surveillance will clearly and accurately display the time and date of recording. It will be surge and power outage protected as to not interrupt the recording.

If approval for our CUP is granted we would move forward with completing our unit in the building. Our intent is to have our store open within the next six months. We would not be making any changes to the proposed location from the current building plans.

We are in the final stages of completing our State of Alaska AMCO application at which point we will finalize with the state. Upon approval of the AMCO application and this CUP we would be eligible to obtain a CBJ Marijuana License.



W

N

NorthWind Architects LLC

1201 Seward St
Jupiter, FL 33401
PH: (561) 746-8150
www.northwind-arh.com

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**IF THE ABOVE INFORMATION DOES NOT
APPEAR IN THE 2004 SOURCEBOOK, YOU
WILL RECEIVE A FREE SOURCEBOOK
DELIVERED BY AIRMAIL, APPROXIMATELY
ONE MONTH AFTER THE SOURCEBOOK
CLOSING DATE.**

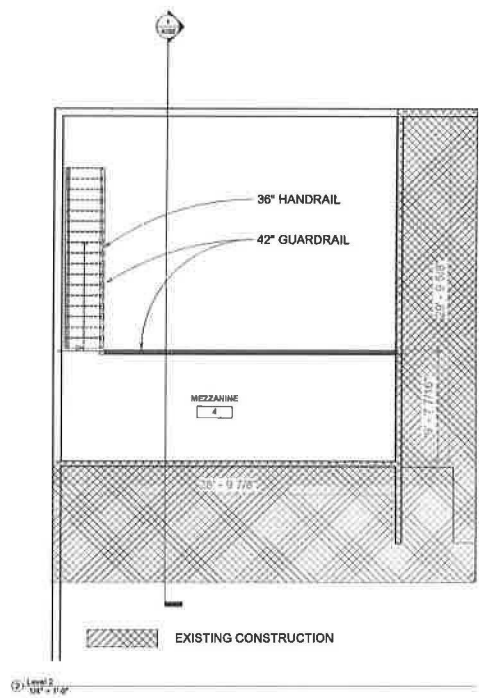
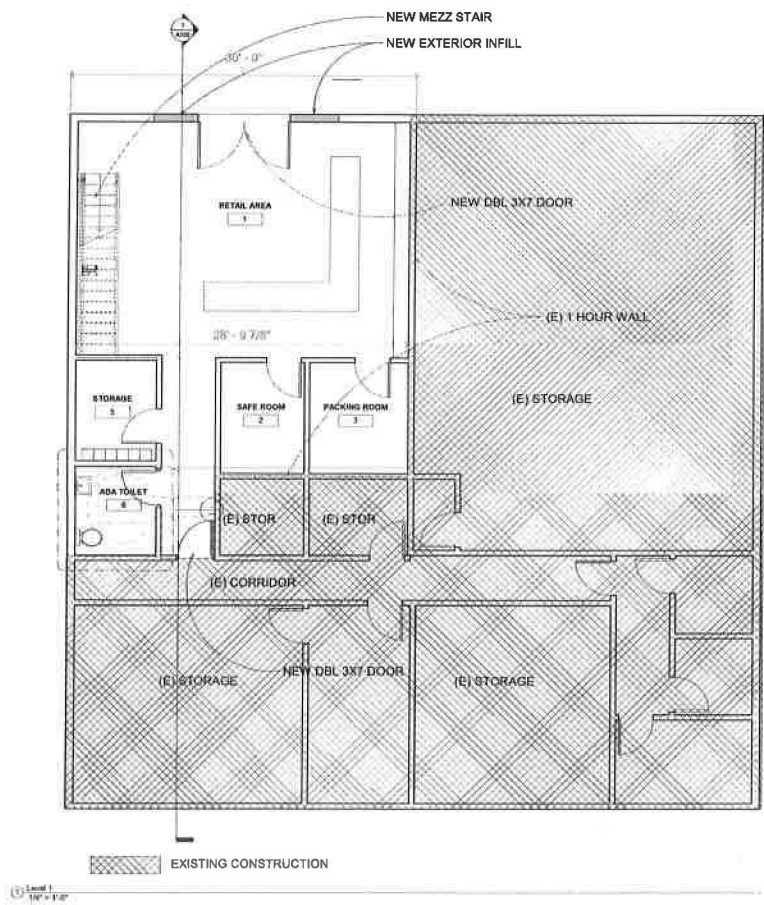
Miller Retail TI - A

NWA NWA-1752
2771 Sherwood Lane
Juneau, AK 99801

T1 - FLOOR PLAN

ISSUED	Checker
DATE	Author

A101



IF THE ABOVE DRAWING IS USED FOR ANY PURPOSE OTHER THAN THAT SPECIFICALLY INTENDED BY THE ARCHITECT, THE USER SHALL BE RESPONSIBLE FOR ANY ERRORS OR OMISSIONS. THE ARCHITECT ASSUMES NO LIABILITY FOR SUCH ERRORS OR OMISSIONS.

Miller Retail TI - A

NWA NWA-1752
2771 Sherwood Lane
Juneau, AK 99801

TI - FLOOR PLAN

PREPARED	CHECKED
DATE	DATE
BY	BY

A101
11/07/17
Issue Date

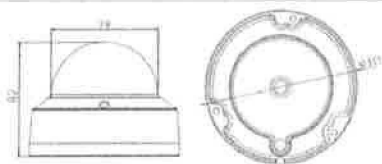
DS-2CD2100F-I Series IR Dome Network Camera



Key Features

- 1.3 MP/3 MP High Resolution
- HD Real-Time Video
- 3D DNR, DWDR, and BLC
- IR LEDs: Up to 100 Feet
- IP66 Protection
- IK10 Vandal Resistant
- PoE (802.3af)
- On-Board Storage (Up to 128 GB)

Dimensions



Accessories



Order Models

1.3 MP: DS-2CD2112F-I
3.0 MP: DS-2CD2132F-I

	DS-2CD2112F-I	DS-2CD2132F-I
Camera		
Image Sensor	1/3" progressive scan CMOS	
Minimum Illumination	0.028 lux @ f/2, AGC on, 0 lux with IR	0.19 lux @ f/1.2, AGC on, 0 lux with IR
Shutter Speed	1/3 sec. to 1/100,000 sec.	
	4 mm @ f/2.0 (2.8 mm, 6 mm, 12 mm optional)	4 mm @ f/2.0 (2.8 mm, 6 mm, 12 mm optional)
Lens	Angle of view: 92.5° (2.8 mm), 73.1° (4 mm), 46° (6 mm), 22° (12 mm)	2048 × 1536: Angle of view: 86° (2.8 mm), 70° (4 mm), 43.3° (6 mm), 20.6° (12 mm)
Lens Mount	M12	
Angle Adjustment	Pan: 0° to 355°, tilt: 0° to 75°, rotation: 0 to 355°	
Digital Noise Reduction	3D DNR	
Wide Dynamic Range	Digital WDR	
Day/Night	IR cut filter with auto switch	
Compression Standard		
Video Compression	H.264/MJPEG	
H.264 Codec Profile	Main profile	
Bit Rate	32 Kbps to 16 Mbps	
Dual Stream	Yes	
Image		
Max. Image Resolution	1280 × 960	2048 × 1536
Frame Rate	30 fps (1280 × 960), (1280 × 720), (704 × 576), (640 × 480)	20 fps (2048 × 1536), 30 fps (1920 × 1080), (1280 × 720)
Image Settings	Saturation, brightness, sharpness, contrast	
BLC	Yes, zone configurable	
ROI	Yes, up to 3 configurable areas	
Network		
Network Storage	Local storage: built-in microSD/SDHC/SDXC card slot, up to 128 GB; NAS	
Alarm Triggers	Line crossing detection, intrusion detection, motion detection, dynamic analysis, tampering alarm, network disconnect, IP address conflict, storage full, storage error	
Protocols	TCP/IP, ICMP, HTTP, HTTPS, FTP, DHCP, DNS, DDNS, RTP, RTSP, RTCP, PPPoE, NTP, UPnP, SMTP, SNMP, IGMP, 802.1X, QoS, IPv6, Bonjour	
System Compatibility	ONVIF, PSIA, CGI, ISAPI	
Security	Three level user authentication, password authorization, HTTPS and SSH certificate, IEEE802.1X, basic and digest authentication, watermark, IP address filtering, log-in lockout	
General Functions	Flickerless, dual stream, heartbeat, mirror, password protection, watermark	
Interface		
Communication Interface	1 RJ-45 10M/100M Ethernet interface	
Smart Features	Line crossing, intrusion detection	
General		
Operating Conditions	-30° C to 60° C (-22° F to 140° F); humidity 95% or less (non-condensing)	
Power Supply	12 VDC ±10%; PoE (802.3af)	
Power Consumption	Maximum 5 W (with IR cut filter on)	
Impact Protection	IK10	
Ingress Protection	IP66	
IR Range	100 feet	
Dimensions	Ø111 mm × 82 mm (4.4" × 3.2")	
Weight	500 g (1.1 lbs.)	

HIKVISION®

DS-2CD2125FWD-I

2 MP Ultra-Low Light Outdoor Network Dome Camera

H.265+

- Up to 2 MP High Resolution
- Full 1080p @30 fps
- 2.8 mm / 4 mm / 6 mm / 8 mm Fixed Lens
- Options
- Ultra-Low Light, 0.008 lux, DarkFighter Technology
- H.265+, H.265, H.264+, H.264
- 120dB Wide Dynamic Range
- 3D Digital Noise Reduction
- 12 VDC & PoE (802.3af)
- EXIR 2.0 with up to 100 ft (30 m) IR Range
- MicroSD card slot supports up to 128 GB
- IP67, IK10 Protection
- 3-Axis Adjustment

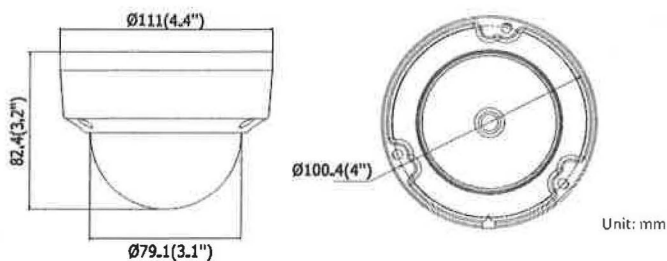


Available models:

DS-2CD2125FWD-I

Hikvision's DS-2CD2125FWD-I provides important new technology for any security application. The H.265+ codec assures savings in bandwidth and storage. The DarkFighter Ultra-Low Light technology allows for use in the most demanding lighting conditions. EXIR 2.0 technology enhances night time performance.

Dimensions



Attachment C

Specifications

DS-2CD2125FWD-I

Camera

Image Sensor	1/2.8" Progressive Scan CMOS
Minimum Illumination	Color: 0.008 lux @(F1.6, AGC ON), 0 lux with IR
Shutter Time	1/3 s to 1/100,000 s
Slow Shutter	Supported
Lens	108" (2.8 mm), 86.4" (4 mm), 52" (6 mm), 40" (8 mm)
Lens Mount	M12
Iris	F1.6
3-Axis Adjustment	Pan: 0° to 355°; Tilt: 0° to 75°; Rotate: 0° to 355°
Day and Night	IR Cut Filter
DNR	3D DNR
Wide Dynamic Range	120 dB

Compression Standard

Video Compression	Main stream: H.265+ / H.265 / H.264+ / H.264; sub stream: H.265+ / H.265 / H.264+ / H.264 / MJPEG; third stream: H.265+ / H.265 / H.264+ / H.264
H.264 Type	Main profile / high profile
H.264+	Support
H.265 Type	Main profile
H.265+	Support
Video Bit Rate	32 Kbps to 16 Mbps

Image

Maximum Resolution	1920 × 1080
Main Stream	30 fps (1920 × 1080, 1280 × 960, 1280 × 720)
Sub Stream	30 fps (640 × 360, 352 × 240)
Third Stream	30 fps (1280 × 720, 640 × 360, 352 × 240)
Image Enhancement	BLC / 3D DNR
Image Settings	Rotate mode supported. Brightness, contrast, saturation, and sharpness are adjustable via web browser and client software
ROI (Region of Interest)	Separate support for one fixed region in main and sub streams
Day / Night Switch	Auto / scheduled

Network

Network Storage	Support for microSD / SDHC / SDXC card (128G), local storage, NAS (NFS, SMB/CIFS), ANR
Alarm Trigger	Motion detection, tampering alarm, network disconnected, IP address conflict, illegal login, HDD full, HDD error
Protocols	TCP/IP, UDP, ICMP, HTTP, HTTPS, FTP, DHCP, DNS, DDNS, RTP, RTSP, RTCP, PPPoE, NTP, UPnP, SMTP, SNMP, IGMP, 802.1X, QoS, IPv6
Standard	ONVIF (PROFILE S, PROFILE G), PSIA, CGI, ISAPI
General Function	One-key reset, anti-flicker, heartbeat, mirror, password protection, privacy mask, watermark, IP address filter

Interface

Communication Interface	1 RJ45 10M/100M self-adaptive Ethernet port
On-board Storage	Built-in microSD / SDHC / SDXC slot, up to 128 GB

Smart Feature Set

Behavior Analysis	Line crossing detection, intrusion detection, unattended baggage detection, object removal detection
Line Crossing Detection	Cross a pre-defined virtual line, up to 1 pre-defined virtual line supported
Intrusion Detection	Enter and loiter in a pre-defined virtual region, up to 1 pre-defined virtual region supported
Object Removal Detection	Objects removed from a pre-defined region, such as exhibits on display
Unattended Baggage Detection	Objects left over in the pre-defined region such as baggage, purses, and dangerous materials
Face Detection	Human face appears in the image can be detected and trigger linkage

General

Operating Conditions	-22° F to 140° F (-30° C to 60° C), Humidity 95% or less (non-condensing)
Power	12 VDC ± 25%, 5 W; PoE (802.3af, class 3), 6.5 W
IR Range	Up to 100 ft (30 m)
Protection Level	IP67, IK10
Dimensions	Camera: Ø 4.4" x 3.2" (Ø 111 x 82.4 mm); Package: 5.27" x 5.27" x 4.25" (134 mm x 134 mm x 108 mm)
Weight	1.1 lbs (500 g)

Accessories

					
PC110 Pendant mount	CB110 Conduit base	AB110 Angled base	WM110 Wall mount	SRS Sun rain shield	SRSM Sun rain shield medium

HIKVISION®

DS-7732NI-I4(/16P) Embedded Plug and Play NVR

- Up to 12 MP Recording Resolution
- HDMI Output at up to 4K (3840 x 2160) Resolution
- 32 IP Camera Inputs, 256 Mbps Bandwidth
- H.265+/H.265/H.264+/H.264/MPEG4 Compression
- HDMI Video Output Up to 4K (3840 x 2160)
- Independent HDMI and VGA Outputs
- 4x SATA HDD, DVD-RW Option
- Smart Search and Smart Playback
- Alarm and Audio I/O
- 16 Independent PoE Network Interface Camera Connections (/16P Model Only)



The DS-7732NI-I4 Series NVRs provide high resolution, high video compression, and HDMI video output up to 4K. The DS-7732NI-I4/16P's 16 independent PoE connections offer easy setup. Both models include smart search and smart playback to make locating specific incidents quick and accurate.

The dual-OS design ensures high system reliability, and Hikvision's proprietary ANR technology guarantees storage reliability when the network is disconnected.

The DS-7732NI-I4 Series supports live view, recording, and storage of up to 16 cameras simultaneously, with resolutions up to 12 MP. Customers will benefit from the centralized management of cameras and features such as information import/export, real-time information display, two-way audio, and VCA detection alarms.

Available Models:

DS-7732NI-I4/16P, 32 channels with 16 PoE ports

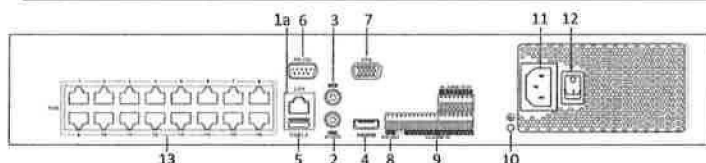
DS-7732NI-I4, 32 channels without PoE ports



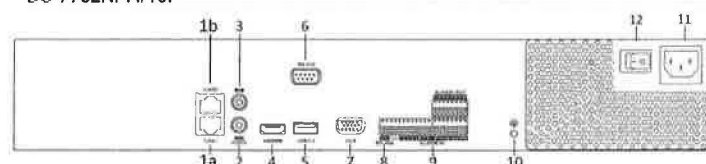
Specifications

DS-7732NI-I4/16P		DS-7732NI-I4	
Video/Audio Input			
Channels	32		
Resolution	Up to 12 MP resolution		
Two-Way Audio	1-ch, RCA (2.0 Vp-p, 1k Ω)		
Network			
Video Compression	H.265+, H.265, H.264+, H.264, MPEG4		
Incoming Bandwidth	256 Mbps		
Outgoing Bandwidth	256 Mbps		
Remote Connections	128		
Video/Audio Output			
Recording Resolution	12 MP/8 MP/6 MP/5 MP/4 MP/3 MP/1080p/UXGA/720p/VGA/4CIF/DCIF/2CIF/CIF/QCIF		
HDMI Output Resolution	4K (3840 × 2160), 1920 × 1080p, 1600 × 1200, 1280 × 1024, 1280 × 720, 1024 × 768		
VGA Output Resolution	1920 × 1080p, 1280 × 1024, 1280 × 720, 1024 × 768		
Audio Output	1-ch, RCA (linear 1k Ω)		
Decoding			
Decoding Format	H.265+/H.265/H.264+/H.264/MPEG4		
Live View/Playback Resolution	12 MP/8 MP/6 MP/5 MP/4 MP/3 MP/1080p/UXGA/720p/VGA/4CIF/DCIF/2CIF/CIF/QCIF		
Synchronous Playback	16-ch		
Audio Output	4-ch @ 4K, or 16-ch @ 1080p		
Hard Disk			
SATA	4 SATA interfaces for 4 HDDs		
Capacity	Up to 6 TB capacity for each HDD		
eSATA	1 eSATA interface		
External Interface			
Network Interface	1 x RJ-45 10/100/1000 Mbps self-adaptive Ethernet interface	2 x RJ-45 10/100/1000 Mbps self-adaptive Ethernet interfaces	
Serial Interface	1 RS-485 (half-duplex), 1 RS-232		
USB Interface	Front panel: 2 × USB 2.0; rear panel: 1 × USB 3.0		
Alarm In/Out	16/4		
PoE Interface			
PoE Interface Quantity	16 RJ-45 10/100 Mbps self-adaptive Ethernet interfaces		-
Power	≤200 W		-
Supported Standards	IEEE 802.3 at/at		-
General			
Power Supply	100 to 240 VAC		
Power	≤300 W		
Consumption (w/o Hard Disk)	≤20 W (w/o enabling PoE)		
Working Temperature	14° to 131° F (-10° to 55° C)		
Working Humidity	10% to 90%		
Chassis	19-inch rack-mounted 1.5 U chassis		
Dimensions (W x D x H)	17.5" × 15.3" × 2.8" (445 mm × 390 mm × 70 mm)		
Weight (w/o Hard Disk)	≤11 lbs (5 kg)		

Rear Panel



DS-7732NI-I4/16P



DS-7732NI-I4

No.	DS-7732NI-I4/16P	DS-7732NI-I4
1a	LAN1 Network Interface	LAN1 Network Interface
1b	---	LAN2 Network Interface
2	Audio Out	Audio Out
3	Audio In	Audio In
4	HDMI Interface	HDMI Interface
5	USB 3.0 Interface	USB 3.0 Interface
6	RS-232 Serial Interface	RS-232 Serial Interface
7	VGA Interface	VGA Interface
8	RS-485 Serial Interface	RS-485 Serial Interface
9	Alarm In and Alarm Out	Alarm In and Alarm Out
10	GND	GND
11	100 to 240 VAC Power Input	100 to 240 VAC Power Input
12	Power Switch	Power Switch
13	Network Interfaces w/PoE	---

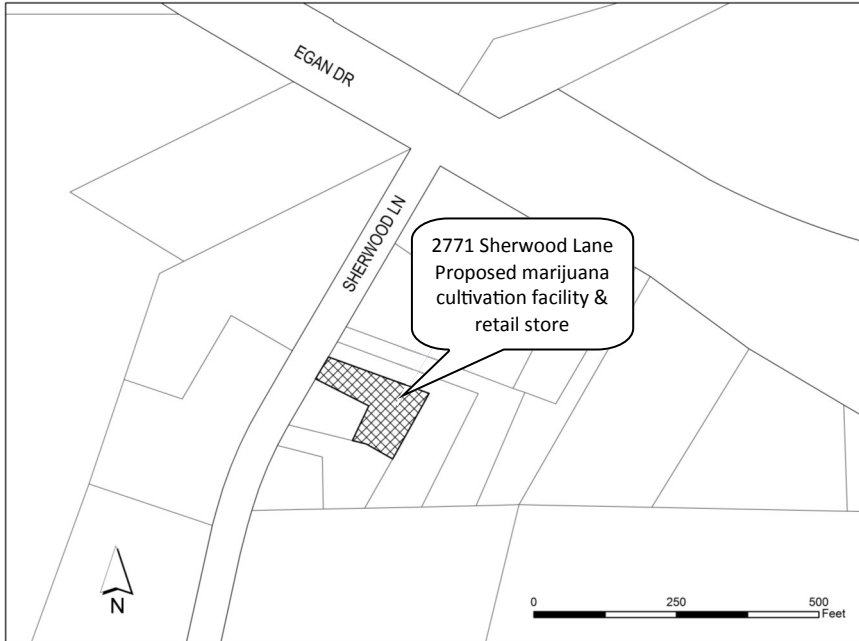
HIKVISION

Hikvision USA Inc., 18639 Railroad Street, City of Industry, CA 91748, USA • Hikvision Canada, 4848 rue Levy, St-Laurent, Quebec, Canada, H4R 2P1
 Tel: +1-909-895-0400 • Toll Free in USA: +1-866-200-6690 • E-Mail: sales.usa@hikvision.com • www.hikvision.com
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102617NA

Invitation to Comment

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



COMMUNITY DEVELOPMENT

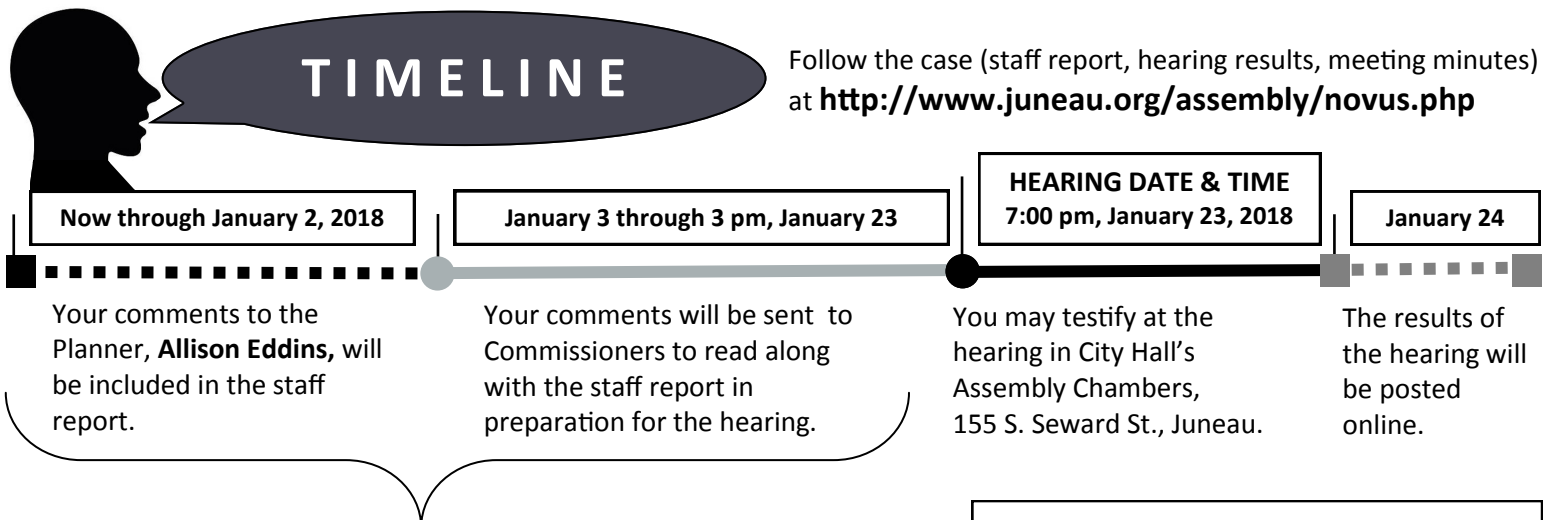
155 S. Seward Street Juneau, Alaska 99801

TO:

Applications have been submitted for consideration and public hearing by the Planning Commission for **two Conditional Use Permits** for a **marijuana retail store and a cultivation facility** located at **2771 Sherwood Lane** in an **Industrial zone**.

TIMELINE

Follow the case (staff report, hearing results, meeting minutes) at <http://www.juneau.org/assembly/novus.php>

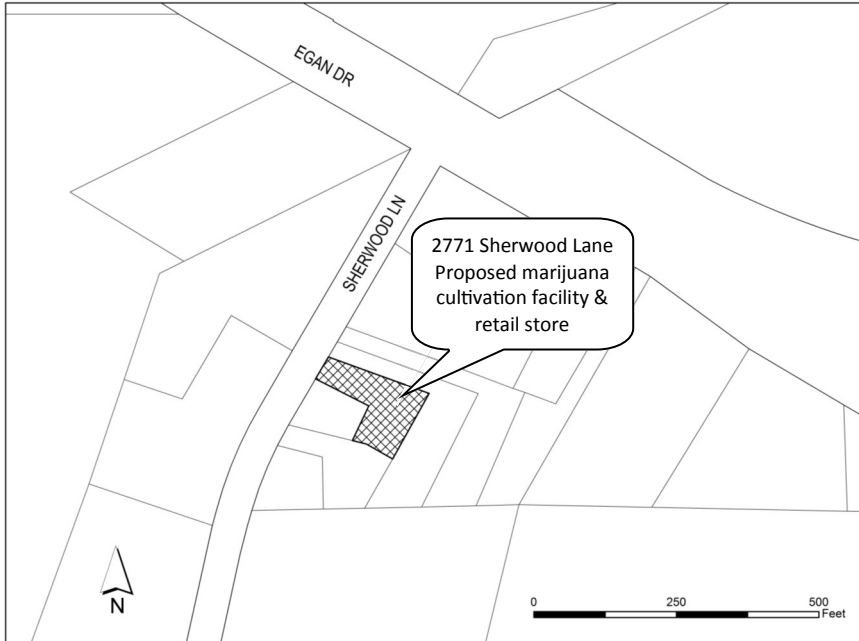


Phone: (907)586-0715 ♦ Email: pc_comments@juneau.org
Mail: Community Development, 155 S. Seward St, Juneau AK 99801

Case Nos.: USE2017 0028, USE2017 0029
Parcel No.: 4B1701104000
CBJ Parcel Viewer: <http://epv.juneau.org>
Date notice was printed: December 20, 2017

Invitation to Comment

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



COMMUNITY DEVELOPMENT

155 S. Seward Street Juneau, Alaska 99801

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TIMELINE

Follow the case (staff report, hearing results, meeting minutes) at <http://www.juneau.org/assembly/novus.php>

Now through January 2, 2018

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

January 3 through 3 pm, January 23

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

HEARING DATE & TIME
7:00 pm, January 23, 2018

You may testify at the hearing in City Hall's Assembly Chambers, 155 S. Seward St., Juneau.

January 24

The results of the hearing will be posted online.

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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 DECISION

Date: January 23, 2018
File No.: USE2017 0028

The Mason Jar LLC
PO Box 35264
Juneau, AK 99803

Proposal: A Conditional Use Permit to convert a storage unit into a 1522 sq. ft. marijuana retail store.

Property Address: 2771 Sherwood Lane

Legal Description: ANDSOH Lot 5B

Parcel Code No.: 4B1701104000

Hearing Date: January 23, 2018

The Planning Commission, at its regular public meeting, adopted the analysis and findings listed in the attached memorandum dated January 12, 2018, and approved the Conditional Use Permit for a marijuana retail store to be conducted as described in the project description and project drawings submitted with the application and with 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.

The Mason jar LLC
File No.: USE2017 0028
January 23, 2018
Page 2 of 3

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.

Attachments: January 12, 2018, memorandum from Allison Eddins, Community Development, to the CBJ Planning Commission regarding USE2017 0028.

This Notice of Decision does not authorize construction activity. Prior to starting any project, it is the applicant's responsibility to obtain the required building permits.

This Notice of Decision constitutes a final decision of the CBJ Planning Commission. Appeals must be brought to the CBJ Assembly in accordance with CBJ 01.50.030. Appeals must be filed by 4:30 P.M. on the day twenty days from the date the decision is filed with the City Clerk, pursuant to CBJ 01.50.030 (c). Any action by the applicant in reliance on the decision of the Planning Commission shall be at the risk that the decision may be reversed on appeal (CBJ 49.20.120).

Effective Date: The permit is effective upon approval by the Commission, January 23, 2018.

Expiration Date: The permit will expire 18 months after the effective date, or July 23, 2019, if no Building Permit has been issued and substantial construction progress has not been made in accordance with the plans for which the development permit was authorized. Application for permit extension must be submitted thirty days prior to the expiration date.

Conditional use permits issued to marijuana establishments under CBJ chapter 49.65.1245(e) shall be subject to review by the commission every five years from the date of issuance. Such review shall be subject to CBJ 49.15.330 except that the commission may only amend or add conditions if necessary to ensure compliance with this title.

Project Planner:



Allison Eddins, Planner
Community Development Department



Benjamin Haight, Chair
Planning Commission



Filed With City Clerk

January 29, 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. Owners and 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: January 12, 2018

TO: Planning Commission

FROM: Allison Eddins, Planner *A. Eddins*
Community Development Department

FILE NO.: USE2017 0029

PROPOSAL: A Conditional Use Permit for a marijuana cultivation facility.

GENERAL INFORMATION

Applicant: Herb'n Legends LLC

Property Owner: Building Pros Inc.

Property Address: 2771 Sherwood Lane

Legal Description: Lot 5B, Andsoh

Parcel Code Number: 4B1701104000

Site Size: 15,559 sq. ft.

Comprehensive Plan Future Land Use Designation: Heavy Industrial (HI)

Zoning: Industrial (I)

Utilities: City water & sewer

Access: Sherwood Lane

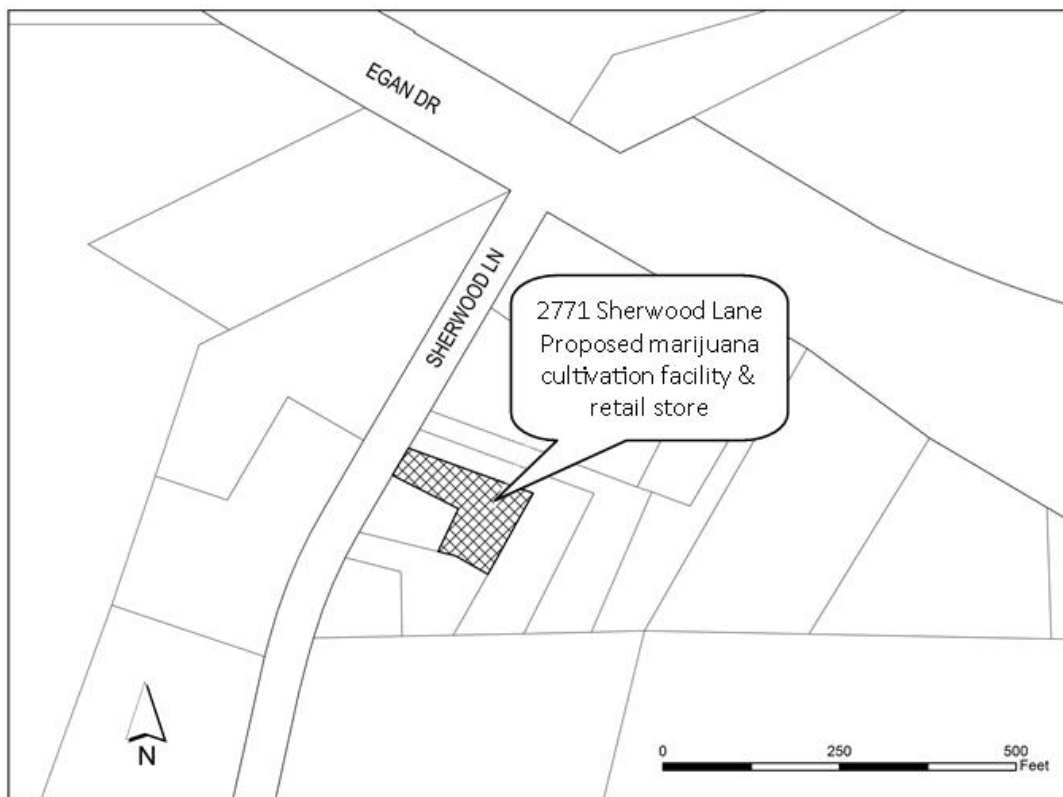
Existing Land Use: Storage and caretaker's unit

Planning Commission
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Surrounding Land Use:

North	- Industrial (I)/ Vacant
South	- Industrial (I)/Boat Condo with caretaker's unit
East	- Industrial (I)/Vacant
West	- Industrial (I)/State of Alaska Dept. of Motor Vehicles/State Trooper's Office

VICINITY MAP



ATTACHMENTS

Attachment A – Development Permit and Conditional Use Permit Applications
Attachment B – Project Narrative
Attachment C – Floor Plan and Surveillance & Lighting Plan
Attachment D – Public Notice

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PROJECT DESCRIPTION

The applicant requests a Conditional Use permit for the development of a 1,200 square foot marijuana cultivation facility located in an Industrial zoning district. There is a pending Conditional Use Permit application for the development of an un-related 1,500 square foot marijuana retail facility (USE20117 0028) that, if approved, will be located on the same lot.

BACKGROUND

The subject lot, Lot 5B, is located in the ANDSOH Subdivision (Plat 2014-54). In 2015, a Variance (VAR2015 0016) was granted to allow for an access and utility easement to be within the 50 foot anadromous stream buffer for Pederson Hill/Casa del Sol Creek. A portion of this easement is on Lot 5B. The variance (VAR2015 0016) was approved with 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 Prior to issuance of a Building Permit and/or Grading and Paving Permit for Lots 5, 7, 8, and 9 of ANDSOH Subdivision, a Deed Restriction shall be placed on Lots 5, 7, 8, and 9 stating that the access and utility easement shall not be improved with impervious surfacing.
- 3 No development of primary or accessory buildings shall occur within 50 feet of Pederson Hill/ Casa del Sol Creek.
- 4 Prior to Plat Amendment, a Snow Storage Note shall be placed on the ANDSOH Subdivision Plat stating: "Snow storage shall be placed on the uphill side of the bioswale for Access and Utilities Easements within ANDSOH Subdivision, with runoff captured by the bioswale."

Conditions 2, 3 and 4 have been met. The building is still under construction and currently has an open building permit (BLD2017 0123). Condition 1 must be met prior to a Certificate of Occupancy being issued. Staff recommends this condition also be a condition of approval of this conditional use.

The applicant has submitted an application with the State of Alaska Marijuana Control Board and will obtain a CBJ Marijuana License if both the state license and this Conditional Use Permit are approved. The inspection required for the CBJ marijuana license will ensure that the applicant is held to the plans proposed, to special use requirements found in CBJ 49.65.1200, and to any conditions required with this permit.

According to CBJ 49.65.1245 (e), an approved Conditional Use Permit for marijuana establishments is subject to review by the Commission every five years from the date of issuance.

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ANALYSIS

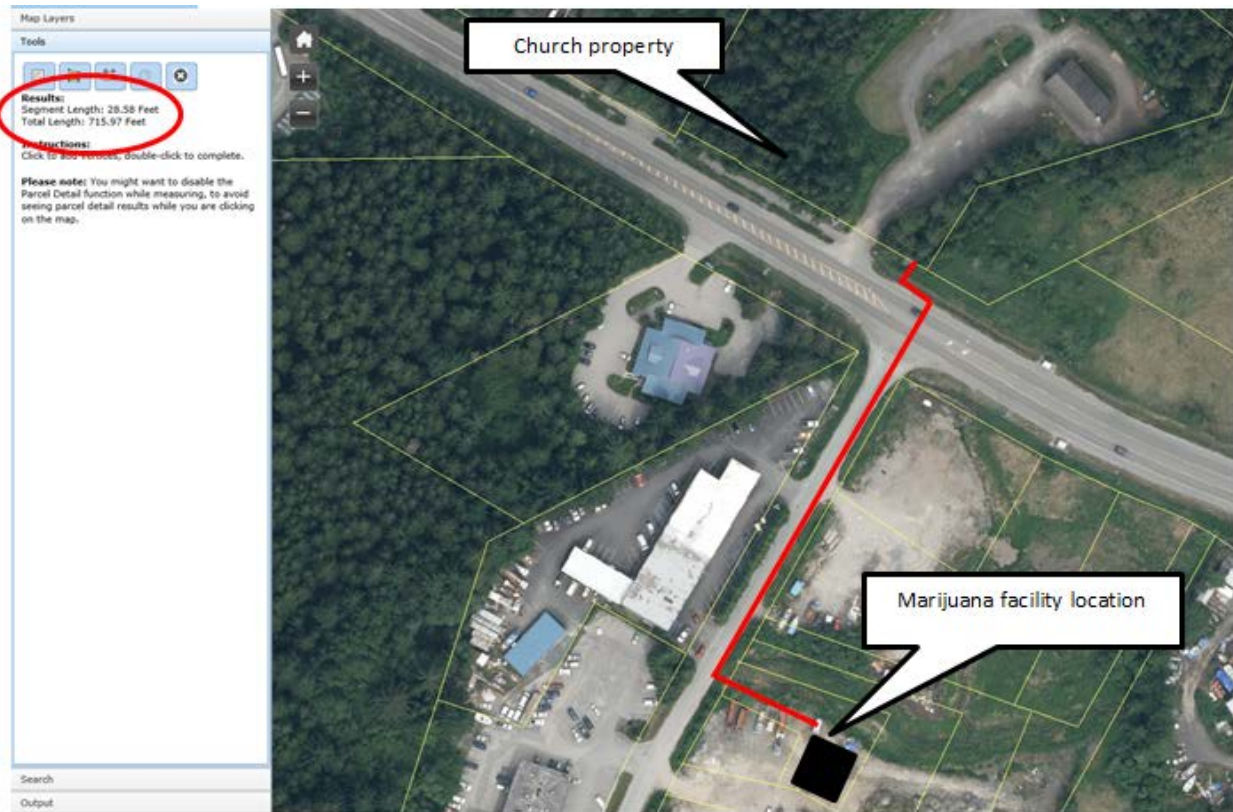
Project Site – The subject lot is 15,559 square feet and meets the minimum lot width and depth requirements. It was platted in 2017 and is accessed via Sherwood Lane.

The State Marijuana Ordinance 3 AAC 306.010 *License restrictions* states that all marijuana facilities must be located more than 500 feet from school grounds, recreation or youth centers, building which regularly conduct religious services, and correctional facilities.

The State Department of Corrections recently announced the opening of a pre-trial services facility that will be located across the street from the subject lot within the State Trooper's Office. CBJ 49.80 defines a correctional facility as *a facility providing for the imprisonment or physical confinement of persons under guard or 24 hour physical supervision such as a prison, jail, detention center, halfway house, and similar facilities*. According to public statements released by the Department of Corrections, the pre-trial facility will not be a holding facility and will serve persons who have been charged with a crime but have yet to appear in court or be convicted. Therefore, the facility is not a correctional facility.

Christ Evangelical Lutheran Church of Juneau is located at 10300 Glacier Highway. The State Marijuana Ordinance requires that the distance between a marijuana facility and a church be measured by the shortest pedestrian route from the public entrance of the building in which the licensed premises would be located to the outer boundary of the church. Staff measured the distance according to the state requirements. That measurement came to 716 feet from the church property line to the building location. The aerial image below is from 2013, and as mentioned previously, the subject building is currently under construction and therefore does not appear in this image. The black square on the subject lot shows the approximate location of the building.

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Project Design – The existing building is a 7,200 square foot, two story structure with three storage units on the first floor and a caretaker's unit above. The 1,200 square foot marijuana cultivation facility will be located storage unit B.

The cultivation space will be accessed via a window-less person door located on the western exterior wall of the storage unit. This is the only exterior access into the facility and the facility has no windows. The space will contain two flowering rooms, a vegetation room, a drying room, a packing and storing room, a secure office, two ADA compliant restrooms, an employee restroom, and a corridor. The site also contains space for a future manufacturing operation. If/when the applicant decides to begin manufacturing marijuana a separate Conditional Use Permit and separate state and local licenses specific to the manufacturing use will be required.

The business owner and up to 2 employees will work at the facility. All employees will be required to obtain the certification and training that complies with State regulations. The applicant will use the RFID marijuana tracking system as required by state law.

The cultivation facility will operate 24 hours per day with most work being conducted between 8:00 am to 5:00 pm Monday through Sunday.

The applicant intends to use CO₂ for plant enrichment. The emission of CO₂ will be electronically monitored. There will be CO₂ detectors that will monitor the level of gas in the air and an alarm will sound if the gas levels reach unsafe levels. The proposed CO₂ usage is in

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compliance with state and local regulations and is subject to review and inspection by the CBJ Fire Marshal.

CBJ 49.65.1245 identifies additional submittal requirements for marijuana establishments. Those items are reviewed in detail below.

Fungicides & Pesticides – The applicant plans to use natural pesticides for pest control on all of their plants. The applicant's list of pesticides is consistent with the approved pesticides allowed to be used on marijuana plants per the Alaska Department of Environmental Conservation.

Screening – CBJ 49.65.1245(a)(4) prohibits marijuana product being visible to the public from the right-of-way. As mentioned previously, the marijuana cultivation facility will be located in a storage space that does not have any exterior windows.

Security – According to CBJ 49.65.1245(a)(2), applicants are required to submit a security plan. State regulations require exterior lighting, alarm systems, video monitoring and commercial grade door locks. The entire building will have eleven (11) exterior lights – four 30 watt LED dark sky compliant fixtures and seven 12 watt LED down light fixtures. One of those lights will be focused on the entry door into the cultivation facility. The office will house the surveillance hardware and safe. Eight surveillance cameras will be installed in the interior space – one in the corridor near the entry door, two in the flowering room, two in the vegetation room, and one each in the packing room, drying room, and office. Two exterior surveillance cameras will be installed – one near the entry way and one on the northwest corner of the building. This is the building corner closest to the entry way. Surveillance cameras will operate 24/7 and will have the capacity to hold up to 40 days of recordings. The exterior door will be alarmed and all motion and contact sensors will be activated when employees are not present. The caretaker's unit above will add an extra layer of security (see Attachment C). In order to eliminate glare onto neighboring properties all exterior lighting fixtures shall be a full cut-off design. Staff is recommending this as a condition of approval. Visitors to the facility will be required to sign in, have their identification checked and receive a visitor pass. Visitors to the facility must be at least 21 years of age and must be accompanied by an employee at all times. Visitors without a state issued marijuana handlers permit will not be allowed to handle any marijuana products.

Ventilation and Filtration/Odor – CBJ 49.65.1245(a)(6) requires a ventilation and filtration plan for marijuana cultivation. The applicant has stated in the project narrative (Attachment B) that the business plans to use air scrubbing carbon filters on recirculating air as well as all air exiting the facility. The applicant will be using carbon dioxide to enrich the plants. The emission of CO₂ gas will be electronically monitored throughout the facility to keep it within ideal and safe levels. The proposed CO₂ usage is in compliance with state and local regulations. CO₂ usage is subject to review by the CBJ Fire Marshall and will be inspected accordingly.

Waste Disposal – Any unsalable marijuana product will be disposed of according to the State waste disposal regulations, which include grinding up the waste and mixing it with another organic material or order to render the product unusable. Staff recommends, as a condition of

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approval, that all waste containing marijuana product shall be stored in a locked enclosure until transported to the CBJ landfill.

CBJ 49.15.330(g) identifies the general items that staff reviews for all Conditional Use Permits. Those items are reviewed below.

Traffic – Traffic to and from the site will consist mostly of employees and deliveries. Although it cannot be certain at this time, the applicant anticipates selling most of their product to the proposed retail facility that will operate out of a separate storage unit on the same site (USE2017 0028). This will minimize delivery traffic. Supply deliveries such as CO₂ will occur infrequently on a weekly or bi-weekly basis. The applicant anticipates a total of three employees with typically only two employees on-site at any one time. It is anticipated that this use will generate four vehicle trips per day, on average. CBJ 49.40.300 states that a traffic impact analysis is not required when a development is projected to generate less than 250 average daily trips.

Parking and Circulation – According to CBJ 49.40.210, the total number of parking spaces required for the existing and proposed uses on site is nine. The building contains three storage units; units A and B will be converted to accommodate marijuana facilities and unit C is serving as a garage and boat storage for the caretaker's unit. It should be noted that if, in the future, any of the proposed uses should change, the change could affect the number of required parking spaces.

Use	Parking Requirements	Size of Use	Parking spaces required
Marijuana Retail (proposed)	1 space/300 sq. ft.	1,522 sq. ft.	5
Marijuana Cultivation (proposed USE2017 0029)	1 space/1,000 sq. ft.	1,200 sq. ft.	1
Office in cultivation facility (proposed USE17-29)	1 space/300 sq. ft.	150 sq. ft.	1
Caretaker's Unit (existing)	2	N/A	2
Total			9

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CBJ 49.40.210(b)(3) requires that sites with a parking requirement of 1 to 25 parking spaces, one ADA accessible space must be provided. The cultivation use does not require an off-street loading space because it is less than 5,000 square feet, per CBJ 49.40.210(c)(2). In order to ensure that all parking requirements are met, staff recommends the following condition:

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).

Noise – Surrounding uses include the Department of Motor Vehicles, Alaska State Trooper's Office, and the CCFR training facility. The noise level that will be generated by the proposed facility is not expected to be greater than the noise level from surrounding uses or other uses permitted in an Industrial zoning district.

Public Health or Safety – Several aspects of public health and safety were addressed in previous sections of this report including the use and storage of CO₂, the use of pesticides, odor management, and security. The use and storage of CO₂ is governed by the requirements found in the International Fire Code and the CBJ Building Code and will be inspected by the CBJ Fire Marshal.

The applicant has indicated that they plan to use non-toxic fertilizers and pesticides. Therefore, any risk of toxic substances being transferred to a consumer or employee is minimal. Carbon filters will be used in the ventilation and filtration system to manage any odor.

The applicant's proposal meets all the state and local requirements for security including an alarm system, surveillance cameras, exterior lighting, commercial grade door locks, CO₂ level detection alarms, and the appropriate signage. Carbon filters will be used in the ventilation and filtration system to manage marijuana odor. The modifications to the storage units are being reviewed through the building permit process. The structure is existing and meets all zoning requirements for height and setback and will meet all applicable building code requirements for fire safety. Fire vehicle access to the property will be via city rights-of-way. No public health or safety concerns have been raised by this proposal and the Fire Marshal had no comments.

Vegetative Cover – CBJ 49.50.300 requires that five percent of the site be maintained with live vegetative coverage. For this site, 777 square feet must be covered with live vegetation. Staff recently visited the site and noted that the vegetative cover requirement has not been met. As mentioned previously, the building is still under construction. A condition of the building permit (BLD2017 0123) states that prior to issuance of a certificate of occupancy the vegetative cover requirement must be met. Staff recommends this condition be placed on this use as well.

Habitat – Pederson Hill/Casa del Sol Creek is identified as an anadromous stream. CBJ 49.70.310(a)(4) states that development within 50 feet of the banks of anadromous streams is prohibited. The closest exterior wall of the building is 63 feet from the bank of the creek. The subject lot did receive a Variance to allow a utility/access easement to be within the 50 foot stream side setback. A condition of the Variance approval restricts the easement from being

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developed with an impervious surface. No further development is allowed to happen within the buffer and none is proposed with this application.

Property Value or Neighborhood Harmony – The area is zoned Industrial and the proposed activity is in keeping with expected activities in this zoning district. The applicant will comply with screening requirements, odor control, and waste management in conformance with CBJ Code. The CBJ Assessor has indicated that marijuana related uses do not appear to have a negative impact on surrounding property values. At the time of the writing of this staff report no comments were received from the public. There is no evidence to suggest that the proposed use will have a negative impact on property values or be out of harmony with the neighborhood.

Conformity with Adopted Plans – The proposed development is located in subarea 3 (Auke Bay, Mendenhall Peninsula, West Mendenhall Valley) of the 2013 Comprehensive Plan's land use maps and has a land use designation of Heavy Industrial (HI). The 2013 Comprehensive Plan defines Heavy Industrial as follows:

Heavy Industrial (HI) – Land to be developed for heavy industrial uses such as large scale food production and/or processing; large scale or industrial related repair activities; metal fabrication; wholesale trade; manufacturing processes; warehousing; outdoor storage; trucking; animal kennels; crematoria; repair and maintenance uses; resource extraction and processing such as gravel pits, rock crushing facilities, cement batch plants, asphalt plants, fuel tanks, stump dumps, salvage yards, landfill sites; aircraft facilities; and other similar large scale or noisy and/or noxious industrial activities. Some recreational uses should be permitted, including sport vehicle, All Terrain Vehicle (ATV) or snowmobile motor course facilities, shooting ranges, and other similar noise-generating uses. Residential, office, retail, and personal service uses are not to be allowed, except that residential caretaker facilities should be permitted.

Although the Comprehensive Plan definition of the HI zone does not specify marijuana cultivation as a use that should be permitted in HI, CBJ 49.25.300 *Table of Permissible Uses Section 14.200 Commercial Agriculture Operations subsection 14.240 Marijuana cultivation*, allows this use in this location.

Staff further reviewed the 2013 Comprehensive Plan for policies that may be relevant to the proposal:

POLICY 5.1. TO DEVELOP AND SUSTAIN A DIVERSE ECONOMY, PROVIDING OPPORTUNITIES FOR EMPLOYMENT FOR ALL RESIDENTS

POLICY 5.11 TO ENCOURAGE THE LOCATION AND GROWTH OF LOCALLY-BASED SECTOR INDUSTRIES THAT PROVIDE YEAR-ROUND, FULL-TIME EMPLOYMENT AND PROVIDE TAX REVENUES THAT SUPPORT PUBLIC SERVICES

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5.18. TO ENCOURAGE AND SUPPORT ENTREPRENEURSHIP AND INNOVATION IN THE ECONOMY OF JUNEAU AND SOUTHEAST ALASKA

The proposed development would help to diversify the economy and is a new business as encouraged by these policies. The applicant's proposed marijuana cultivation facility is in general conformity with the 2013 Comprehensive Plan.

FINDINGS

CBJ 49.15.330 (e)(1), Review of Director's Determinations, states that the Planning Commission shall review the Director's report to consider:

1. Whether the application is complete;
2. Whether the proposed use is appropriate according to the Table of Permissible Uses;
 and,
3. Whether the development as proposed will comply with the other requirements of this chapter.

The Commission shall adopt the Director's determination on the three items above unless it finds, by a preponderance of the evidence, that the Director's determination was in error, and states its reasoning for each finding with particularity.

CBJ 49.15.330(f), Commission Determinations, states that even if the Commission adopts the Director's determination, it may nonetheless deny or condition the permit if it concludes, based upon its own independent review of the information submitted at the public hearing, that the development will more probably than not:

1. Materially endanger the public health or safety;
2. Substantially decrease the value of or be out of harmony with property in the neighboring area; or,
3. Not be in general conformity with the comprehensive plan, thoroughfare plan, or other officially adopted plans.

Per CBJ 49.15.330(e) & (f), *Review of Director's & Commission's Determinations*, the Director makes the following findings on the proposed development:

1. *Is the application for the requested conditional use permit complete?*

Yes. Staff finds the application contains the information necessary to conduct full review of the proposed operations. The application submittal by the applicant, including the appropriate fees, substantially conforms to the requirements of CBJ Chapter 49.15.

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2. *Is the proposed use appropriate according to the Table of Permissible Uses?*

Yes. The requested permit is appropriate according to the Table of Permissible Uses. The permit is allowed in the Industrial zoning district under CBJ 49.25.300, Section 14.240 *Marijuana Cultivation over 500 square feet*.

3. *Will the proposed development comply with the other requirements of this chapter?*

Yes. The proposed development complies with the other requirements of this chapter. Public notice of this project was provided in the January 12, 2017 and January 22, 2017 issues of the Juneau Empire's "Your Municipality" section, and a notice of public hearing was mailed to all property owners within 500 feet of the subject parcel. Moreover, a public notice sign was posted on the subject parcel, visible from the public Right of Way. Additionally the proposed development complies with CBJ 49.65.1245.

4. *Will the proposed development materially endanger the public health or safety?*

No. Based on the preceding analysis and application materials, the applicant's plans for surveillance and security, odor control, CO₂ monitoring, and waste disposal all meet the requirements of state and local regulations. No evidence indicates that the proposed development will endanger the public health or safety.

5. *Will the proposed development substantially decrease the value of or be out of harmony with property in the neighboring area?*

No. The proposed use will be located in an industrially zoned district near several large institutional uses. Based on the preceding analysis, the proposed marijuana cultivation facility is not expected to decrease the value of or be out of harmony with property in the neighborhood.

6. *Will the proposed development be in general conformity with the land use plan, thoroughfare plan, or other officially adopted plans?*

Yes. The proposed facility is in conformity with the CBJ Land Use Plan and the 2013 Comprehensive Plan, specifically policies 5.1, 5.11, and 5.18. Further, the Heavy Industrial land use designation supports manufacturing uses.

Per CBJ 49.70.900 (b)(3), General Provisions, the Director makes the following Juneau Coastal Management Program consistency determination:

7. *Will the proposed development comply with the Juneau Coastal Management Program?*

N/A

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January 12, 2018
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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.

DEVELOPMENT PERMIT APPLICATION

Project Number	CITY and BOROUGH of JUNEAU	Date Received: 12/18/17
Project Name (City Staff to Assign Name)		

PROJECT / APPLICANT INFORMATION	Project Description <i>Marijuana cultivation</i>		
	PROPERTY LOCATION		
	Street Address <i>2771 Sherwood lane</i>	City/Zip <i>Juneau, Alaska 99801</i>	
	Legal Description(s) of Parcel(s) (Subdivision, Survey, Block, Tract, Lot) <i>Lot 56 Andson subdivision</i>		
	Assessor's Parcel Number(s) <i>4 B1701104000</i>		
	LANDOWNER/ LESSEE		
	Property Owner's Name <i>Dan Miller</i>	Contact Person: <i>Dan Miller</i>	Work Phone: <i>907-223-2298</i>
	Mailing Address <i>P.O. Box 32098, Juneau AK 99803</i>	Home Phone:	Fax Number:
	E-mail Address <i>dmiller@aci.net</i>	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.			
☒ _____ Landowner/Lessee Signature _____			
☒ _____ Landowner/Lessee Signature _____			
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 <i>Herbn Legends LLC</i>			
Contact Person: <i>Jake Miller</i>			
Work Phone: <i>907-209-8889</i>			
Mailing Address <i>3557 Riverside Dr.</i>			
Home Phone: <i>907-209-8889</i>			
Fax Number:			
E-mail Address <i>herbnlegends907@gmail.com</i>			
Other Contact Phone Number(s):			
☒ _____ Applicant's Signature _____			
Date of Application			

STAFF APPROVALS	OFFICE USE ONLY BELOW THIS LINE			
	☒	Permit Type	***SIGN	Date Received
		Building/Grading Permit		
		City/State Project Review and City Land Action		
		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)		<i>12/18/17</i>
		Variance Case (De Minimis and all other Variance case types)		<i>USE 20170029</i>
		Wetlands Permits		
		Zone Change Application		
		Other (Describe)		
	***Public Notice Sign Form filled out and in the file.			
	Comments:			Permit Intake Initials <i>ANE</i>

NOTE: DEVELOPMENT PERMIT APPLICATION FORMS MUST ACCOMPANY ALL OTHER COMMUNITY DEVELOPMENT DEPARTMENT APPLICATIONS

FORMS\2010 Applications

Revised November 2009

Attachment A

Conditional Use Permit Application – Marijuana Cultivation

By: Herb'n Legends LLC

Project Overview

We are seeking to open a marijuana cultivation facility located in an industrially zoned, new construction building. The facility will use state of the art equipment that will meet all of the requirements within state and local law. All marijuana cultivated on site shall be prepared for sale/transportation to licensed marijuana retailers or product manufacturing establishments in accordance with applicable state and local law.

Existing Site, Building, and Zoning

The existing site is a new build located at 2771 Sherwood Lane, unit D. For geographic reference, the location of the building is across from Alaska Division of Motor Vehicle Division

Site information:

- Rented Facility Sq. ft. -Approx. 1500

Utilities

All utilities (water, sewer, and electric) for the proposed cultivation facility will be municipally served.

Hours of Operation

The cultivation facility will be operational twenty-four (24) hours per day with most work being conducted between socially established/acceptable business hours of 8:00 a.m. and 5:00 p.m. Some operations/functions may be conducted outside of this block of time, but all associates will be mindful of the surrounding community so as not to cause any disturbance.

Signs

The only signs for this business are those required by law.

Odor Management

We will use indoor air scrubbing carbon filters as well as carbon filtration exiting the facility meeting or exceeding the CFM requirements. (See attached)

Waste management

All marijuana waste material created by this facility will be stored in a secured area until it can be ground and mixed with an equal amount of biodegradable and non-biodegradable waste until it can be picked up or brought to the landfill. The small amount of runoff water with a drip feed system in trays will be reclaimed and used again.

Security

Video surveillance will cover all restricted access areas. Cameras will operate 24 hours a day, 7 days a week both inside and outside as requires by State regulations.

Exterior cameras will face at least 25' out past the exterior wall. Security footage will be stored on site for 40 days in a locked and secure area where video surveillance recording equipment and records will be housed and stored. This area will only be accessible to authorized personnel or law enforcement.

The video will be archived in a format that does not permit alteration of the recorded image, so that the images can readily be authenticated. All video surveillance will clearly and accurately display the time and date of recording. A copy of video footage will be saved offsite and backed-up on a monthly basis.

There will be one exterior access into the proposed cultivation facility and two accesses within the area that will be locked at all times and used only by authorized personnel. All will be equipped with contact sensors and security cameras. Exterior motion lighting will be installed to facilitate surveillance.

In the case that a break in occurs, the alarm system will notify the landowner, tenants, and JPD accordingly. Any significant cash deposits will be held in a safe until it can be put in a secure area offsite. All product will be in a locked, secured room, only accessible by owners and trusted employees. This secured room will also hold all business records and transactions.

This facility will begin owner run with the plan to hire 1-2 full time employees, that will be required to be trained on site with specific security protocols and procedures prior to employment. An identification badge will be displayed and worn by each licensee, employee, or agent while on the premises.

Diversion of Product

Policies and procedures include:

- RFID tags on all product and plants
- A marijuana inventory tracking system designed by BiotrackTHC. This system's capable of sharing information with the system the board implements to ensure tracking
- Products will be stored in a secure room while awaiting sale.
- All sales will be recorded and filed with detailed information of the product.
- Security Systems signs will alert intruders of security measures.
- Lighting both indoors and exterior will allow for product to be monitored sufficiently via video surveillance.
- Access to safe will be limited only to owners and limited staff.
- All marijuana packaged will be weighed on a scale certified in compliance with AS 3 AAC 306.745.
- Marijuana product shall be prepared, packaged and secured for pickup in child resistant bags with tracking and testing info attached at all times.

- Purchaser will supply locking containers, marijuana handling card, manifest of transportation, and receipt of product paid before leaving our facility.

Guest and visitors

The process for admitting visitors into and escorting them through restricted access areas will require guests to wear a guest pass, sign in with name, age, date and time of entrance and exit, name of person escorting, and drivers license info. Owner or employee with handlers card will escort guest at all times. Guest info will be stored in secured area.

Employees

All employees will be required to obtain a marijuana handler permit before date of employment. A dedicated washroom for employees with lockers, work attire, shower and sink will be on site.

Employees will be trained onsite with proper protocols and procedures for a number of situations such as a security breach, or internal hazards such as fires etc. A detailed report for a security breach will be made and filed onsite.

Health and sanitation

Cleanliness of all areas and persons is a must in our facility. Sanitizing with authorized cleaners will be a daily duty for employees. The cultivation areas will be sanitized between crops and monthly in vegetative areas. A record will be kept with employee name date and areas cleaned.

With the use of the gPod (see attached), humidity, temperature, and Co2 will be controlled remotely which keeps the mold and bacteria in the grow space to a minimum.

See attached list of cleaners, pesticides, fungicides, and insecticides.

Co2

We will use Co2 tanks controlled by our gPod to monitor the ppm in the room both lights on and lights off. A built-in alarm will sound at a standard setpoint harmful employees.

Parking

Parking will not be an issue for employees and owners. We require 2 parking spaces and have a total of 5 available (8.5 feet by 17 feet)

License to Display

A copy of the State license will be displayed inside of the main entrance to the building, outside of the restricted access areas and will be directly in sight of the main entrance.

A copy of the local license will be displayed inside of the main entrance to the building, outside of the restricted access areas and will be directly in sight of the main entrance.

On-site Record Keeping

In addition to standard operating procedures, several items will be stored on-site in a locked file cabinet. These files will be located in the safe room and will be restricted only to certain personnel and authority.

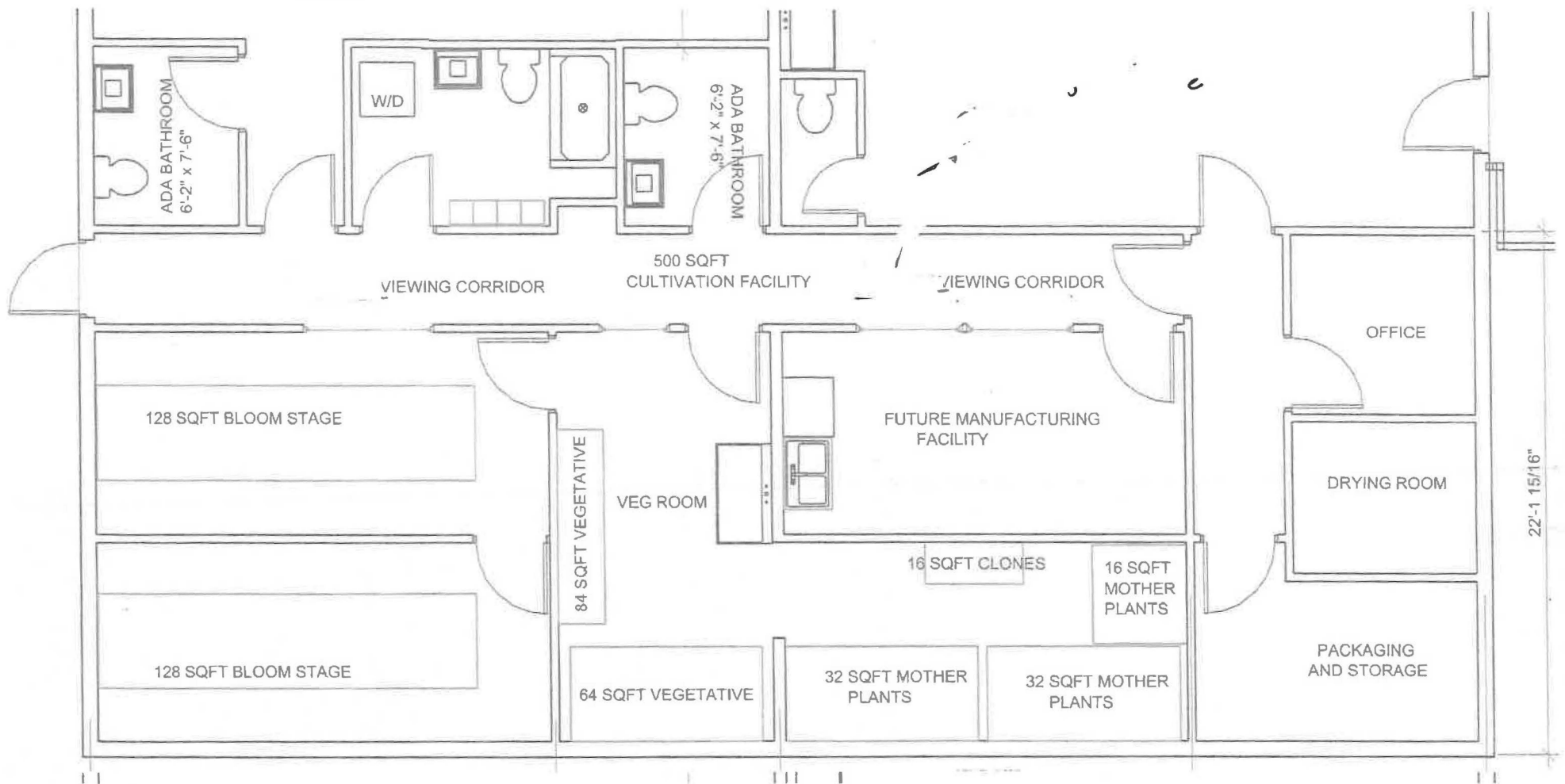
Items to be stored on-site include:

- All books and records necessary to fully account for each business transaction conducted for the current year and three preceding calendar years (when applicable); records for the last six months are maintained on the marijuana establishment's licensed premises.
- A current employee list setting out the full name and marijuana handler permit number of each licensee, employee, and agent.
- The business contact information for vendors that maintain video surveillance systems and security alarm.
- Systems for the licensed premises.
- Records related to advertising and marketing.
- A current diagram of the licensed premises including each restricted access area.
- A log recording the name, and date and time of entry of each visitor permitted into a restricted access area.
- All records normally retained for tax purposes.
- Accurate and comprehensive inventory tracking records that account for all marijuana inventory activity from seed or immature plant stage until the retail marijuana or retail marijuana product is sold to a consumer, to another marijuana establishment, or destroyed.
- Transportation records for marijuana and marijuana product as required under 3 AAC 306.750
- Expiration dates of Marijuana Handler Cards for employees.

To prevent these records from being lost or destroyed, a copy of all records will be made and stored off site after the period of required record retention expires. Copies of records and files will be constantly updated and made in duplicate for the purposes of having back-up copies available when needed.

Chemical List

<u>Green Cleaner: Central Coast Garden Products</u>
Insecticide, Fungicide
<u>Organocide: Plant Doctor</u>
Fungicide
<u>Azamax: General Hydroponics</u>
Insecticide
<u>Pure Neem Oil: Dyna-Gro</u>
Preventative spray
<u>Eliminator: Doctor Zymes</u>
Insecticide, Fungicide



Attachment C

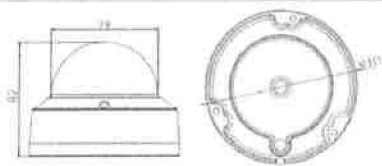
DS-2CD2100F-I Series IR Dome Network Camera



Key Features

- 1.3 MP/3 MP High Resolution
- HD Real-Time Video
- 3D DNR, DWDR, and BLC
- IR LEDs: Up to 100 Feet
- IP66 Protection
- IK10 Vandal Resistant
- PoE (802.3af)
- On-Board Storage (Up to 128 GB)

Dimensions



Accessories



Order Models

1.3 MP: DS-2CD2112F-I
3.0 MP: DS-2CD2132F-I

	DS-2CD2112F-I	DS-2CD2132F-I
Camera		
Image Sensor	1/3" progressive scan CMOS	
Minimum Illumination	0.028 lux @ f/2, AGC on, 0 lux with IR	0.19 lux @ f/1.2, AGC on, 0 lux with IR
Shutter Speed	1/3 sec. to 1/100,000 sec.	
	4 mm @ f/2.0 (2.8 mm, 6 mm, 12 mm optional)	4 mm @ f/2.0 (2.8 mm, 6 mm, 12 mm optional)
Lens	Angle of view: 92.5° (2.8 mm), 73.1° (4 mm), 46° (6 mm), 22° (12 mm)	2048 × 1536: Angle of view: 86° (2.8 mm), 70° (4 mm), 43.3° (6 mm), 20.6° (12 mm)
Lens Mount	M12	
Angle Adjustment	Pan: 0° to 355°, tilt: 0° to 75°, rotation: 0 to 355°	
Digital Noise Reduction	3D DNR	
Wide Dynamic Range	Digital WDR	
Day/Night	IR cut filter with auto switch	
Compression Standard		
Video Compression	H.264/MJPEG	
H.264 Codec Profile	Main profile	
Bit Rate	32 Kbps to 16 Mbps	
Dual Stream	Yes	
Image		
Max. Image Resolution	1280 × 960	2048 × 1536
Frame Rate	30 fps (1280 × 960), (1280 × 720), (704 × 576), (640 × 480)	20 fps (2048 × 1536), 30 fps (1920 × 1080), (1280 × 720)
Image Settings	Saturation, brightness, sharpness, contrast	
BLC	Yes, zone configurable	
ROI	Yes, up to 3 configurable areas	
Network		
Network Storage	Local storage: built-in microSD/SDHC/SDXC card slot, up to 128 GB; NAS	
Alarm Triggers	Line crossing detection, intrusion detection, motion detection, dynamic analysis, tampering alarm, network disconnect, IP address conflict, storage full, storage error	
Protocols	TCP/IP, ICMP, HTTP, HTTPS, FTP, DHCP, DNS, DDNS, RTP, RTSP, RTCP, PPPoE, NTP, UPnP, SMTP, SNMP, IGMP, 802.1X, QoS, IPv6, Bonjour	
System Compatibility	ONVIF, PSIA, CGI, ISAPI	
Security	Three level user authentication, password authorization, HTTPS and SSH certificate, IEEE802.1X, basic and digest authentication, watermark, IP address filtering, log-in lockout	
General Functions	Flickerless, dual stream, heartbeat, mirror, password protection, watermark	
Interface		
Communication Interface	1 RJ-45 10M/100M Ethernet interface	
Smart Features	Line crossing, intrusion detection	
General		
Operating Conditions	-30° C to 60° C (-22° F to 140° F); humidity 95% or less (non-condensing)	
Power Supply	12 VDC ±10%; PoE (802.3af)	
Power Consumption	Maximum 5 W (with IR cut filter on)	
Impact Protection	IK10	
Ingress Protection	IP66	
IR Range	100 feet	
Dimensions	Ø111 mm × 82 mm (4.4" × 3.2")	
Weight	500 g (1.1 lbs.)	

HIKVISION®

DS-2CD2125FWD-I

2 MP Ultra-Low Light Outdoor Network Dome Camera

H.265+

- Up to 2 MP High Resolution
- Full 1080p @30 fps
- 2.8 mm / 4 mm / 6 mm / 8 mm Fixed Lens
- Options
- Ultra-Low Light, 0.008 lux, DarkFighter Technology
- H.265+, H.265, H.264+, H.264
- 120dB Wide Dynamic Range
- 3D Digital Noise Reduction
- 12 VDC & PoE (802.3af)
- EXIR 2.0 with up to 100 ft (30 m) IR Range
- MicroSD card slot supports up to 128 GB
- IP67, IK10 Protection
- 3-Axis Adjustment

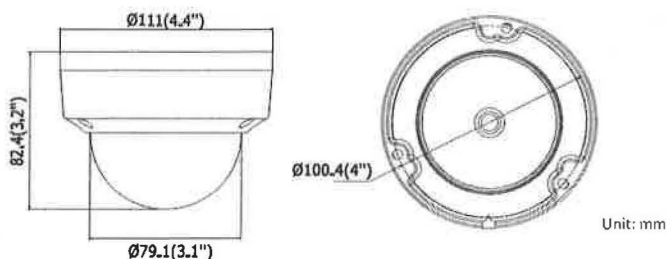


Available models:

DS-2CD2125FWD-I

Hikvision's DS-2CD2125FWD-I provides important new technology for any security application. The H.265+ codec assures savings in bandwidth and storage. The DarkFighter Ultra-Low Light technology allows for use in the most demanding lighting conditions. EXIR 2.0 technology enhances night time performance.

Dimensions



Attachment C

Specifications

DS-2CD2125FWD-I

Camera

Image Sensor	1/2.8" Progressive Scan CMOS
Minimum Illumination	Color: 0.008 lux @(F1.6, AGC ON), 0 lux with IR
Shutter Time	1/3 s to 1/100,000 s
Slow Shutter	Supported
Lens	108° (2.8 mm), 86.4° (4 mm), 52° (6 mm), 40° (8 mm)
Lens Mount	M12
Iris	F1.6
3-Axis Adjustment	Pan: 0° to 355°; Tilt: 0° to 75°; Rotate: 0° to 355°
Day and Night	IR Cut Filter
DNR	3D DNR
Wide Dynamic Range	120 dB

Compression Standard

Video Compression	Main stream: H.265+ / H.265 / H.264+ / H.264; sub stream: H.265+ / H.265 / H.264+ / H.264 / MJPEG; third stream: H.265+ / H.265 / H.264+ / H.264
H.264 Type	Main profile / high profile
H.264+	Support
H.265 Type	Main profile
H.265+	Support
Video Bit Rate	32 Kbps to 16 Mbps

Image

Maximum Resolution	1920 × 1080
Main Stream	30 fps (1920 × 1080, 1280 × 960, 1280 × 720)
Sub Stream	30 fps (640 × 360, 352 × 240)
Third Stream	30 fps (1280 × 720, 640 × 360, 352 × 240)
Image Enhancement	BLC / 3D DNR
Image Settings	Rotate mode supported. Brightness, contrast, saturation, and sharpness are adjustable via web browser and client software
ROI (Region of Interest)	Separate support for one fixed region in main and sub streams
Day / Night Switch	Auto / scheduled

Network

Network Storage	Support for microSD / SDHC / SDXC card (128G), local storage, NAS (NFS, SMB/CIFS), ANR
Alarm Trigger	Motion detection, tampering alarm, network disconnected, IP address conflict, illegal login, HDD full, HDD error
Protocols	TCP/IP, UDP, ICMP, HTTP, HTTPS, FTP, DHCP, DNS, DDNS, RTP, RTSP, RTCP, PPPoE, NTP, UPnP, SMTP, SNMP, IGMP, 802.1X, QoS, IPv6
Standard	ONVIF (PROFILE S, PROFILE G), PSIA, CGI, ISAPI
General Function	One-key reset, anti-flicker, heartbeat, mirror, password protection, privacy mask, watermark, IP address filter

Interface

Communication Interface	1 RJ45 10M/100M self-adaptive Ethernet port
On-board Storage	Built-in microSD / SDHC / SDXC slot, up to 128 GB

Smart Feature Set

Behavior Analysis	Line crossing detection, intrusion detection, unattended baggage detection, object removal detection
Line Crossing Detection	Cross a pre-defined virtual line, up to 1 pre-defined virtual line supported
Intrusion Detection	Enter and loiter in a pre-defined virtual region, up to 1 pre-defined virtual region supported
Object Removal Detection	Objects removed from a pre-defined region, such as exhibits on display
Unattended Baggage Detection	Objects left over in the pre-defined region such as baggage, purses, and dangerous materials
Face Detection	Human face appears in the image can be detected and trigger linkage

General

Operating Conditions	-22° F to 140° F (-30° C to 60° C), Humidity 95% or less (non-condensing)
Power	12 VDC ± 25%, 5 W; PoE (802.3af, class 3), 6.5 W
IR Range	Up to 100 ft (30 m)
Protection Level	IP67, IK10
Dimensions	Camera: Ø 4.4" x 3.2" (Ø 111 x 82.4 mm); Package: 5.27" x 5.27" x 4.25" (134 mm x 134 mm x 108 mm)
Weight	1.1 lbs (500 g)

Accessories

					
PC110 Pendant mount	CB110 Conduit base	AB110 Angled base	WM110 Wall mount	SRS Sun rain shield	SRSM Sun rain shield medium

HIKVISION®

DS-7732NI-I4(/16P) Embedded Plug and Play NVR

- Up to 12 MP Recording Resolution
- HDMI Output at up to 4K (3840 x 2160) Resolution
- 32 IP Camera Inputs, 256 Mbps Bandwidth
- H.265+/H.265/H.264+/H.264/MPEG4 Compression
- HDMI Video Output Up to 4K (3840 x 2160)
- Independent HDMI and VGA Outputs
- 4x SATA HDD, DVD-RW Option
- Smart Search and Smart Playback
- Alarm and Audio I/O
- 16 Independent PoE Network Interface Camera Connections (/16P Model Only)



The DS-7732NI-I4 Series NVRs provide high resolution, high video compression, and HDMI video output up to 4K. The DS-7732NI-I4/16P's 16 independent PoE connections offer easy setup. Both models include smart search and smart playback to make locating specific incidents quick and accurate.

The dual-OS design ensures high system reliability, and Hikvision's proprietary ANR technology guarantees storage reliability when the network is disconnected.

The DS-7732NI-I4 Series supports live view, recording, and storage of up to 16 cameras simultaneously, with resolutions up to 12 MP. Customers will benefit from the centralized management of cameras and features such as information import/export, real-time information display, two-way audio, and VCA detection alarms.

Available Models:

DS-7732NI-I4/16P, 32 channels with 16 PoE ports

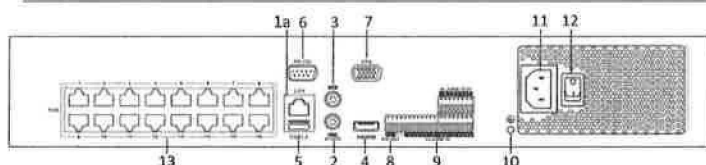
DS-7732NI-I4, 32 channels without PoE ports



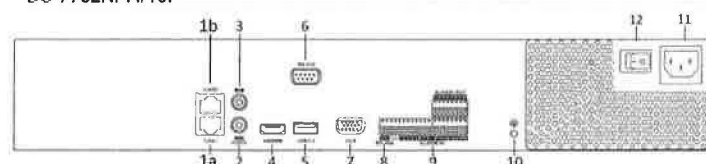
Specifications

DS-7732NI-I4/16P		DS-7732NI-I4	
Video/Audio Input			
Channels	32		
Resolution	Up to 12 MP resolution		
Two-Way Audio	1-ch, RCA (2.0 Vp-p, 1k Ω)		
Network			
Video Compression	H.265+, H.265, H.264+, H.264, MPEG4		
Incoming Bandwidth	256 Mbps		
Outgoing Bandwidth	256 Mbps		
Remote Connections	128		
Video/Audio Output			
Recording Resolution	12 MP/8 MP/6 MP/5 MP/4 MP/3 MP/1080p/UXGA/720p/VGA/4CIF/DCIF/2CIF/CIF/QCIF		
HDMI Output Resolution	4K (3840 × 2160), 1920 × 1080p, 1600 × 1200, 1280 × 1024, 1280 × 720, 1024 × 768		
VGA Output Resolution	1920 × 1080p, 1280 × 1024, 1280 × 720, 1024 × 768		
Audio Output	1-ch, RCA (linear 1k Ω)		
Decoding			
Decoding Format	H.265+/H.265/H.264+/H.264/MPEG4		
Live View/Playback Resolution	12 MP/8 MP/6 MP/5 MP/4 MP/3 MP/1080p/UXGA/720p/VGA/4CIF/DCIF/2CIF/CIF/QCIF		
Synchronous Playback	16-ch		
Audio Output	4-ch @ 4K, or 16-ch @ 1080p		
Hard Disk			
SATA	4 SATA interfaces for 4 HDDs		
Capacity	Up to 6 TB capacity for each HDD		
eSATA	1 eSATA interface		
External Interface			
Network Interface	1 x RJ-45 10/100/1000 Mbps self-adaptive Ethernet interface	2 x RJ-45 10/100/1000 Mbps self-adaptive Ethernet interfaces	
Serial Interface	1 RS-485 (half-duplex), 1 RS-232		
USB Interface	Front panel: 2 × USB 2.0; rear panel: 1 × USB 3.0		
Alarm In/Out	16/4		
PoE Interface			
PoE Interface Quantity	16 RJ-45 10/100 Mbps self-adaptive Ethernet interfaces		-
Power	≤200 W		-
Supported Standards	IEEE 802.3 at/at		-
General			
Power Supply	100 to 240 VAC		
Power	≤300 W		
Consumption (w/o Hard Disk)	≤20 W (w/o enabling PoE)		
Working Temperature	14° to 131° F (-10° to 55° C)		
Working Humidity	10% to 90%		
Chassis	19-inch rack-mounted 1.5 U chassis		
Dimensions (W x D x H)	17.5" × 15.3" × 2.8" (445 mm × 390 mm × 70 mm)		
Weight (w/o Hard Disk)	≤11 lbs (5 kg)		

Rear Panel



DS-7732NI-I4/16P



DS-7732NI-I4

No.	DS-7732NI-I4/16P	DS-7732NI-I4
1a	LAN1 Network Interface	LAN1 Network Interface
1b	---	LAN2 Network Interface
2	Audio Out	Audio Out
3	Audio In	Audio In
4	HDMI Interface	HDMI Interface
5	USB 3.0 Interface	USB 3.0 Interface
6	RS-232 Serial Interface	RS-232 Serial Interface
7	VGA Interface	VGA Interface
8	RS-485 Serial Interface	RS-485 Serial Interface
9	Alarm In and Alarm Out	Alarm In and Alarm Out
10	GND	GND
11	100 to 240 VAC Power Input	100 to 240 VAC Power Input
12	Power Switch	Power Switch
13	Network Interfaces w/PoE	---

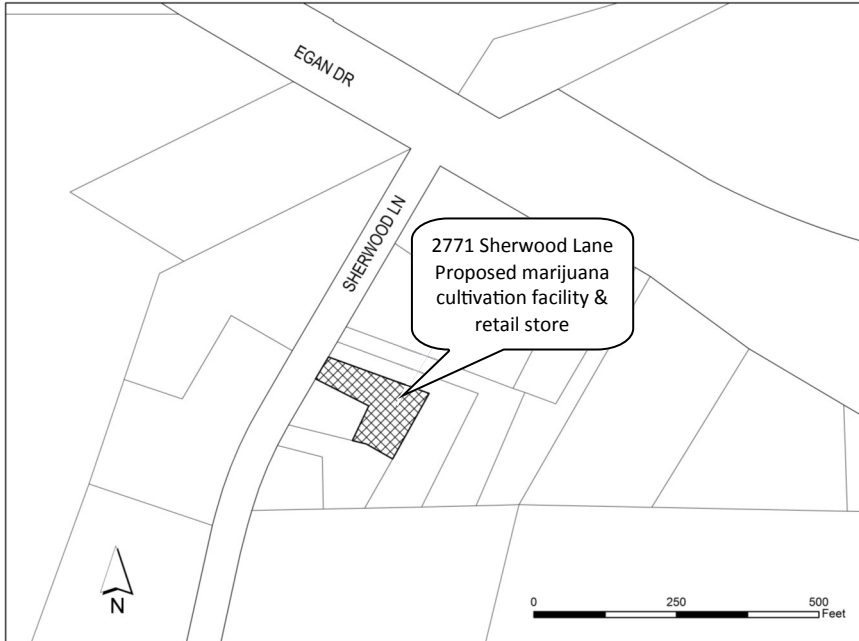
HIKVISION

Hikvision USA Inc., 18639 Railroad Street, City of Industry, CA 91748, USA • Hikvision Canada, 4848 rue Levy, St-Laurent, Quebec, Canada, H4R 2P1
 Tel: +1-909-895-0400 • Toll Free in USA: +1-866-200-6690 • E-Mail: sales.usa@hikvision.com • www.hikvision.com
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102617NA

Invitation to Comment

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



COMMUNITY DEVELOPMENT

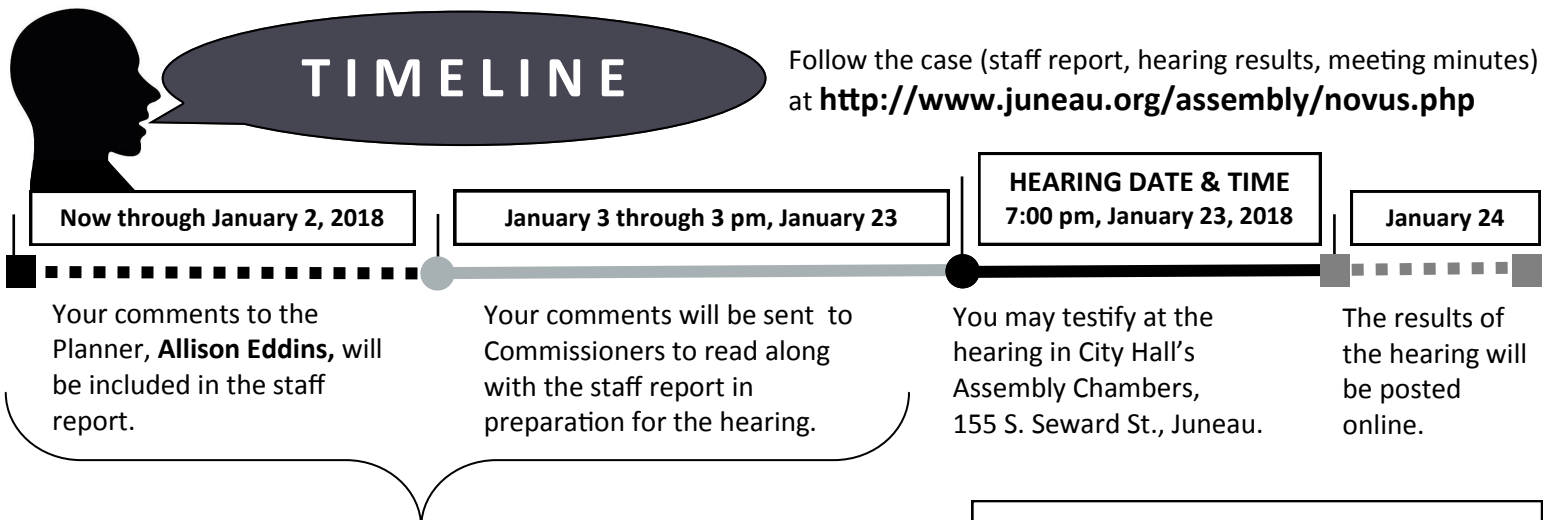
155 S. Seward Street Juneau, Alaska 99801

TO:

Applications have been submitted for consideration and public hearing by the Planning Commission for **two Conditional Use Permits** for a **marijuana retail store and a cultivation facility** located at **2771 Sherwood Lane** in an **Industrial zone**.

TIMELINE

Follow the case (staff report, hearing results, meeting minutes) at <http://www.juneau.org/assembly/novus.php>

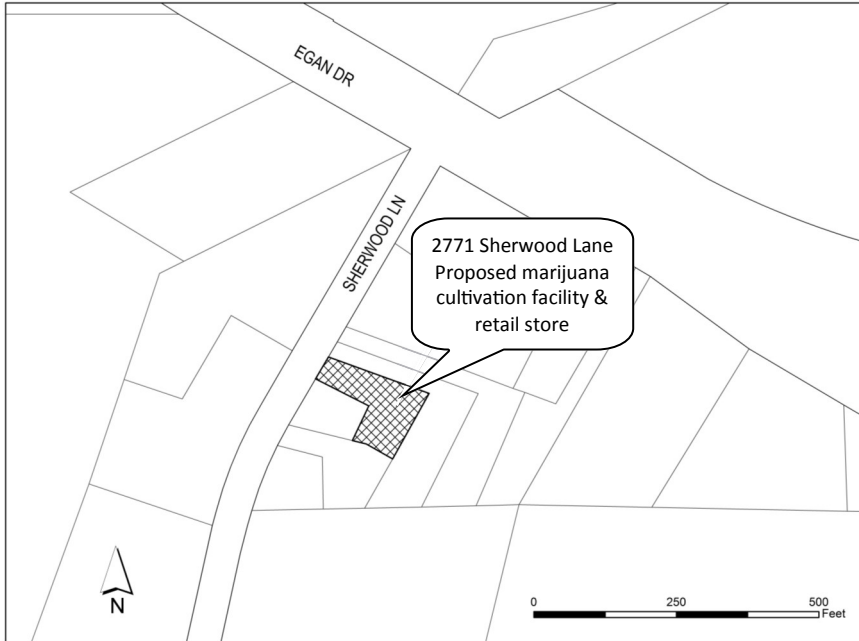


Phone: (907)586-0715 ♦ Email: pc_comments@juneau.org
Mail: Community Development, 155 S. Seward St, Juneau AK 99801
Attachment D

Case Nos.: USE2017 0028, USE2017 0029
Parcel No.: 4B1701104000
CBJ Parcel Viewer: <http://epv.juneau.org>
Date notice was printed: December 20, 2017

Invitation to Comment

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



COMMUNITY DEVELOPMENT

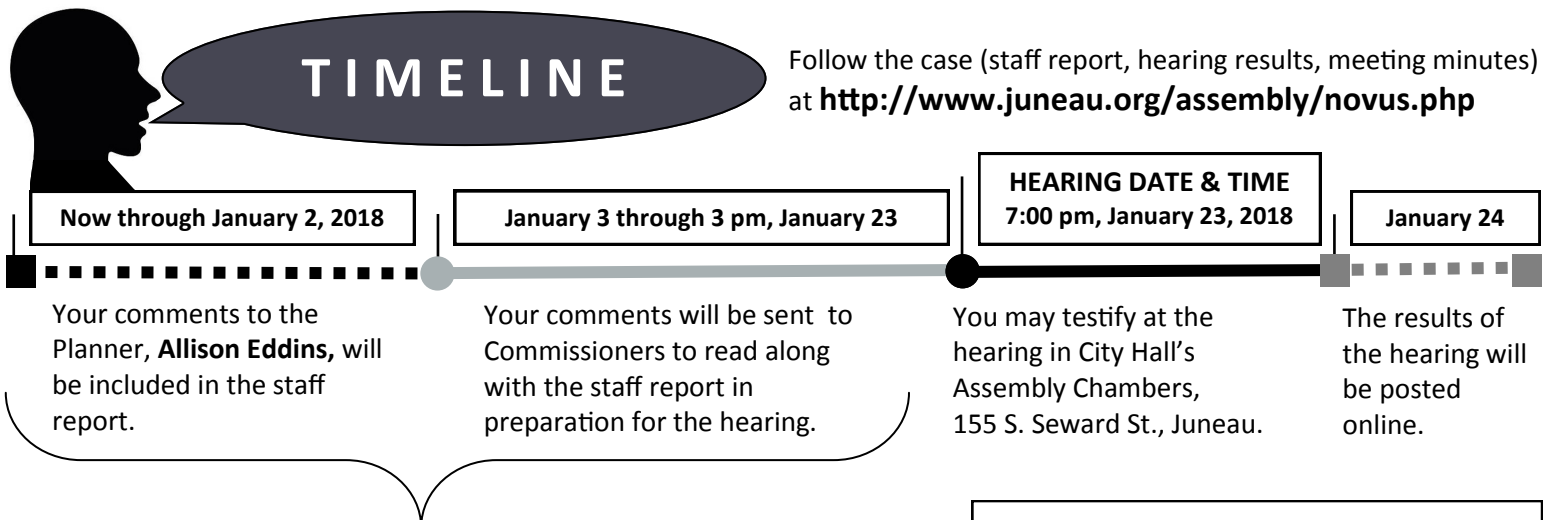
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Case Nos.: USE2017 0028, USE2017 0029
Parcel No.: 4B1701104000
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Date notice was printed: December 20, 2017



Planning Commission

(907) 586-0715

PC_Comments@juneau.org

www.juneau.org/plancomm

155 S. Seward Street • Juneau, AK 99801

PLANNING COMMISSION NOTICE OF DECISION

Date: January 23, 2018

File No.: USE2017 0029

Herb n' Legends LLC
3557 Riverside Drive
Juneau, AK 99801

Proposal: A Conditional Use Permit to convert a storage unit into a 1,200 sq. ft. marijuana cultivation facility

Property Address: 2771 Sherwood Lane

Legal Description: ANDSOH, Lot 5B

Parcel Code No.: 4B1701104000

Hearing Date:

The Planning Commission, at its regular public meeting, adopted the analysis and findings listed in the attached memorandum dated January 12, 2018, and approved the Conditional Use Permit for a marijuana cultivation facility to be conducted as described in the project description and project drawings submitted with the application and with 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.

Herb n' Legends LLC
 File No.: USE2017 0029
 January 23, 2018
 Page 2 of 3

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.

Attachments: January 12, 2018, memorandum from Allison Eddins, Community Development, to the CBJ Planning Commission regarding USE2017 0029.

This Notice of Decision does not authorize construction activity. Prior to starting any project, it is the applicant's responsibility to obtain the required building permits.

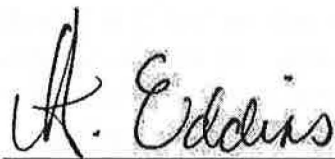
This Notice of Decision constitutes a final decision of the CBJ Planning Commission. Appeals must be brought to the CBJ Assembly in accordance with CBJ 01.50.030. Appeals must be filed by 4:30 P.M. on the day twenty days from the date the decision is filed with the City Clerk, pursuant to CBJ 01.50.030 (c). Any action by the applicant in reliance on the decision of the Planning Commission shall be at the risk that the decision may be reversed on appeal (CBJ 49.20.120).

Effective Date: The permit is effective upon approval by the Commission, January 23, 2018.

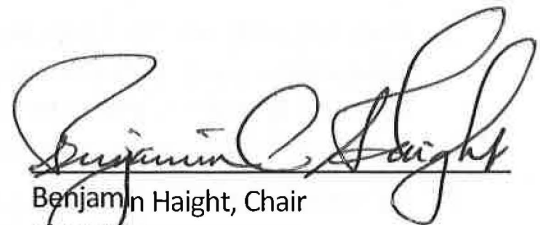
Expiration Date: The permit will expire 18 months after the effective date, or July 23, 2019, if no Building Permit has been issued and substantial construction progress has not been made in accordance with the plans for which the development permit was authorized. Application for permit extension must be submitted thirty days prior to the expiration date.

Conditional use permits issued to marijuana establishments under CBJ chapter 49.65.1245(e) shall be subject to review by the commission every five years from the date of issuance. Such review shall be subject to CBJ 49.15.330 except that the commission may only amend or add conditions if necessary to ensure compliance with this title.

Project Planner:



Allison Eddins, Planner
 Community Development Department



Benjamin Haight, Chair
 Planning Commission



Filed With City Clerk

January 29, 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. Owners and 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: January 11, 2018

TO: Planning Commission

FROM: Tim Felstead, Planner
Community Development Department

A handwritten signature in black ink, appearing to read 'Tim Felstead', is written over the printed name.

FILE NO.: CSP2017 0017

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

GENERAL INFORMATION

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

Lot purchase:

Property Owner: Construction Machinery Industrial LLC

Property Address: 1721 Anka Street

Legal Description: Lot 3, HORN 2

Parcel Code No.: 5B1201040052

Lot Size: 237,088 square feet (5.4428 acres)

**Comprehensive Plan Future
Land Use Designation:** Light Industrial (LI)

Zoning: Industrial (I)

Utilities: Public sewer/public water

Access: Anka St

Existing Land Use: Commercial storage

Planning Commission
 File No.: CSP2017 0017
 January 11, 2018
 Page 2 of 7

Lot Sale:

Property Owner: City & Borough of Juneau (managed by Public Works)

Property Address: 5436 Commercial Boulevard; 5233 Shaune Drive

Legal Description: Lot 41, SSG IV; Lot 42, SSG IV;
 Lot 4, SSG; Lot 5; SSG

Parcel Code No.: 5B1201390030; 5B1201390040;
 5B1201020040; 5B1201020050

Lot Size: 65,818 square feet - four lots combined (1.51 acres)

Comprehensive Plan Future
 Land Use Designation: Light Industrial (LI)

Zoning: Industrial (I)

Utilities: Public sewer/public water

Access: Commercial Blvd; Shaune Drive

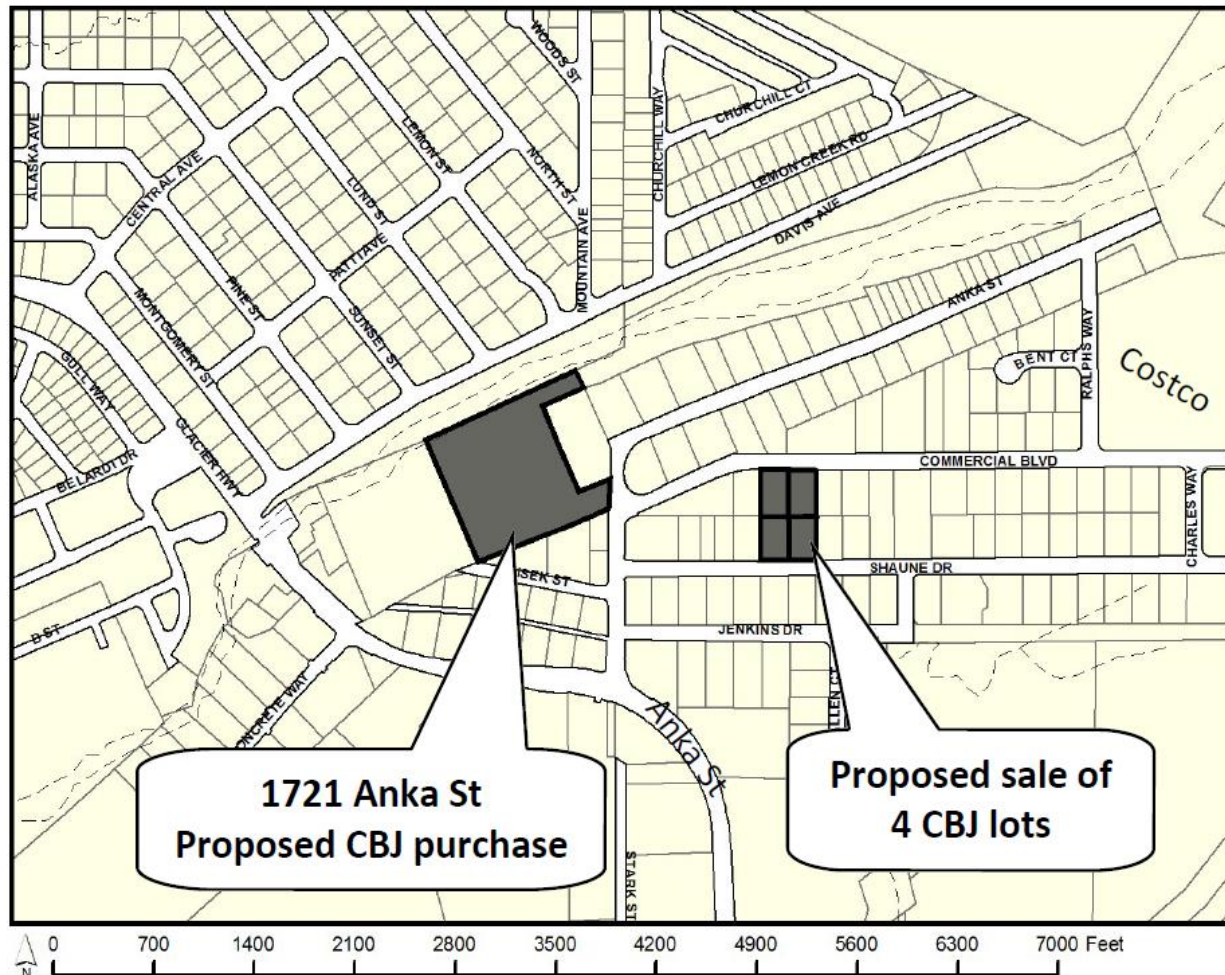
Existing Land Use: CBJ Household Hazardous Waste collection facility;
 CBJ Public Works Water utility offices

Surrounding Land Use:

Direction	<i>Lot purchase</i>	<i>Lot sale</i>
North	Lemon Creek, Vacant (GC, RR)	Commercial Boulevard, Commercial Misc. (I)
South	Group quarters (GC)	Shaune Drive, Industrial (I)
East	Commercial miscellaneous, Anka St (I)	Industrial mix (I)
West	Vacant (GC)	Vacant (I)

Planning Commission
File No.: CSP2017 0017
January 11, 2018
Page 3 of 7

VICINITY MAP



ATTACHMENTS

- Attachment A Application including background information on proposed land purchase and sale, and November 20, 2017, memorandum on RecycleWorks program to Assembly Committee of the Whole
- Attachment B Photographs of locations

PROPOSAL

CBJ is proposing to sell four lots in the Lemon Creek Industrial area (lots front onto Shaune Drive and Commercial Boulevard). This will require existing CBJ Household Hazardous Waste and Water Utility facilities on these lots to be relocated.

Planning Commission
 File No.: CSP2017 0017
 January 11, 2018
 Page 4 of 7

BACKGROUND

The Alaskan Brewery has requested to purchase the subject CBJ owned lots to allow expansion of their adjacent production facility. There are obvious benefits to the brewery expanding on adjacent property rather than seeking new locations. The brewery currently leases approximately two-thirds of the Water Utility building to provide office space for their operations. The CBJ Household Hazardous Waste collection center and CBJ Water Utility building are currently located on the subject lots.

While not in the scope of the Planning Commission review regarding the lot sale, it is pertinent to discuss where the CBJ facilities currently existing on the subject lots will be relocated.

As described in the November 20, 2017, memorandum from CBJ Engineering and Public Works to the Assembly Committee of the Whole (see Attachment A), the CBJ RecycleWorks program intends to purchase a privately owned lot on nearby Anka Street. The sale to the brewery of the CBJ owned lots will partly fund the purchase of the Anka Street lot. This will allow CBJ to establish an easily-accessed location for related services to include the relocated Household Hazardous Waste facility, the Recycling Facility (currently located at the Waste Management facility at the landfill), and a pilot composting facility. The Water Utility offices would move to the currently vacant 'Valley Shop' on Barrett Avenue, in the Industrial Boulevard area (adjacent to the Capital Transit facility). The water utility control system (supervisory control and data acquisition – SCADA) servers and computers would be relocated to the Salmon Creek Water Treatment facility.

ANALYSIS

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

49.10.170 Duties

(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 of the commission shall be based upon the provisions of this title, the comprehensive plan, and the capital improvements program.*

Title 53 requires that all negotiated land sales and leases undergo a review by the Planning Commission before final authorization by the City Assembly.

53.09.260 - Negotiated sales, leases, and exchanges.

(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*

Planning Commission
 File No.: CSP2017 0017
 January 11, 2018
 Page 5 of 7

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 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.

Unlike for sales or leases of CBJ Lands, Title 53 does not state that the Planning Commission is required to review land acquisitions.

53.04.020 - Acquisition by purchase or eminent domain.

(a) Upon the appropriation of funds for the purpose, the manager may acquire real property or an interest therein at a price the manager determines does not exceed fair market value. The manager may acquire such property through negotiation or eminent domain, including the use of a declaration of taking. Except upon the determination of a court or the master in an eminent domain proceeding, or upon the approval of the assembly by motion, the manager may not acquire property under this section at a price which is higher than fair market value of the property.

According to the CBJ Land Use Code Table of Permissible Uses (CBJ 49.25.300), the expansion of the brewery production on CBJ lots may require a Conditional Use Permit, depending on the size of the expansion (Use 4.050 Light Manufacturing). The relocation of CBJ facilities to the lot proposed for purchase for the combined RecycleWorks facilities (Use 11.110- 11.130) and relocation to the vacant Valley City Shop of the Water Utility (Use 10.220) including accessory office space will all be permissible uses for their respective zoning districts and will not require Conditional Use Permits. The relocation of the SCADA system is an accessory use to existing operations at the Salmon Creek Water Treatment facility.

Conformity with Adopted Plans

2013 Comprehensive Plan

The sale of the CBJ lots to allow expansion of the Alaska Brewery production facility is consistent with the following policies:

POLICY 5.1 TO DEVELOP AND SUSTAIN A DIVERSE ECONOMY, PROVIDING OPPORTUNITIES FOR EMPLOYMENT FOR ALL RESIDENTS. (p.44)

Implementing Actions:

5.1 – IA1 Work with private-sector industries and businesses and public sector agencies that are interested in locating or expanding within the City and Borough of Juneau, and consider offering land, tax incentives, or other benefits to encourage new development.

POLICY 5.11. TO ENCOURAGE THE LOCATION AND GROWTH OF LOCALLY-BASED BASIC

Planning Commission
 File No.: CSP2017 0017
 January 11, 2018
 Page 6 of 7

SECTOR INDUSTRIES THAT PROVIDE YEAR-ROUND, FULL-TIME EMPLOYMENT AND PROVIDE TAX REVENUES THAT SUPPORT PUBLIC SERVICES. (p.58)

The purchase of additional land by CBJ is outside the scope of this review; however the sale of the CBJ lots will assist in the purchase of a larger parcel of land for the RecycleWorks program facilities and allow for future expansion of that program. The facility would include Household Hazardous Waste, recycling drop off and processing, and composting facilities. The Comprehensive Plan notes diversion of waste from the landfill, where possible, is important.

POLICY 12.4. TO FACILITATE THE REDUCTION OF WASTE MATERIALS GENERATED AND DISPOSED BY HOUSEHOLDS AND BUSINESSES THROUGH PROMOTION OF AN AGGRESSIVE SOLID WASTE DIVERSION PROGRAM INCLUDING ACTIVITIES FACILITATING WASTE PREVENTION, REUSE AND RECYCLING. (p.203)

In particular, the Comprehensive Plan states that the *Final Solid Waste Management Strategy for the City and Borough of Juneau – 2008* should be implemented in full. This strategy includes providing a centralized location for recycling, reuse initiatives, and composting. Therefore, a large parcel of land between 10-25 acres would be ideal. It was also noted that a smaller parcel may have to suffice since parcels of that size in suitably zoned, accessible, and buffered locations are in short supply in Juneau.

Appropriate uses of CBJ owned property is encouraged, even those parcels not identified for immediate disposal.

POLICY 17.2. TO HOLD CERTAIN LANDS IN THE PUBLIC TRUST, AND TO DISPOSE OF CERTAIN LANDS FOR PRIVATE USE WHEN DISPOSAL SERVES THE PUBLIC INTEREST. (p.226)

2016 Land Management Plan

While not a plan adopted into Title 49, the Land Management Plan is adopted by CBJ ordinance and is relevant to this review.

The sale of the CBJ lots is supported by the policy of Title 53 regarding management of CBJ lands states and referenced in the 2016 CBJ Land Management Plan:

CBJ 53.09.010 Land Management Policy

It is the policy of the City and Borough to manage its real property as a municipal resource and to use, retain and dispose of both improved and unimproved land to realize the maximum benefit of the municipality and its residents, including encouraging beneficial private economic activity and facilitating the provision of public services, guiding a rational growth pattern, preserving land for public and private use for present and future generations of City and Borough residents, meeting the need of City and

Planning Commission
File No.: CSP2017 0017
January 11, 2018
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Borough residents for private ownership, and stabilizing land values without making land available for purposes of speculation.

The 2016 Land Management Plan indicates that these particular lots proposed for sale should be 'retained'. As explained in correspondence from the CBJ Attorney (see Attachment A), a process according to Title 53 should be followed to address the issue that the lots to be sold have been identified for retention. Approval of the sale by the Assembly would effectively amend the status that was established in the adopted 2016 Land Management Plan; this CSP review by the Planning Commission will result in a recommendation to the Assembly as part of the land sale process.

Lemon Creek Area Plan (2018)

The following goal in the Lemon Creek Area Plan supports sale of the CBJ lots to allow for the growth of the Brewery production facility.

Goal 2: Create thriving commercial and industrial areas that support industry and neighborhood.

Habitat

There are no habitat concerns identified related to the proposed sale of the CBJ lots. Lemon Creek (adjacent to the lot proposed for purchase) is a cataloged anadromous stream and is subject to the 50-foot no-disturb buffer. This will be addressed through appropriate permits at the time of development.

Flood Hazard Zone

A small strip of land along the banks of Lemon Creek on the lot proposed for purchase is in the flood zone where special development regulations would apply. This also overlaps with the 50 foot anadromous stream buffer for the lot and would be undevelopable anyway.

FINDINGS

CDD staff finds the proposed disposal of the subject CBJ owned lots to the Alaska Brewery is consistent with the CBJ Land Use Code and is consistent with adopted plans and studies.

RECOMMENDATION

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

DEVELOPMENT PERMIT APPLICATION

Project Number CSP 2017-0017	CITY and BOROUGH of JUNEAU	Date Received: 11/22/17
Project Name (City Staff to Assign Name)		

INFORMATION	Project Description CBJ RecycleWorks proposed to the Assembly the sale of 4 CBJ lots in Lemon Creek and the purchase of one lot in Lemon Creek. The division requests comments from the planning commission on the land disposal and acquisition per 49.10.170 and 53.09.260.		
	PROPERTY LOCATION		
	Street Address see attached.		City/Zip
	Legal Description(s) of Parcel(s) (Subdivision, Survey, Block, Tract, Lot) HORN 2 LT 3, 5561V LT 41, 5561TS		
	Assessor's Parcel Number(s) 5-B12-0-104-005-2, 5B1201390030, 5B1201020050,		
	LANDOWNER/ LESSEE		
	Property Owner's Name see attached.	Contact Person:	Work Phone:
	Mailing Address	Home Phone:	Fax Number:
	E-mail Address	Other Contact Phone Number(s):	
	PROJECT / APPLICANT	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		Landowner/Lessee Signature	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 Michele Elfers		Contact Person: Michele Elfers	Work Phone: 586-0931
Mailing Address CBJ 155 S. Seward Street		Home Phone:	Fax Number:
E-mail Address Michele.Elfers@juneau.org	Other Contact Phone Number(s):		
X	Applicant's Signature	Date of Application 11/22/17	

OFFICE USE ONLY BELOW THIS LINE

STAFF APPROVALS	☒	Permit Type	***SIGN	Date Received	Application Number(s)
		Building/Grading Permit			
	☒	City/State Project Review and City Land Action		11/22/17	CSP2017-0017
		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: Check with Beth on whether acquisition part of this needs review by PC. T49 says to follow procedure of 153.					Permit Intake Initials JMM

NOTE: DEVELOPMENT PERMIT APPLICATION FORMS MUST ACCOMPANY ALL OTHER COMMUNITY DEVELOPMENT DEPARTMENT APPLICATIONS

CITY/STATE PROJECT AND LAND ACTION REVIEW APPLICATION

Project Number	Project Name (15 characters)	Case Number CSP	Date Received
----------------	------------------------------	--------------------	---------------

TYPE OF PROJECT REVIEW:

☐ City Project Review
 ☒ City Land Acquisition /Disposal
 ☐ State Project Review

DESCRIPTION OF PROJECT

See narrative

Please attach a cover letter to fully explain the project if there is not adequate space on this form.

CURRENT USE OF LAND OR BUILDING(S):

Lots for disposal - CBS Hazardous waste collection - public works.
lots for acquisition - Construction Machinery yard.

PROPOSED USE OF LAND OR BUILDING(S):

- Lots for disposal - AK browsing
- Lots for acquisition - CBS Recycling Centre including compost.

PROJECT NUMBERS ASSOCIATED WITH PROPOSAL:

Is this project associated with any other Land Use Permits? ☒ No ☐ Yes Case No.: _____

Capital Improvement Program # (CIP) _____

Local Improvement District # (LID) _____

State Project # _____

ESTIMATED PROJECT COST:

\$ *NA* - Land ~~off~~ sale - not subject to fees.

For more information regarding the permitting process and the submittals required for a complete application, please see the reverse side.

If you need any assistance filling out this form, please contact the Permit Center at 586-0770.

CITY/STATE PROJECT FEES

	Fees	Check No.	Receipt	Date
Application Fees	\$ _____	_____	_____	_____
Total Fee	\$ _____	_____	_____	_____

NOTE: MUST BE ACCOMPANIED BY DEVELOPMENT PERMIT APPLICATION FORM

&

EVEN IF THE PROPOSED PROJECT IS ASSOCIATE WITH OTHER LAND USE PERMITS, THIS APPLICATION MUST BE FILLED OUT Attachment A: Application

RecycleWorks Disposal and Acquisition Proposal for land in Lemon Creek

CBJ Purchase				
<u>Owner</u>	<u>Address</u>	<u>City and Zip</u>	<u>Lot</u>	<u>Contact</u>
CMI	1721 Anka St	Juneau, 99801	HORN 2 LT 3	Ken Gerondale
CBJ Sell				
CBJ Public Works	Salt B. 5436 Commercial Blvd	Juneau, 99801	SSG IV LT 41, 42	
CBJ Public Works	5433 Shaune Drive	Juneau, 99801	SSG LT 4 and 5	



Kyle Paw

From: Amy Mead
Sent: Wednesday, November 29, 2017 5:10 PM
To: Michele Elfers
Cc: Roger Healy; Rorie Watt
Subject: RE: RLS RecycleWorks

Hi Michele

I'm going to outline the necessary process for all of the moving pieces because some of the action described below requires process (or doesn't require process) being envisioned below. There is definite benefit to bringing the global picture forward to the assembly so they're tracking all of these moving pieces but you might want to reconsider how that is going to happen because there's an assembly motion piece needed that isn't identified below. I just want to be sure I've communicated what the actual required process is for all the pieces in case you guys see some efficiencies you can build in....

Land purchases. These do not need PC approval. Rorie has the authority under 53.04.020 to purchase property for FMV once the money is appropriated. FMV needs to be established and appropriating ordinance drafted by Finance. You can certainly bring together as information to PC but they don't need to comment on the acquisition; not their role.

1. Appraisal needed
2. Negotiate sale document terms (does not need assembly process)
3. Appropriating ordinance (Finance)

Land sale I think the facts are that AK Brewery contacted CBJ with the idea that they buy the four lots, and in considering that, the idea came up for the purchase being contemplated above. If that is indeed the case, there should be an application filed with Lands under 53.09.260 because that is the code section that allows for us to do a negotiated sale. Unfortunately, the Land Management Plan identifies the two lots being contemplated for sale as being "retained" – so we do need to go through this process:

1. Assembly needs to pass a motion authorizing the manager to negotiate the sale with AK Brewery.
2. Rorie starts negotiating that sales agreement
3. the proposed sale gets taken to PC
4. The Assembly adopts an ordinance authorizing the sale.

That highlighted part has to get before the Assembly (not a committee) ASAP for all of this to proceed. Earliest opportunity is 12/18.

User rate ordinance I'll start drafting this. I might need more information; I'll see what I can pick apart from memo.

Central treasury loan. (if this goes forward), this is just an ordinance. See 57.05.045.

Also keep in mind – (regarding the sale and disposal) the ordinances are not what takes time. The sales agreements take time. Give yourself enough room to work with us to get those agreements drafted. It'll either be Teresa or Palmer. Once the agreements are drafted, those become the "text" of the ordinances, not the other way around. This is important because if there is some negotiating around one of our "boilerplate" terms from the code, that modified language must be in the ordinance. Additionally, the sales agreement is usually attached to the ordinance as an exhibit.

 Amy Mead
 CBJ Municipal Attorney
 (907) 586-5340

From: Michele Elfers
Sent: Wednesday, November 29, 2017 3:57 PM
To: Deb Senn; Amy Mead
Cc: Roger Healy
Subject: RE: RLS RecycleWorks

Deb and Amy,

I met with Rorie today and he would like us to be on the 12/13 Finance Committee with a draft of the user rate ordinance. Sorry to drop this on you, I thought we had more time. The other three ordinances, land purchase, land sale, and loan, can wait until the COW on 1/29 or the Finance Committee on 2/7. Here is the tentative schedule:

1. 12/13 Finance Committee – introduce user rate draft ordinance
2. 1/23 Planning Commission – get comments on land sale and purchase
3. 1/29 COW or 2/7 Finance Committee – introduce other three ordinances, bring user rate ordinance back
4. 2/12 Assembly introduce
5. 3/5 Assembly Public Hearing

Michele

From: Michele Elfers
Sent: Tuesday, November 28, 2017 8:20 AM
To: Deb Senn
Cc: Amy Mead
Subject: RE: RLS RecycleWorks

Deb and Amy,

I am so sorry I did not forward the memo that went in the packet for the meeting. In my head I was thinking it would be assigned an attorney and we would work through the issues as it is complicated. But really, I should have attached the memo so you know what the heck we are talking about.

Here is a brief rundown.

Land Purchase and Sale: RecycleWorks/Public Works is proposing selling the 4 lots in Lemon Creek (HHW and water utility operations) to the AK Brewing Company. Aerials are attached. This money would be used to partially fund the purchase of a 5.4 acre lot on Anka Street. Water Utility will move to the Valley Shop next to Capital Transit bus barn and HHW would will move to the Anka Street lot. The intent of the purchase is to relocate HHW and consolidate RecycleWorks programs, so we would move recycling from the landfill to this new lot and begin a pilot composting program. The lot is adjacent to our current contractor for Junk Vehicles and we are in year 1 of a 10 year contract with them.

User Rate Increase: This land purchase/sale and consolidation plan requires a user rate increase for funding, the increase is in the attached memo in a chart. The proposal is to increase the \$4 monthly fee (\$48 annual) that is assessed on dwelling units for the program over 4 years to \$8 monthly. We also propose to make a pilot/voluntary commercial recycling fee mandatory. This fee is based on annual tonnage recycled and is shown in the attached chart in the memo.

Central Treasury Loan: As the consolidation and purchase will be supported by user rate increases over 4 years, there is a cash flow issue that can be resolved with a central treasury loan. Bob suggested this last year when we started working on this proposal. I met with him yesterday and he is thinking on other options for financing so there is a chance the loan piece could change to something else. I think we will get this resolved in the next week or two as we are finalizing our financial model.

There is a lot more detail I can provide, but I kept it brief in the email. Let me know if you have any questions. Our tentative schedule is:

Planning Commission January 23rd for land purchase/sale comments
Finance Committee February 7th with draft ordinance

Thank you!
Michele

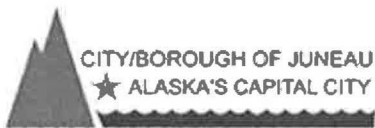
From: Deb Senn
Sent: Monday, November 27, 2017 5:05 PM
To: Michele Elfers
Cc: Amy Mead
Subject: FW: RLS RecycleWorks

Hi Michele,

I left you a voicemail earlier. You will want to discuss this RLS with Amy. She tells me that Law will need much more information for this RLS. The RLS status has been changed to 'Pending Action by Department' in the RLS database. No attorney has been assigned pending further discussion.

Deb

Deb Senn, Office Manager
City and Borough of Juneau - Law Department
155 S. Seward Street, Juneau, Alaska 99801
Ph: (907)586-0270; Email: deb.senn@juneau.org



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From: Amy Mead
Sent: Monday, November 27, 2017 4:52 PM
To: Deb Senn; Robert Palmer
Subject: RE: RLS RecycleWorks

We need a lot more information. What are the user rates they want to propose?
A loan from central treasury to buy and sell what property?

Amy Mead
CBJ Municipal Attorney
(907) 586-5340

From: Deb Senn
Sent: Monday, November 27, 2017 3:42 PM
To: Amy Mead; Robert Palmer
Subject: RLS RecycleWorks

Amy / Rob,

Michele Elfers submitted an RLS last Wednesday for an ordinance needed within a month relating to the RecycleWorks Program. This request is based on a Motion by Loren Jones at the 11/20 COW meeting (RLS is below). No backup came with the RLS. Loren's Motion is below. What do we need from Michele in order to draft this ordinance? The minutes/motion below do not seem sufficient, but maybe you have information on this subject I'm not aware of.

Please advise if any pre-ordinance steps need to take place first, such as those relating to the purchase of the Anka Street property, or determining the user rates. I also left a voicemail message for Michele today requesting a call back.

Deb

MOTION, by Jones, to direct staff to draft an ordinance to authorize rate increases and negotiate the purchase of the Anka Street property.

Mr. Edwardson objected. He said he would like more organized information on the subject of the vote.

Ms. Gladziszewski appreciated Mr. Edwardson's comment and said that could be forthcoming during the work on the ordinance.

Mr. Jones said he had sat through many presentations on this topic and was comfortable moving forward in a timely manner.

Mr. Edwardson said that it would be illustrative for the public to see a fiscal note on this matter.

Mr. Kiehl supported the motion and said there would be more opportunities to analyze and discuss the matter.

Mayor Koelsch asked how the \$2 million voter approval factored into this equation. Ms. Elfers said that would supplement the user rates to avoid more rate increases.

Roll call:

Aye: Becker, Gladziszewski, Gregory, Jones, Kiehl, Weldon,
Koelsch

Nay: Edwardson

Motion passed, 7 ayes, 1 nay.

For Legal Services (Recy) > Draft Ordinances for RecycleWorks program > Edit Item

OK

Cancel

 Attach File |  Delete Item

* indicates a required field

Brief keyword description *

Draft Ordinances for RecycleWorks program

Service Requested *

☒ Resolution/Ordinance/Regulation ▼

☐ Specify your own value:

Use "Specify Your Own Value" only if your need is not listed in the drop-down. If this is a Contract request be sure to complete a Contract Preparation Request.

Need By *

☒ within a month ▼

☐ Specify your own value:

If you have a specific deadline, choose "Specify Your Own Value" and enter the date using M/D/YYYY format.

If you put anything other than a date in this "Other" field, it will sometimes make your ENTIRE request invisible to Law. Comments regarding an item's urgency belong in the DETAILS field.

Dept *

PUB WORKS - WASTE MNGMNT ▼

Dept Approval By *

Roger Healy

Who in your dept approved making this request?

Contact *

Michele Elfers

Phone Number *

586-0931

Details of Your Request *

Based on Assembly direction at Monday's COW, we need to draft an ordinance on user rates, a loan from central treasury, to buy property and to sell property. We will go back in January to the Assembly with this information.

Please be specific

Deb Senn, Office Manager
City and Borough of Juneau - Law Department
155 S. Seward Street, Juneau, Alaska 99801
Ph: (907)586-0270; Email: deb.senn@juneau.org



Engineering & Public Works Department

155 South Seward Street

Juneau, Alaska 99801

Phone: 907-586-0800 | Fax: 907-463-2606

DATE: November 20, 2017

TO: Jerry Nankervis, Chair
Committee of the Whole

FROM: Michele Elfers, RecycleWorks Manager

SUBJECT: RecycleWorks Fee Schedule and Site Location

Background:

Over the last year, there have been several Assembly presentations¹ on the RecycleWorks program which focused on current opportunities and challenges, long term goals and objectives, and sustained fiscal viability. Those presentations outlined that in order to achieve the Assembly's long term goal of waste stream diversion from the landfill, the Assembly needs to consider and take action on two critical issues: Fee schedule and Site location.

In making these decisions, the Assembly must balance the needs of the existing program, the desire to increase diversion of waste from the landfill, the ability of the citizens to afford rate increases and the desire to control the management of the programs.

Proposed Fee Schedule Adjustments:

The RecycleWorks program is currently funded through a \$48/year residential user rate charged via CBJ utility bills (\$4/month) and a Motor Vehicle Registration Tax (MVRT) of \$22/year charged on non-commercial vehicles which is collected and transmitted through the State of Alaska DMV. Currently, there is no MVRT in place for commercial vehicles.

For FY18, revenue to the program is approximately \$1.1M and expenditures are estimated at \$1.3M. The shortfall is covered through the Waste Management Enterprise Fund balance. In order to grow the program and achieve the goal of additional diversion from the landfill, the CBJ needs to provide for a stable revenue base to fund operations. The Assembly and voting public took the first step in that direction with the recent infusion of \$2M in 1% sales tax funding. The 1% helps to stabilize the program, but does not cure the problem.

The table below constitutes staff's proposed fee structure. Residential rates would increase over a period of 4 years from \$4.00 a month to \$8.00 a month. Commercial rates are currently structured as a flat rate and are not mandatory. Approximately \$2500 will be collected from the voluntary

¹ May 31, 2017, Assembly Finance Committee – 1% sales tax discussion

April 10, 2017, Lands Committee Presentation: <http://www.juneau.org/pubworks/documents/Lands4-10.pdf>

March 20, 2017, Assembly Committee of the Whole:
<http://www.juneau.org/pubworks/documents/COWRWFfinal3-16.pdf>

November 20, 2017 Assembly Committee of the Whole
RecycleWorks Fee Schedule and Site Location

commercial permit program this year. Moving forward, it is proposed that the commercial rate is mandatory and that for larger commercial customers the fee will increase based on overall tonnage. Increasing the MVRT or addressing a commercial vehicle tax is not being proposed at this time but could be considered as an option in the future.

Existing and Proposed Annual RecycleWorks Program User Rates

	Residential	Commercial up to 3 tons	Commercial up to 20 tons	Commercial up to 50 tons	Commercial over 50 tons
Existing					
FY 18	\$48	\$100	\$100	\$100	\$100
Proposed:					
FY19*	\$72	\$100	\$100	\$100	\$100
FY20	\$84	\$ 100	\$100	\$100	\$100
FY21	\$96	\$100	\$ 500	\$2,000	\$5,000
FY22	\$96	\$100	\$500	\$2,000	\$5,000

* In FY 19 commercial rate becomes mandatory and assessed on the utility bill.

In considering these rates, it may be helpful to put them in perspective. The average consumer pays approximately \$430 annually for garbage and recycling curbside pickup, and the cost of disposal at the landfill is \$195 per ton for the public.

Site Location:

The Alaskan Brewing Company continues to be interested in acquiring the 4 CBJ lots adjacent to their property in Lemon Creek to expand their manufacturing facility. The appraised value of these 4 lots is \$2,600,000. The water utility occupies two of these lots and the Household Hazardous Waste (HHW) facility occupies the other two. Both programs can be relocated to allow for the sale of the property. At the April 10, 2017 Lands Committee, a recommendation to authorize the City Manager to begin negotiations directly with the Alaskan Brewing Company for the sale of the four lots was forwarded to the Assembly.

Alternate locations for CBJ programs have been evaluated. The water utility can move to the former Valley Street Maintenance Shop property (adjacent to Capital Transit) which is vacant.

Currently, the RecycleWorks program is spread over several locations in Lemon Creek: the HHW facility on Commercial Drive, junk vehicle processing with Skookum on Anka Street, and recycling with Waste Management at the landfill. While the current facilities and site distribution have functioned adequately for the last few years, the growth in recycling we have seen with the drop box containers has shown that the landfill facility has reached maximum capacity. Additionally, when considering future growth opportunities, having multiple facility locations does not lend itself to operational efficiencies or to customer convenience. If the overall goal is to increase the amount of diversion to the landfill, then making disposal easier for the customer will help us to achieve this goal.

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RecycleWorks Fee Schedule and Site Location

At the April 10, 2017 Lands Committee, 4 potential site options for RecycleWorks were presented: Valley Street site, Lemon Creek Gravel Pit, Waste Management site, and the CMI (formerly Channel) property on Anka Street.

The HHW program needs public access, indoor and outdoor storage space, and paved areas for large containers to be loaded for shipping of materials. It would be possible to locate the HHW program to the Valley Street Shop, but the site would be operationally difficult for public access and container loading especially if combined with water utility operations. The location is inconvenient for the public and it would limit overall program growth.

The Gravel Pit area in Lemon Creek could be developed, but the cost of development is higher than any of the other options and it ties up a piece of property that potentially could be used for a better purpose. Industrial land is sparse and this parcel represents significant future potential for growth.

The other two options, the CMI property on Anka Street and contracting for expanded services with Waste Management at the landfill both allow for current and future operational program needs to be met, but represent different long term outcomes.

The 5.4 acre property owned by CMI, LLC is for sale at 1721 Anka Street for \$3,300,000. This parcel meets current and future RecycleWorks needs. It is paved, has adequate room for growth and is centrally located for the public. It has the added advantage of being adjacent to the CBJ junk vehicle program currently operated by Skookum under a 10 year contract. The HHW program could be moved into the existing building with minimal renovation and the recycling program could be relocated here with a covered structure similar to the salt storage bay at the CBJ Streets Shop at 7 mile Glacier Highway, and a pilot composting program could be initiated.

It is also possible to expand operations at the Waste Management site with significant capital investment. The recycling building at Waste Management (WM) needs to be replaced due to physical and operational problems, and if the goal is to co-locate services, an additional structure to house HHW would need to be constructed. WM indicated that to make this investment, a long term contract of 10-20 years with a higher rate to include amortized capital costs, lease costs, and operational costs would be required. At the end of the lease period, CBJ would be back in the position of determining how best to provide for the future of the program.

Considerations:

Juneau does not have ownership over our waste stream and there is not a private sector competitive market for solid waste disposal. This means that as a municipality we have been dependent on private companies to haul and process our waste which limits our decision making ability on long term solid waste disposal options. In making a decision about site location, the Assembly must weigh how much control the city should have over managing our solid waste stream.

The proposal to buy the CMI property for the HHW, recycling and compost programs gives us some ownership and decision making power to affect the cost of solid waste processing and disposal into the future. With the sale to the Alaskan Brewing Company and the relocation to the CMI property, CBJ will have the option to contract with private operators on our property, manage how recycling is processed, grow the local beneficial reuse of our waste, and extend the lifespan of the landfill.

November 20, 2017 Assembly Committee of the Whole
RecycleWorks Fee Schedule and Site Location

The chart below summarizes points for consideration:

RecycleWorks Facility Ownership and Management		
Pro's & Con's		
	Public Operator	Private Operator
Public Land	Can recoup infrastructure investment over long term.	Can recoup infrastructure costs over long term, potentially lower operating costs.
Private Land	Infrastructure costs have to be recouped over life of contract.	Infrastructure costs have to be recouped over life of contract, potentially lower operating costs.

Conclusion:

The proposed fee schedule and sale of the 4 CBJ lots would allow for program relocation, consolidation of HHW and Recycling programs, and the initiation of a pilot composting program. The requested action items are:

1. Direct staff to draft an ordinance authorizing rate increases for Assembly consideration.
2. Motion to begin negotiations for sale of CBJ property and purchase of the Anka Street property.

SIMILAR

CSP

CITY/STATE PROJECT AND LAND ACTION REVIEW APPLICATION

Project Number	Project Name (15 characters)	Case Number CSP	Date Received APR 17 2017 PERMIT CENTER/CDD
----------------	------------------------------	--------------------	---

TYPE OF PROJECT REVIEW:

CSP20170010

☐

City Project Review

☒

City Land Acquisition /Disposal

☐

State Project Review

DESCRIPTION OF PROJECT

The applicants own a legally non-conforming, triangular, 14,000 sq. ft. lot at 11259 N. Douglas Highway and are purchasing adjacent CBJ property on either side of their lot to make it rectangular in shape. The CBJ Assembly has authorized the Manager to enter into negotiations for a land sale to Mr. Dwight Scott Williams and Ms. Carol Colp for approximately 14,000-22,000 square feet of CBJ property located at USS 3559 Lot 2.

Please attach a cover letter to fully explain the project if there is not adequate space on this form.

CURRENT USE OF LAND OR BUILDING(S):

CBJ property USS 3559 Lot 2 (LND-1421) is listed in the 2016 Land Management Plan as "retain/dispose." The CBJ has future plans to subdivide the lot; the applicants' request does not hinder future CBJ development of the lot.

PROPOSED USE OF LAND OR BUILDING(S):

The applicants are acquiring CBJ property to make their lot rectangular. With the additional property, the applicants intend to build a small house on the lot.

PROJECT NUMBERS ASSOCIATED WITH PROPOSAL:

Is this project associated with any other Land Use Permits? ☒ No ☐ Yes Case No.: _____

Capital Improvement Program # (CIP) _____

Local Improvement District # (LID) _____

State Project # _____

ESTIMATED PROJECT COST: \$ Less than \$100,000

For more information regarding the permitting process and the submittals required for a complete application, please see the reverse side.

If you need any assistance filling out this form, please contact the Permit Center at 586-0770.

CITY/STATE PROJECT FEES

	Fees	Check No.	Receipt	Date
Application Fees	\$ _____	_____	_____	_____
Total Fee	\$ _____	_____	_____	_____

NOTE: MUST BE ACCOMPANIED BY DEVELOPMENT PERMIT APPLICATION FORM

&

EVEN IF THE PROPOSED PROJECT IS ASSOCIATE WITH OTHER LAND USE PERMITS, THIS APPLICATION MUST BE FILLED OUT

DEVELOPMENT PERMIT APPLICATION

Project Number	CITY and BOROUGH of JUNEAU		Date Received:	APR 27 2017
Project Name (City Staff to Assign Name)				
INFORMATION	Project Description The applicants own a legally non-conforming, triangular, 14,000 sq. ft. lot at 11259 N. Douglas Highway and are purchasing adjacent CBJ property on either side of their lot to make it rectangular in shape. The CBJ Assembly has authorized the Manager to enter into negotiations for a land sale to Mr. Dwight Scott Williams and Ms. Carol Colp for approximately 14,000-22,000 square feet of CBJ property located at USS 3559 Lot 2.			
	PROPERTY LOCATION			
	Street Address 11259 North Douglas Highway		City/Zip Douglas/99824	
	Legal Description(s) of Parcel(s) (Subdivision, Survey, Block, Tract, Lot) USS 3559 Lot 2 Tract C Entrance Point			
	Assessor's Parcel Number(s) 6D1201090030 6D12 0 11 0010			
	LANDOWNER/ LESSEE			
	Property Owner's Name City and Borough of Juneau		Contact Person: Greg Chaney	
	Mailing Address 155 S. Seward St.		Work Phone: 907-586-0205	
	E-mail Address Greg.Chaney@juneau.org		Home Phone: Fax Number: 	
	Other Contact Phone Number(s): 907-586-5252			
PROJECT / APPLICANT	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			
	X <u><i>Greg Chaney</i></u>		April 25 2017	
			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 SAME		Contact Person:		
Mailing Address		Work Phone:		
E-mail Address		Home Phone:		
		Fax Number:		
		Other Contact Phone Number(s):		
X _____				
Applicant's Signature		Date of Application		

STAFF APPROVALS	☒	Permit Type	SIGN	Date Received	Application Number(s)	
		Building/Grading Permit				
	☒	City/State Project Review and City Land Action		11/27/17	CSP20170010	
		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: Lot will be subdivided but improvement on current situation. Subdivision submitted. DOT Driveway permit attached.					Permit Intake Initials <i>TJP</i>

NOTE: DEVELOPMENT PERMIT APPLICATION FORMS MUST ACCOMPANY ALL OTHER COMMUNITY DEVELOPMENT DEPARTMENT APPLICATIONS

INFORMS\2010 Applications Revised November 2009

Attachment A: Application



**View of Household Hazardous Waste collection facility from
Commercial Boulevard (brewery in background)**



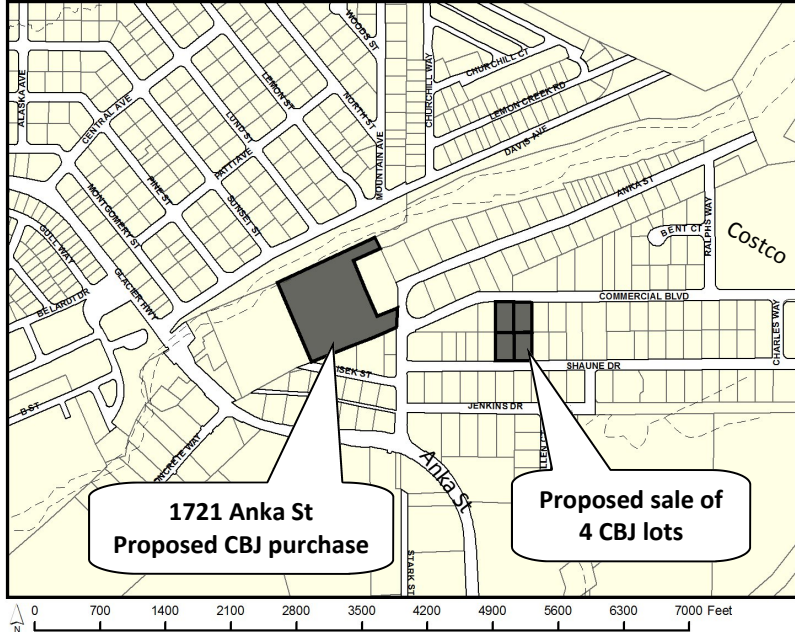
**View of Water Utility facility from Shaune Drive
(brewery in background)**



**View of entrance of lot proposed for purchase (Anka St);
Skookum vehicle recycling on right of photo**

Invitation to Comment

PLEASE NOTE: The correct date for this hearing is January 23rd 2018, the previous notice listed the wrong year, therefore you are receiving a second notice.



COMMUNITY DEVELOPMENT

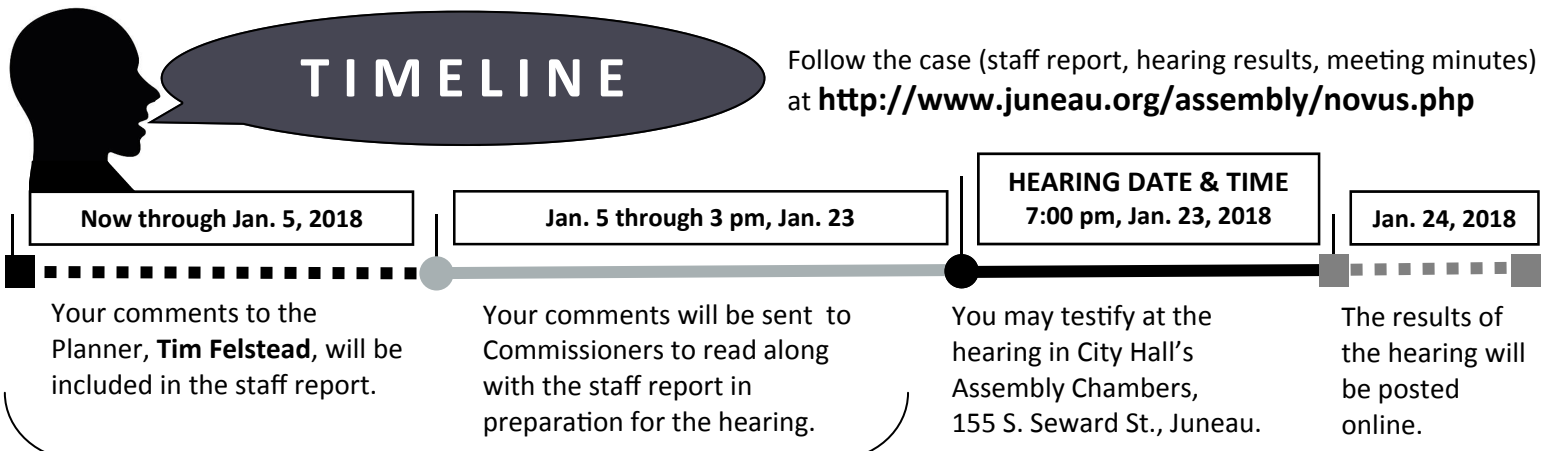
155 S. Seward Street Juneau, Alaska 99801

TO:

An application has been submitted for consideration and public hearing by the Planning Commission for the **purchase of one lot (1721 Anka St), and the sale of four CBJ owned lots (5436 Commercial Blvd, and 5433 Shaune Drive) in an Industrial (I) zone.**

TIMELINE

Follow the case (staff report, hearing results, meeting minutes) at <http://www.juneau.org/assembly/novus.php>



Phone: (907)586-0715

Email: pc_comments@juneau.org

Mail: Community Development, 155 S. Seward St, Juneau AK

Case No.: CSP2017 0017

Parcel No.: Purchase: B1201040052 (1721 Anka St);

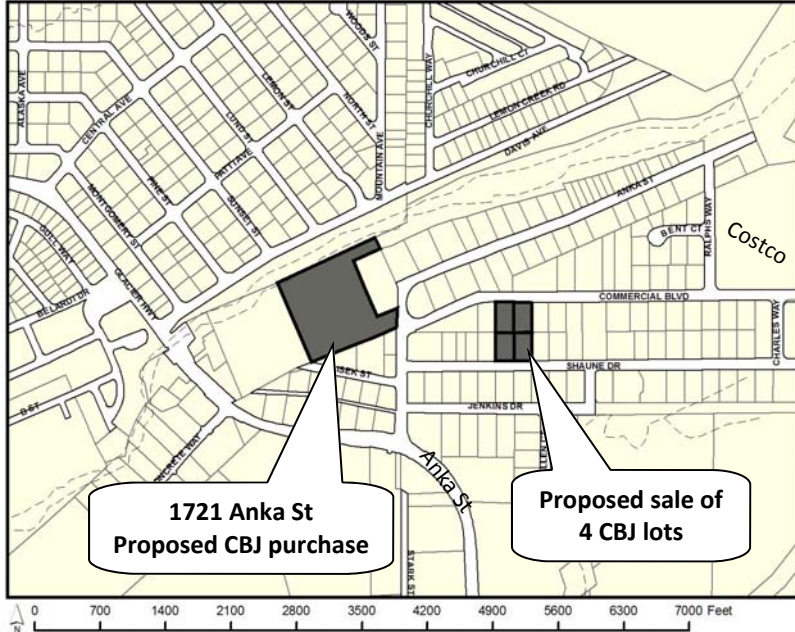
Sale: 5B1201390030; 5B1201390040 (both lots 5436 Commercial Blvd); 5B1201020040 (no address assigned); 5B1201020050 (5433 Shaune Dr)

CBJ Parcel Viewer: <http://epv.juneau.org>

Date notice was printed: January 2, 2018

Invitation to Comment

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



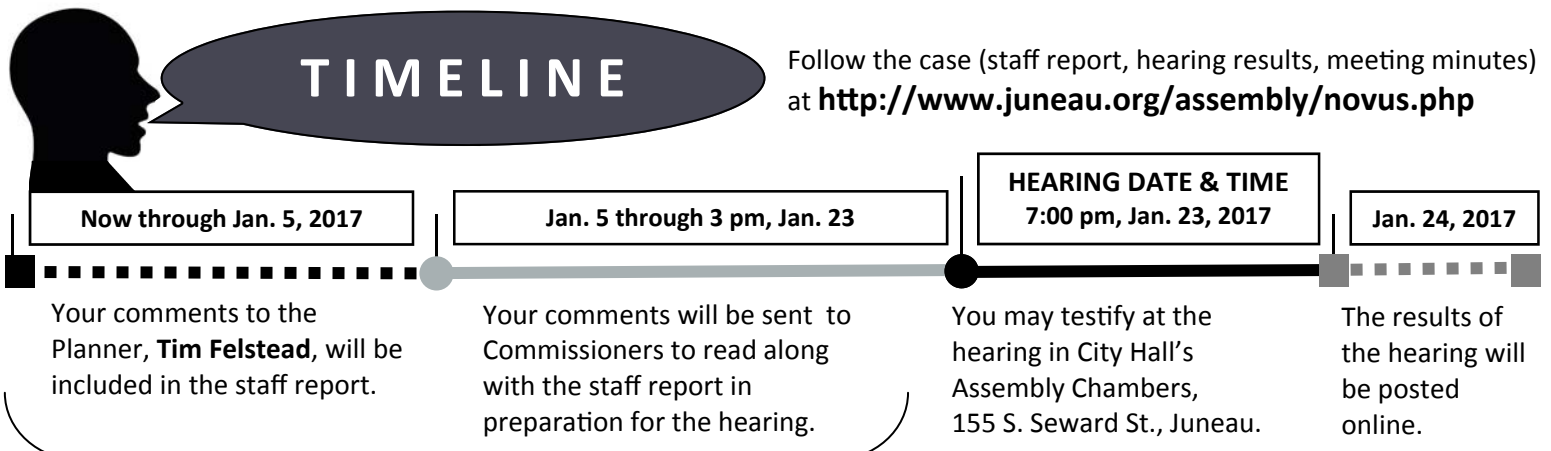
155 S. Seward Street Juneau, Alaska 99801

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Phone: (907)586-0715

Email: pc_comments@juneau.org

Mail: Community Development, 155 S. Seward St, Juneau AK

Case No.: CSP2017 0017

Parcel No.: Purchase: B1201040052 (1721 Anka St);

Sale: 5B1201390030; 5B1201390040 (both lots 5436 Commercial Blvd); 5B1201020040 (no address assigned); 5B1201020050 (5433 Shaune Dr)

CBJ Parcel Viewer: <http://epv.juneau.org>

Date notice was printed: December 29, 2017



Community Development

(907) 586-0715

PC_Comments@juneau.org

www.juneau.org/plancomm

155 S. Seward Street • Juneau, AK 99801

PLANNING COMMISSION NOTICE OF RECOMMENDATION

Date: January 23, 2018

File No.: CSP2017 0017

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

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

Property Address: 5436 Commercial Boulevard, 5233 Shaune Drive, and 1721 Anka Street

Legal Description: Lot 41, SSG IV; Lot 42, SSG IV; Lot 4, SSG; Lot 5, SSG; Lot 3, Horn 2

Parcel Code No.: 5B1201390030; 5B1201390040; 5B1201020040; 5B1201020050;
5B1201040052

Hearing Date: January 23, 2018

The Planning Commission, at a regular public meeting, adopted the analysis and findings listed in the attached memorandum dated January 11, 2018 and recommended that the City Manager direct CBJ staff to sell four lots (Lot 41, SSG IV; Lot 42, SSG IV; Lot 4, SSG; Lot 5, SSG) to the Alaska Brewery.

Attachments: January 11, 2018 memorandum from Tim Felstead, Community Development, to the CBJ Planning Commission regarding CSP2017 0017.

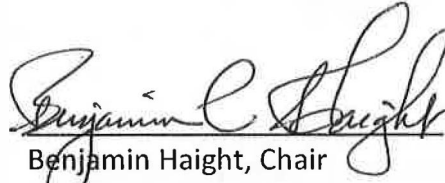
This Notice of Recommendation constitutes a recommendation of the CBJ Planning Commission to the City and Borough Assembly. Decisions to recommend an action are not appealable, even if the recommendation is procedurally required as a prerequisite to some other decision, according to the provisions of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

City and Borough of Juneau
CBJ Assembly
File No.: CSP2017 0017
January 23, 2018
Page 2 of 2

Project Planner:



Tim Felstead, Planner
Community Development Department



Benjamin Haight, Chair
Planning Commission



Filed With City Clerk

January 29, 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: January 12, 2018

TO: Planning Commission

FROM: Allison Eddins, Planner
Community Development Department

FILE NO.: CSP2017 0018

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

GENERAL INFORMATION

Applicant: City & Borough of Juneau

Property Owner: City & Borough of Juneau

Property Address: 3000 Jackson Road

Legal Description: Lot 1 Fraction, USS 3853

Parcel Code No.: 3D0501000021

Site Size: 7.33 acres (Lease area .87 acres)

Comprehensive Plan Future
Land Use Designation: ULDR/Urban Low Density Residential

Zoning: RR/Rural Reserve

Utilities: No water or sewer

Access: Jackson Road

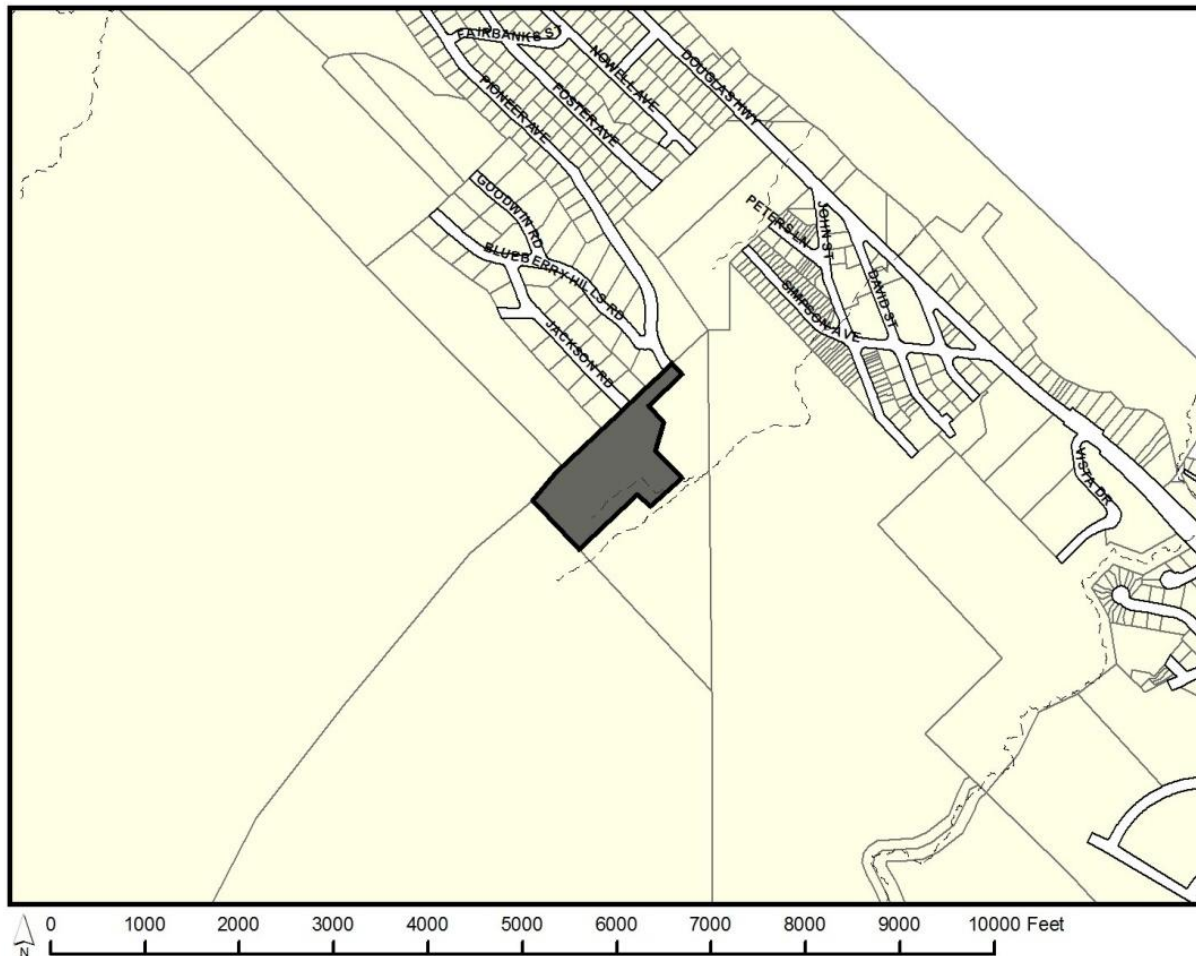
Existing Land Use: CBJ Water Tower & Private Telecommunications Towers

Surrounding Land Use:

North	-	RR/Dan Moller Trail Parking Lot & Jackson Road
South	-	RR/Vacant State Land
East	-	RR/Vacant State Land
West	-	RR/Vacant State Land

Planning Commission
File No.: CSP2017 0018
January 12, 2018
Page 2 of 5

VICINITY MAP



ATTACHMENTS

Attachment A – Development Permit and CSP Application
Attachment B – Lease Renewal Application
Attachment C – Site Maintenance Agreement
Attachment D – Public Notice

PROPOSAL

The applicant, CBJ Lands and Resources Division, requests a Planning Commission recommendation to the Assembly regarding a land lease renewal with White Oak Towers of Alaska, Inc. for the continued use of a telecommunication tower located at the West Juneau Reservoir site at the end of Jackson Road.

Planning Commission
File No.: CSP2017 0018
January 12, 2018
Page 3 of 5

BACKGROUND

When the subject telecommunications tower was constructed in 1995 with an approved Conditional Use Permit (CU-31-95), the land was owned by the State of Alaska. The State granted an access and maintenance easement to Cellular One who constructed and owned the tower. White Oak Towers of Alaska, Inc. later purchased the tower and easement rights from Cellular One. In 2003, the State transferred the management of the land and all easements to CBJ. The White Oak Tower easement does not expire until 2026. However, entering into a new lease now will allow CBJ to bring the terms and conditions of the lease to current standards.

White Oak Towers of Alaska, Inc. is currently leasing their tower to AT&T. AT&T has pending a Wireless Communication Facility Permit (WCF2017-0015) and a building permit (BLD2017-0676) that will allow for the replacement of two antennas and two remote radio units. WCF applicants who meet the criteria as laid out in CBJ 49.65.950, Table 1 receive Community Development Department review and approval from the Director. All building permits also receive departmental review. Both applications for these permits will be reviewed for consistency with Title 49, CBJ Land Use Code, and Title 19, CBJ Building Code.

ANALYSIS

The subject lot is located at the end of Jackson Road at the West Juneau reservoir site. There are currently four towers located in the vicinity of a water tower – three on the subject lot and one on an abutting lot (indicated by triangles, below). White Oak Towers of Alaska, Inc. owns the tower that is circled.



Planning Commission
 File No.: CSP2017 0018
 January 12, 2018
 Page 4 of 5

The proposed lease terms and conditions will be similar to those previously approved by the Assembly for the other telecommunication towers on this site. The new lease will update the rent to fair market value, and the terms and conditions will become consistent with current CBJ leasing practices. The lease would be a term of five years and allow for three five-year renewals. Subleasing would continue to be allowed based on a revenue sharing schedule in which White Oak Towers of Alaska, Inc. would share with CBJ a percentage of rent it collects from its sublease. White Oak Towers of Alaska, Inc. currently subleases to AT&T. The Lessee shall ensure all equipment and activities on the leased premises operate in a manner which will not cause unreasonable interference with the operations of the CBJ or other authorized users in the vicinity of the leased premises.

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 of the commission shall be based upon the provisions of this title, the Comprehensive Plan and the capital improvement plan.*

CBJ 53.20.090 - Renewal of lease. *If at the expiration of the lease of any lands under this chapter the lessee desires a renewal lease of the lands, properties or interests covered thereby, the lessee shall, not sooner than 60 days prior to the expiration, and not later than 30 calendar days prior to the expiration, make application for the renewal lease in writing on forms provided entitled "Application for Renewal of Lease," certifying under oath as to the character and value of all improvements existing on the lands, properties or interests, the purpose for which the lessee desires a renewal lease and such other information as the manager may require to evaluate the renewal. The applicant shall deposit \$25.00 if the lease does not require public bidding or \$50.00 if the lease does require public bidding. The manager may thereupon lease the lands in compliance with all sections of this chapter with a preference being allowed to the former lessee if all other pertinent factors are substantially equivalent. The date that the application for renewal of lease is presented to the manager, as evidenced by the City and Borough receipt date stamped thereon, whether delivered or forwarded by regular mail, certified or registered mail, shall be conclusive.*

Conformity with Adopted Plans

The project was reviewed for consistency with the 2013 Comprehensive Plan which classifies this land as Urban Low Density Residential (ULDR).

Urban Low Density Residential - These lands are characterized by urban or suburban residential lands with detached single-family units, duplex, cottage or bungalow housing, zero lot-line dwelling units and manufactured homes on permanent foundations at densities of one

Planning Commission
 File No.: CSP2017 0018
 January 12, 2018
 Page 5 of 5

to six units per acre. Any commercial development should be of a scale consistent with a single-family residential neighborhood.

The policies in the Comprehensive Plan which most directly relate to this project proposal are found within Chapter 10 - Land Use and Chapter 12 - Public and Private Utilities and Facilities.

POLICY 10.14 - TO RESERVE SUFFICIENT LAND TO SUPPORT THE DEVELOPMENT OF PUBLIC FACILITIES THAT ARE ANTICIPATED TO BE NEEDED BY THE COMMUNITY IN THE FORESEEABLE FUTURE, INCLUDING RIGHTS-OF-WAY, SCHOOL SITES, PARKS, STREAM CORRIDORS AND OTHER PUBLIC FACILITIES.

POLICY 12.11 – TO PLAN FOR AND TO ESTABLISH LAND USE CONTROLS ON WIRELESS COMMUNICATION FACILITIES IN AN MANNER THAT IS APPROPRIATE FOR THE COMMUNITY AND WITHIN THE PARAMETERS ESTABLISHED BY FEDERAL LAW.

12.11 – SOP1 Facilitate the provision of high quality, consistent wireless communication services to residents, businesses, and visitors.

12.11 – SOP3 Accommodate the growing need and demand for wireless communication services.

Though the site does not support any residential dwellings or uses, it has become a popular site for telecommunication infrastructure. These towers have been constructed next to a water tank and will not likely affect any future development. As discussed above, the proposed lease facilitates the provision of high quality, consistent wireless communication services to the community of Juneau. Towers are identified as a permissible land use in the Rural Reserve zoning district, as noted in the Land Use Code. As stated previously, any alterations to the existing tower receive review through the Wireless Communications Facility Permit and building permit processes.

Staff finds the continuation of an existing tower in an area used by other telecommunication carriers an appropriate land use, consistent with the Comprehensive Plan.

FINDINGS

CDD staff finds that the proposed lease renewal between the CBJ Lands and Resources Division and White Oak Towers of Alaska, Inc. meets all applicable land use codes and is consistent with adopted plans and studies.

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.

DEVELOPMENT PERMIT APPLICATION

Project Number	CITY and BOROUGH of JUNEAU	Date Received: <u>12/11/17</u>
Project Name (City Staff to Assign Name)		

INFORMATION	Project Description White Oak Towers of Alaska have requested a new lease for the existing communications tower located at the end of Jackson Road, in West Juneau. The existing easement is outdated and a new lease will bring the terms and conditions to current standards used by the City and will allow for the applicant to request a longer term, and the existing easement expires in roughly 8 years.		
	PROPERTY LOCATION		
	Street Address 3000 Jackson Rd	City/Zip 99801	
	Legal Description(s) of Parcel(s) (Subdivision, Survey, Block, Tract, Lot) USS 3853 LT 1 FR		
	Assessor's Parcel Number(s) 3D0501000021		
	LANDOWNER/ LESSEE		
	Property Owner's Name City & Borough of Juneau	Contact Person: Dan	Work Phone: 586-0224
	Mailing Address 155 S. Seward Street C/O Lands & Resources	Home Phone:	Fax Number:
	E-mail Address Dan.Bleidorn@Juneau.org	Other Contact Phone Number(s): 586-5252	
	PROJECT / APPLICANT	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>Daniel Bleidorn</u>	<u>11/27/17</u>
		Landowner/Lessee Signature	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 SAME		Contact Person:	Work Phone:
Mailing Address		Home Phone:	Fax Number:
E-mail Address	Other Contact Phone Number(s):		
X			
	Applicant's Signature	Date of Application	

STAFF APPROVALS	-----OFFICE USE ONLY BELOW THIS LINE-----			
	✓	Permit Type	***SIGN	Date Received
		Building/Grading Permit		
	✓	City/State		
		Project Review and City Land Action		
		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	

NOTE: DEVELOPMENT PERMIT APPLICATION FORMS MUST ACCOMPANY ALL OTHER COMMUNITY DEVELOPMENT DEPARTMENT APPLICATIONS

CITY/STATE PROJECT AND LAND ACTION REVIEW APPLICATION

Project Number	Project Name (15 characters)	Case Number CSP 20170018	Date Received 12/11/17
----------------	------------------------------	-----------------------------	---------------------------

TYPE OF PROJECT REVIEW:

☒ City Project Review
 ☐ City Land Acquisition /Disposal
 ☐ State Project Review

DESCRIPTION OF PROJECT

White Oak Towers of Alaska have requested a new lease for the existing communications tower located at the end of Jackson Road, in West Juneau. This is City owned property and also the location of the West Juneau Reservoir. The existing easement is outdated and a new lease will bring the terms and conditions to current standards used by the City and will allow for the applicant to request a longer term, and the existing easement expires in roughly 8 years.

Please attach a cover letter to fully explain the project if there is not adequate space on this form.

CURRENT USE OF LAND OR BUILDING(S):

The lease application is for a fraction of a City owned property. Also located on this property are at least 3 other towers, the West Juneau Reservoir managed by Engineering/Public Works, and a trail head and parking for the Treadwell Ditch Trail.

PROPOSED USE OF LAND OR BUILDING(S):

The application is for the continued use of an existing communications tower located on leased property owned by the City.

PROJECT NUMBERS ASSOCIATED WITH PROPOSAL:

Is this project associated with any other Land Use Permits? ☐ No ☒ Yes Case No.: _____

Capital Improvement Program # (CIP) _____

Local Improvement District # (LID) _____

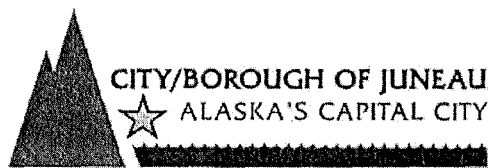
State Project # _____

ESTIMATED PROJECT COST: \$ 2,000

For more information regarding the permitting process and the submittals required for a complete application, please see the reverse side. If you need any assistance filling out this form, please contact the Permit Center at 586-0770.	CITY/STATE PROJECT FEES				
		Fees	Check No.	Receipt	Date
	Application Fees	\$ N/A	_____	_____	_____
Total Fee	\$ N/A	_____	_____	_____	

TO BE COMPLETED BY THE APPLICANT

NOTE: MUST BE ACCOMPANIED BY DEVELOPMENT PERMIT APPLICATION FORM**&****EVEN IF THE PROPOSED PROJECT IS ASSOCIATE WITH OTHER LAND USE PERMITS, THIS APPLICATION MUST BE FILLED OUT**



APPLICATION TO LEASE CITY AND BOROUGH OF JUNEAU LANDS

Application No.

Staff only

Assessor's No.

Assessor's number available using the CBJ Assessor's Database: <http://www.juneau.org/assessordata/sqlassessor.php>

Legal name of applicant(s)

Mailing address

1. Legal description of property where the lease is to be located (attach map)

The easement area depicted on the easement diagram for ADL 106493, attached to the Right-of-Way/Easement recorded October 19, 2000 in Book 547 at Page 475, Juneau Recording District records. The easement is located in Lot 1, U. S. Survey 3853 and within Section 27, Township 41 South, Range 67 East, Copper River Meridian, First Judicial District, State of Alaska.

2. Existing parcel size

Square feet: Acres:

Parcel (lot) size available using the CBJ Assessor's Database: <http://www.juneau.org/assessordata/sqlassessor.php>

3. Existing utilities

Water: On Site ☒ Public ☒ None ☒

Sewer: On Site ☒ Public ☒ None ☒

Utilities information available using the CBJ Assessor's Database: <http://www.juneau.org/assessordata/sqlassessor.php>

4. Access

5. Provide a brief description of your proposal:

Enter into an lease of the real property covered by the existing Right-of-Way/Easement with the State of Alaska as recorded in Book 547 at Page 475 (CBJ RL03-04 10-17-02 Right of Way), copy attached hereto as Exhibit A, and Site Maintenance Agreement with City and Borough of Juneau dated April, 2011, copy attached hereto as Exhibit B. Lessee wishes to add thirty (30) years to the current lease term. The site contains a communications tower which is currently leased out to:

1. GCI/AWN
2. Coast Alaska

Copies of all current leases are attached hereto as Exhibits, C, and D respectively.

Attached are pictures of the communications tower and modular building located on the leased premises.

5. Continued

Attached are certificates of insurance for the leases.

6. Comprehensive plan designation for property *(Staff only)*

7. Zoning designation

Rural Reserve

Zoning designation a/a/la/_____n_____t_____/or_____Datab____/t____/W____/na____/orla____/ordata/la_____/or____

I HEREBY CERTIFY THAT all of the statements made in this application and its incorporated attachments are true and correct.

White Oak Towers of Alaska, Inc.

Name and Title (Please Print)

White Oak Towers of Alaska, Inc

Signature _____

Luann C. Dahl, President

Name and Title (Please Print)

Luann C. Dahl, President

Signature

Return application to the Lands and Resources Office, 105 Municipal Way, Third Floor or Lands_Office@juneau.org

Staff only

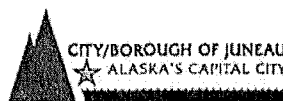
RECEIPT of the above application and attachments together with filing fee (non-refundable) in the amount of \$500.00 is hereby acknowledged.

FULL APPLICATION RECEIVED by Lands staff on _____ by: _____

MM/DD/YYYY

Name and Title (Please Print)

Signature



**City & Borough of Juneau, Alaska – White Oak Towers of Alaska, Inc.
West Juneau Reservoir/Tower
Site Maintenance Agreement
("SMA")**

April 2011

I. Introduction

This Site Maintenance Agreement ("SMA") between the City and Borough of Juneau ("CBJ") and White Oak Towers of Alaska, Inc. ("White Oak"), is established in accordance with the Special Condition #13 of that Right-of-Way Permit/Easement recorded on October 19, 2000 in Book 0547 at Page 475 in the Juneau Recording District, Juneau, Alaska, between the State of Alaska, Department of Natural Resources, and White Oak Broadcasting of Alaska ("Easement") which Easement was assigned to White Oak. The purpose of this SMA is to establish clear lines of communication, and to formally set out the responsibilities and procedures for access, operation, and maintenance of the West Juneau Reservoir/Tower Site ("Reservoir Site") in Juneau, Alaska.

The CBJ's municipal water reservoir is the primary structure at the Reservoir Site and improvements associated with it include the access road, access gate, a security fence surrounding the reservoir, water mains, and electrical/communications utilities. Additional, non-CBJ site improvements include four broadcast/communication towers serving various users. Each tower facility is permitted under an individual Right-of-Way Permit or Right-of-Way/Easement administered by the CBJ Lands and Resources Division. White Oak's authorized improvements at the Reservoir Site consist of a radio communications tower, an 8' x 20' van to be used for radio transmitting equipment and electrical power supply, located as shown in the Easement diagram.

Access to the Reservoir Site via the Juneau road system is as follows:

- From Douglas Highway turn uphill on Cordova Avenue and proceed to Pioneer Avenue,
- Go uphill on Pioneer Avenue and proceed to Blueberry Hills Road South,
- Go uphill on Blueberry Hills Road South and proceed to Jackson Road,
- Go uphill on Jackson Road until reaching the Reservoir Site access gate,
- The water reservoir and broadcast/communication towers are located within the locked fenced area approximately 300 feet uphill from the Reservoir Site access gate.

II. Contact Information and Responsibilities

1. Authorized Contacts

a. The authorized contacts for issues regarding the day-to-day operational logistics or activities at the Reservoir Site:

CBJ Contact:

Attn: Water Superintendent
 Water Utility Division, CBJ Public Works Dept.
 City and Borough of Juneau, Alaska
 5433 Shaune Drive
 Juneau, Alaska 99801
 Phone: (907) 780-6888
 Fax: (907) 780-4637

White Oak Contact:

Attn: Luann Dahl
PO Box 941
Cotati, CA 94931
 Phone: (707) 758-3566
 Fax: () _____
 Cell: (707) 758-3566

b. The authorized contacts for issues regarding the administration of this SMA and all other matters:

CBJ Contact:

Attn: Deputy Land Manager
 Lands & Resources Division
 155 South Seward Street
 Juneau, Alaska 99801
 Phone: (907) 586-5252
 Fax: (907) 586-5385

White Oak Contact:

Attn: Luann Dahl
PO Box 941
Cotati, CA 94931
 Phone: (707) 758-3566
 Fax: () _____
 Cell: (707) -758-3566

2. **Changes in Contact Information.** Each party is responsible for notifying the other party of any changes to its contact information.
3. **Reliance on Others.** Any party relying on information or actions provided by others not listed as the authorized contacts herein shall do so at the party's own risk.
4. **White Oak Responsible for Identifying an Authorized Contact for each Approved Sublessee.** For purposes of day-to-day operational logistics or activities at the Reservoir Site, White Oak shall provide CBJ with an authorized contact for each approved Sublessee.

III. Terms and Conditions of Agreement

1. Site Access

- a. **Keys.** The CBJ has provided White Oak one set of Reservoir Site access keys that may not be duplicated. A reasonable number of additional sets are available to White Oak for a charge of \$100 per set. If replacement keys or locks are necessary, they will be provided at replacement cost. Key distribution is coordinated by the CBJ Water Superintendent.
- b. **CBJ Callout Charges.** The CBJ Water Utility may be contacted to access the Reservoir Site to unlock gates or for similar needs. It will be White Oak's responsibility to identify and notify the CBJ of those individual agents, employees, sublessees, subcontractors, licensees, entities, or affiliates who are authorized to initiate callouts. The CBJ may hold White Oak responsible for all authorized callouts and associated fees, as set out in Section 3 below, and shall not be responsible for billing or collecting callout fees from sublessees or other third parties. CBJ Water Utility personnel are available for callouts in accordance with conditions noted below:

Normal work days, Monday - Friday (between 8:00 am and 4:00 pm)

Notice Requirement: Provide minimum 4 hours advance notice of request

Callout Fee: \$50/callout.

After hours, weekend, or holiday callouts

Notice Requirement: Provide minimum 3 hours advance notice of request

Callout Fee: \$100/callout.

- c. **Adjustments to Callout Charges.** The CBJ reserves the right to periodically review and adjust the callout fees to insure they are commensurate with the costs associated with providing the services.

2. Operation and Protection of Site

- a. **Binding Effect and Applicability:** This agreement between the CBJ and White Oak applies to, and is binding on, White Oak, its employees, agents, sublessees, subcontractors, licensees, entities, and affiliates. At all times hereunder, and without regard to the existence or terms of any third party agreements, White Oak shall remain the party legally responsible to the CBJ for the performance of this SMA.

- b. **Reservoir Site Security:** White Oak is authorized to access the Reservoir Site for the sole purpose of operating, maintaining, and repairing the equipment authorized by, and located on, its Easement. White Oak shall insure that all security locks and gates are properly secured when leaving the Reservoir Site and notify the CBJ Water Superintendent of any security breaches observed at the Reservoir Site.
- c. **Onsite Storage:** White Oak shall limit its onsite storage of materials, tools, or equipment to the interior of its control building. The CBJ reserves the right to remove and dispose of materials, tools, or equipment stored outside of the control building at the expense of White Oak, after providing White Oak with 14 days written notice.
- d. **Perimeter Fence and Other CBJ Assets Protected and Maintained:** White Oak shall not cause damage to the CBJ's perimeter fence or other CBJ assets at the Reservoir Site, and shall be responsible for repairing any such damage caused by White Oak, its agents, sublessees, subcontractors, licensees, entities, or affiliates.
- e. **Brush Removal:** While under no duty to do so, the CBJ periodically clears brush or vegetation from the Reservoir Site as needed to operate the water reservoir. White Oak is responsible, at its own expense, for any additional brush removal needed or desired for the operation of its tower facility at its expense. White Oak shall remove the debris it clears from the Reservoir Site, unless otherwise approved by the CBJ Water Superintendent.
- f. **Excavation and Grading:** White Oak shall not do any excavating or grading activities at the Reservoir Site without the prior approval of the CBJ Water Superintendent and without all required permits. All excavation and grading shall be inspected by the CBJ Water Utility after completion to verify that pre-excavation conditions have been restored to the satisfaction of the CBJ.
- g. **Snow Plowing:** The CBJ performs snow plowing at the Reservoir Site only as needed to operate the water reservoir facility. White Oak is authorized to remove snow, at its own expense, provided it does not harm or impede the improvements or operations of either CBJ or third parties at the Reservoir Site.
- h. **Modification or Expansion of Grantee Improvements:** Authorized White Oak improvements on the Reservoir Site are limited to those authorized in White Oak's Easement with the CBJ. White Oak shall obtain written approval from the CBJ Lands and Resources Division in advance of any modification to or expansion of its improvement footprint.

- i. **Use of CBJ Utilities:** White Oak shall not connect to any CBJ owned electrical, communication, or other utility without prior written approval of the CBJ Lands and Resources Division.
- j. **Protection of Others:** Any damage to the improvements or property of the CBJ, or that of other permittees and easement holders at the Reservoir Site caused by White Oak, its employees, agents, subcontractors, sublessees, licensees, entities, or affiliates shall be repaired promptly at the expense of White Oak.

3. Damage/CBJ Callout Deposit Account

- a. **Account Established:** White Oak shall pay and maintain a deposit with the CBJ Lands and Resources Division in the amount of \$2,000. This deposit account shall be used, as necessary, to reimburse the CBJ for authorized callouts to the site by White Oak, its employees, agents, subcontractors, sublessees, licensees, entities and affiliates and for repair of damages to the Reservoir Site resulting from the activities of White Oak, its employees, agents, subcontractors, sublessees, licensees, entities, and affiliates.
- b. **Callouts:** Unless otherwise paid, callouts to the site will be billed directly to the deposit account. White Oak will be notified of the date and amount of each callout.
- c. **Non-emergency repairs:** White Oak will be notified of the need for non-emergency repairs and given the opportunity to make said repairs without charge to the deposit account. If these repairs are not corrected in a timely manner (typically within two weeks) the CBJ shall have the option of making the repairs and charging the associated expenses to the account. If the cost of repairs exceeds the balance of the account, the unpaid portion will be billed to White Oak.
- d. **Emergency repairs:** If emergency repairs are required, the CBJ shall have the option to make said repairs in advance of contacting White Oak and billing the associated expenses to the deposit account.
- e. **Replenishment of Account Balance.** White Oak will be notified of all charges to the deposit account and will be billed the amount necessary to replenish it to the \$2,000 balance.

4. Consent to Agreement:

By our signatures we warrant and represent that we are authorized to execute this document on behalf of the respective parties below and agree to the conditions of this West Juneau Reservoir/Tower Site Maintenance Agreement.

**WHITE OAK TOWERS OF
ALASKA, INC.**

Lynn Dahl, Sales Office/owner *6/12/11*
Name, Title *White Oak Towers of* Date
AK, Inc.

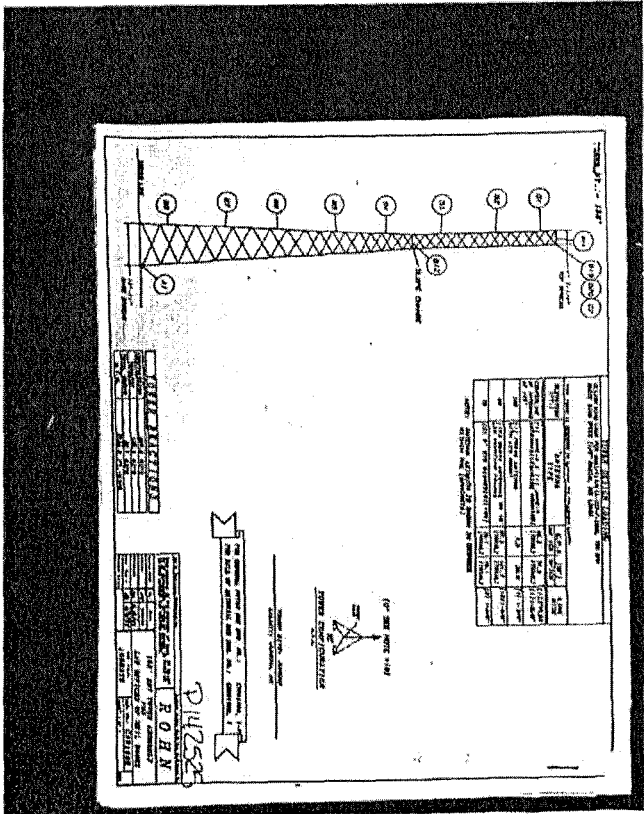
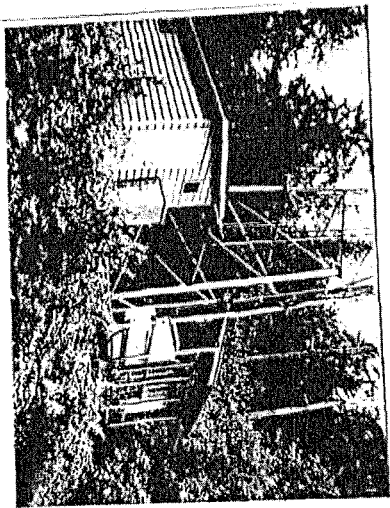
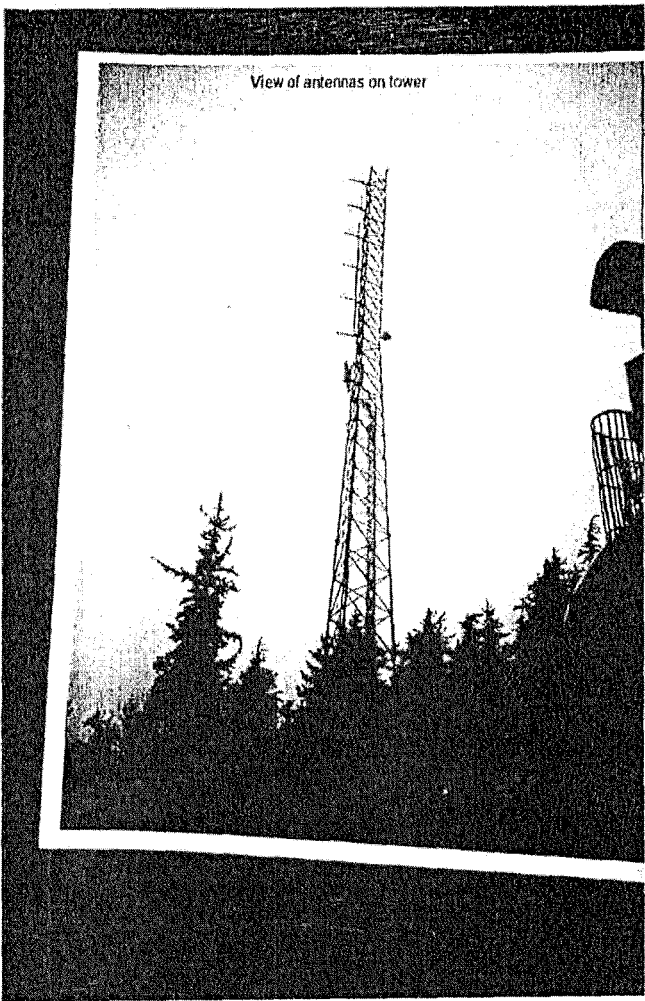
CITY & BOROUGH OF JUNEAU

Rod Swope *9/9/2011*
Rod Swope, City Manager Date

Approved as to content:

Park S. Johnson *9/9/11*
CBJ Public Works Department Date

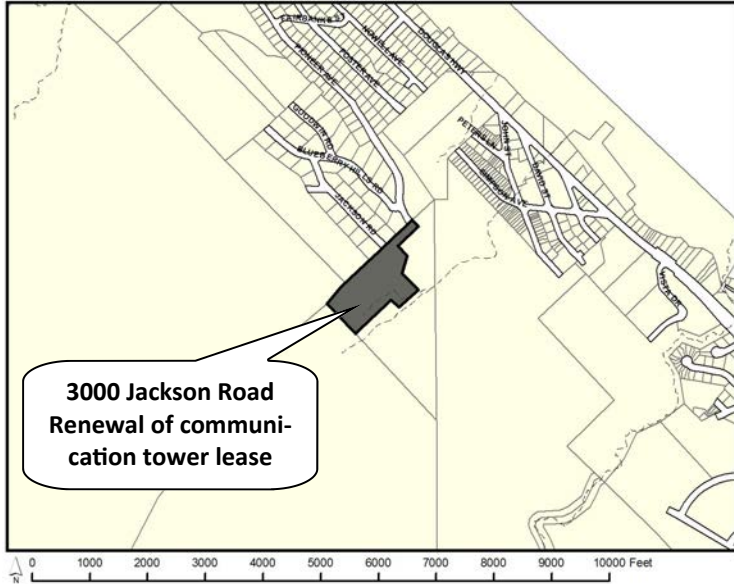
Deborah Marlow *9/7/11*
CBJ Lands and Resources Date
Division





Invitation to Comment

PLEASE NOTE: The correct date for this hearing is January 23rd 2018, the previous notice listed the wrong year, therefore you are receiving a second notice.



155 S. Seward Street Juneau, Alaska 99801

TO:

An application has been submitted for consideration and public hearing by the Planning Commission for the **renewal of a lease for an existing communications tower** located at **3000 Jackson Road** in a **Rural Reserve (RR)** zone.

TIMELINE

Follow the case (staff report, hearing results, meeting minutes) at <http://www.juneau.org/assembly/novus.php>

Now through Jan. 5, 2018

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

Jan. 5 through 3 pm, Jan. 23, 2018

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

HEARING DATE & TIME
7:00 pm, Jan. 23, 2018

You may testify at the hearing in City Hall's Assembly Chambers, 155 S. Seward St., Juneau.

Jan. 24, 2018

The results of the hearing will be posted online.

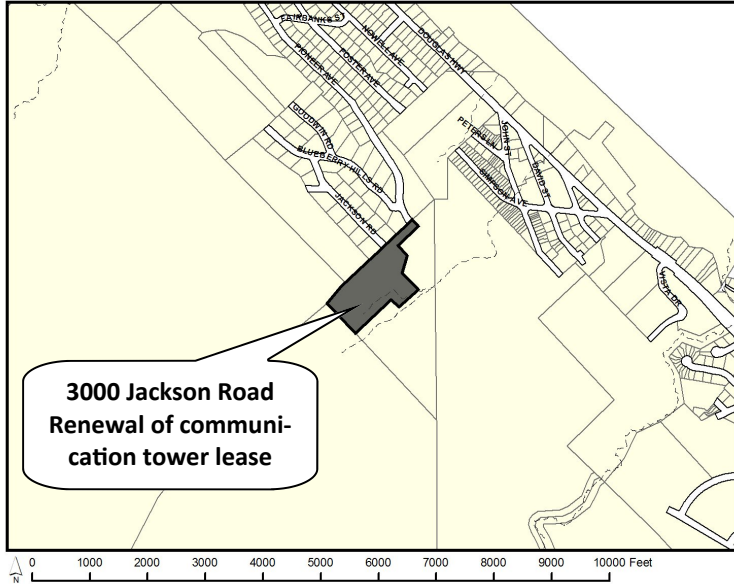
Phone: (907)586-0715 ♦ Email: pc_comments@juneau.org
Mail: Community Development, 155 S. Seward St, Juneau AK 99801

Attachment D

Case No.: CSP2017 0018
Parcel No.: 3D0501000021
CBJ Parcel Viewer: <http://epv.juneau.org>
Date notice was printed: January 2, 2018

Invitation to Comment

PLEASE NOTE: The correct date for this hearing is January 23rd 2018, the previous notice listed the wrong year, therefore you are receiving a second notice.



COMMUNITY DEVELOPMENT

155 S. Seward Street Juneau, Alaska 99801

TO:

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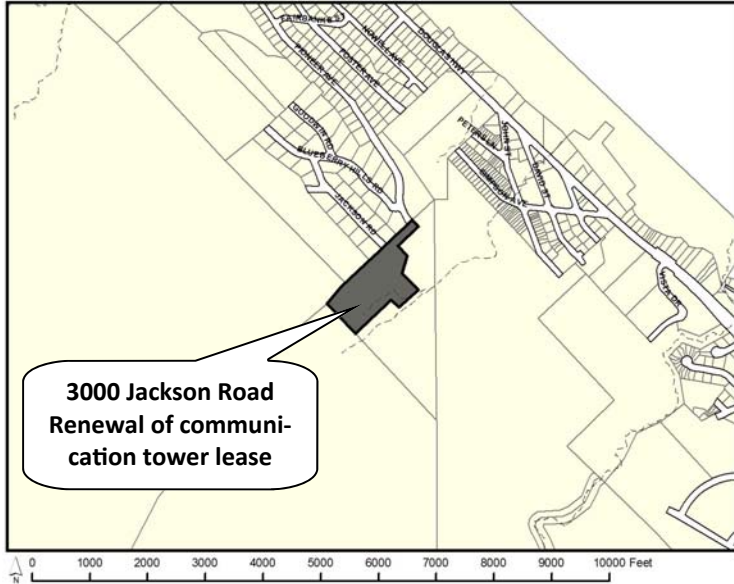
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Phone: (907)586-0715 ♦ Email: pc_comments@juneau.org
Mail: Community Development, 155 S. Seward St, Juneau AK 99801

Case No.: CSP2017 0018
Parcel No.: 3D0501000021
CBJ Parcel Viewer: <http://epv.juneau.org>
Date notice was printed: January 2, 2018

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:

An application has been submitted for consideration and public hearing by the Planning Commission for the **renewal of a lease for an existing communications tower** located at **3000 Jackson Road** in a **Rural Reserve (RR)** zone.

TIMELINE

Follow the case (staff report, hearing results, meeting minutes) at <http://www.juneau.org/assembly/novus.php>

Now through Jan. 5, 2017

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

Jan. 5 through 3 pm, Jan. 23, 2017

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

HEARING DATE & TIME
7:00 pm, Jan. 23, 2017

You may testify at the hearing in City Hall's Assembly Chambers, 155 S. Seward St., Juneau.

Jan. 24, 2017

The results of the hearing will be posted online.

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

Case No.: CSP2017 0018
Parcel No.: 3D0501000021
CBJ Parcel Viewer: <http://epv.juneau.org>
Date notice was printed: December 29, 2017



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: January 25, 2018

File No.: CSP2017 0018

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 a new land lease with White Oak Towers of Alaska for the continued use of an existing telecommunication tower.

Property Address: 3000 Jackson Road

Legal Description
or ROW name: Lot 1 Fraction, USS 3853

Parcel Code No.: 3D0501000021

Hearing Date: January 23, 2018

The Planning Commission, at a regular public meeting, adopted the analysis and findings listed in the attached memorandum dated January 12, 2018, and recommended that the City Manager direct CBJ staff to enter into a new land lease agreement with White Oak Towers of Alaska for the continued use of an existing telecommunications tower.

Attachments: January 12, 2018, memorandum and January 23, 2017, memo from Allison Eddins, Community Development, to the CBJ Planning Commission regarding CSP2017 0018.

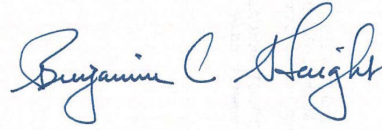
This Notice of Recommendation constitutes a recommendation of the CBJ Planning Commission to the City and Borough Assembly. Decisions to recommend an action are not appealable, even if the recommendation is procedurally required as a prerequisite to some other decision, according to the provisions of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

City and Borough of Juneau
CBJ Assembly
File No.: CSP2017 0018
January 25, 2018
Page 2 of 2

Project Planner:



Allison Eddins, Planner
Community Development Department



Benjamin Haight, Chair
Planning Commission



Filed With City Clerk

January 29, 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: January 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.

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

ATTACHMENTS:

Attachment A: Draft Ordinance – Amending CBJ 49.20, *Variances*
Attachment B: Committee of the Whole Meeting Minutes, June 13, 2017
Attachment C: Staff Report for the Committee of the Whole Meeting, June 13, 2017
Attachment D: Committee of the Whole Meeting Minutes, August 8, 2017
Attachment E: Staff Report for the Committee of the Whole Meeting, August 8, 2017
Attachment F: Planning Commission Draft Meeting Minutes, December 12, 2017
Attachment G: Staff Report for December 12, 2017 Regular Planning Commission Meeting

INTRODUCTION

The City and Borough of Juneau 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 of the Comprehensive Plan.

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.

BACKGROUND

The current variance standards were established in 1995 with Ordinance 95-33. That ordinance made several substantive changes. The variance criteria were reduced to six, and one of those, criterion 5, included four parts, only one of which needed to be met in order to satisfy the

Planning Commission
File No.: AME2016 0002
January 16, 2018
Page 2 of 12

requirement. This resulted in the criteria being slightly easier to meet than the prior criteria. Additionally the De Minimus Variance and several setback encroachments were added to provide flexibility.

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 even when no hardship existed. The variance process has been used often, broadly, and, in some cases, inappropriately.

Staff worked with the Title 49 Committee, a subcommittee of the Planning Commission, 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.

The Planning Commission Committee of the Whole discussed the proposed amendment at its Committee of the Whole meetings on June 13, 2017, and August 8th, 2017 (Attachments B through E). The Planning Commission reviewed and proposed changes to this ordinance at its December 12, 2017, meeting (Attachment F). The Title 49 Committee of the Planning Commission also met December 20th, 2017, to discuss the proposed administrative variance process. This ordinance incorporates those changes (Attachment A).

DISCUSSION

A variance is intended to provide relief from Code requirements when application of the Code results in an unreasonable hardship. The proposed ordinance (Attachment A) seeks to accomplish the following and is discussed in more detail, below:

- 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.

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.

Planning Commission
 File No.: AME2016 0002
 January 16, 2018
 Page 3 of 12

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:

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

The proposed ordinance provides that only the following standards may be varied:

- lot width,
- lot depth,
- building setbacks,
- building height,
- habitat, and
- canopies.

The City and Borough of Juneau has consistently prohibited variances that could alter density, lot coverage, the use of land or structure, or reduce a construction standard. In the last draft of the proposed changes brought to the Committee of the Whole at its August meeting, staff had 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 it 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

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zoning district. This is why the concept was not moved to the introductory paragraph but in a modified Criterion 5.

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 had included access and frontage related requests, panhandle lot design, and accessory apartment design requests. However, recent Code changes regarding shared access, privately maintained access roads in public rights-of-way, panhandles, accessory apartments, and eagle habitat have provided more flexibility in these instances such that there is likely no need to make them subject to a variance.

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.

As discussed at recent Committee of the Whole meetings, staff recommends removing this threshold requirement and incorporating it into a criterion. In the draft 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.

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 deter the inappropriate use of the variance process where no hardship exists, as well as to provide more clarity regarding the intent of each criterion. The following five criteria are proposed in the draft ordinance:

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

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This criterion analyzes whether a hardship does exist, and if so, whether it is unreasonable. This differs from the existing Code in that a hardship was implied, but not explicitly stated or a finding made as such. Now, 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. If the applicant shows that the enforcement of the ordinance would result in a loss of all or nearly all beneficial use of the property, then an unreasonable hardship likely exists. For example, the applicant has the burden of proving that the physical features or conditions of the property directly create, affect, or contribute to the need for a variance. Odd-shaped lots or unusual topography are examples of conditions that may contribute to a hardship. The applicant must then explain how the condition unreasonably burdens them from complying with Code requirements. The applicant may also need to explain why similarly situated properties are the same or different. The grant of the variance would give the applicant parity with their neighbors.

The Alaska Supreme Court stated the following in the Thibodeau case:

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 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.")

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 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 state statutes 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

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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 solely be to make it more convenient to use the property.

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

- Wanting a larger structure or wanting to meet personal needs (except ADA improvements) that are not in compliance with the property and that the property does not have a physical constraint or is non-conforming,
- Constructing a structure or building without the necessary permits or is not in compliance with the approved permit,
- Purchasing a lot with existing development restrictions, regardless of whether these restrictions are known or unknown, is a factor to consider in evaluation of an unreasonable hardship.

Review of What the Courts Have Held in Self-Created Hardship Cases

Throughout the United States, courts have held a variety of decisions on self-created hardship. Some decisions go to the extreme that a self-created hardship exists when, for example, the owner hires a surveyor and that surveyor makes an error and constructs the home in the wrong location, then it is considered a self-created hardship and a variance is not available.

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 the courts are open to granting a variance. (*Rural Water Co. v. Zoning Board of Appeals*, 287 Conn. 282, 295 (2008)) Another example of this decision is provided in *Osborne V. Zoning Board of Appeals* (41 Conn. App. 351 (Conn. App. Ct. 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, it was the architect. The Osbornes were separated by one degree from the person making the error so the error was not self-created and they could seek a variance.

We believe the CBJ wishes to take a different approach with the self-created hardship concept such as in *Turik. V. Town of Surf City*. An error made in good faith that resulted in a newly constructed building erroneously 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.

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

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

Based upon the discussions to date by the Planning Commission, staff believes that #4 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 criterion analyzes 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 is one of those primary goals. When a variance is requested, the analysis should include that safety will not be impacted by the granting of a variance. 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 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, air or water quality, and noise levels.

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

This criterion analyzes that the variance requested is the minimum needed to provide relief. This also means that the intent of the ordinance is still met by allowing some relief from the requirement, but this is not meant to be a complete waiver from the Code requirements. At the December 12, 2017, public hearing on this amendment, there was much discussion about this criterion (See Attachment F). The suggested language during the meeting was as follows:

"The grant of the variance is no more than is necessary to relieve the hardship."

Concerns from the Planning Commission to address more about the variance itself rather than the granting of the variance resulted in the following suggestions:

- "The variance is no more than is necessary to relieve the hardship and maintain neighborhood harmony." This should allow for some consideration for how much of a variance is needed and allows for neighborhood harmony. Some commissioner supported this suggestion, but since it seemed to be duplicative with the neighborhood harmony concept in another criteria (which is no longer included), and was dismissed.

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- “The grant of the variance is appropriate to relieve the hardship.”
- “The variance is narrowly tailored to relieve the hardship.”

The intent of Commissioners Voelckers and LeVine was to seek some limits while balancing it at the same time so that the Commission could provide some flexibility. The draft language incorporates these concepts.

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 specifically analyzes whether the requested variance to lot width, lot depth, building setbacks, or height will have a 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 is approved to lot depth, the approval cannot result in a lot size less than the minimum area allowed in the zoning district, which affects density. Another example could be a variance to setbacks that results in lot coverage greater than permitted by code which results in bulk, massing, and neighborhood character, that is different than the surrounding area. Zone district standards create neighborhood character, which is one of underlying principles of our zoning code.

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; (3) CDD already has both the enforcement tools and the discretion to appropriately deal with an inadvertent encroachment; and (4) determining intent is difficult. Thus, there is a high likelihood that the De Minimis Variance provisions would be considered arbitrary.

At the December 12, 2017, Planning Commission meeting, the Planning Commission stated its support for an administrative variance that could be applied for both before- and after-the-fact. Additionally, the Title 49 Committee of the Planning Commission met December 20, 2017, at a meeting to review proposed administrative variance concepts. The draft ordinance incorporates changes agreed upon at these meetings.

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The ordinance provides that an administrative variance can be applied for before or after a project when projections will not encroach more than 25% into yard setbacks, or two feet, whichever is less. The Director of the Community Development Department 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 reasonably 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.

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 waive code requirements where no hardship exists. As the data has shown (Attachment C), 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 where increased flexibility should be created for several sections of code. Making these changes will rectify the practice of using the variance as a catch-all. The list below identifies the Code changes to 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 as being variable. The ordinance language at CBJ 49.20.200 states the following:

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.

The following Code changes have occurred that provide additional flexibility regarding these other items:

- Vegetative cover requirement for Mixed Use zone districts reduced (effective February, 2013)
- Accessory apartment code changes – regarding design and an increase in apartment size (effective February, 2015)
- Parking – the parking waiver is now in effect (effective April, 2017)
- Shared access – allows four or fewer lots to share access, and frontage on a publicly maintained right-of-way is not required (effective May, 2017)
- Alternative Development Overlay Districts (ADOD) – The downtown Juneau and the downtown Douglas overlay districts can provide flexibility regarding lot coverage,

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vegetative cover, and setbacks until zoning that “fits” the downtown residential areas are proposed (effective July, 2017)

- Panhandle subdivision requirements (effective December, 2017)
- Removed setbacks from trees with active eagle nests (effective February, 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. Upcoming proposed Code amendments that CDD is working on include:

- Anadromous stream buffers
- Privately Maintained Access Roads in Public Rights-of-Way within the Urban Service Area
- Nonconforming situations

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 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.

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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.

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 for approval to the Assembly.

Presented by:
Introduced:
Drafted by:

ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 2018-04 PCv4

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 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 designs ~~standards of this title;~~ and (b) standards directly related to habitat and canopies.

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 reasonably 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 reasonably 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.

~~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.

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

Adopted this _____ day of _____, 2018.

Kendell D. Koelsch, Mayor

Attest:

Laurie J. Sica, Municipal Clerk

Agenda
Planning Commission
Committee of the Whole
 CITY AND BOROUGH OF JUNEAU
Ben Haight, Chairman
 June 13, 2017

I. ROLL CALL

Ben Haight, Chairman, called the Committee of the Whole (COW) meeting of the City and Borough of Juneau (CBJ) Planning Commission (PC), held in the Assembly Chambers of the Municipal Building, to order at 5:11 p.m.

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

Commissioners absent:

Staff present: Rob Steedle, CDD Director; Beth McKibben, Planning Manager; Laura Boyce, Senior Planner; Teri Camery, Senior Planner; Jill Maclean, Senior Planner; Robert Palmer, Assistant Municipal Attorney

Assembly members:

II. REGULAR AGENDA

- a. AME2016 0002:** Variances - Commissioner training and discussion about proposed amendments.

Providing background on this item, Mr. Steedle said that they have been working on variances for quite a while. Most of the work involves clarifying the language and ascertaining that the criteria are very clear. Since there has been a change in the Title 49 Committee, the staff wants to make sure that the entire Commission is aware and involved in the process, said Mr. Steedle. They want to ensure that they have code that is well understood, he said. The behavior of past commissioners has deviated somewhat from the intent of the variance, said Mr. Steedle. The other two items on the agenda for this meeting reflect the other two areas in which they are building flexibility into the code, he said. They have to be careful to develop enough flexibility within the code so that Juneau residents can build on their property, said Mr. Steedle. The Alaska Planning Commission handbook of which all Commission members should have

been provided, said Ms. Boyce, depicts a variance as a “safety valve”. It is an exception from the strict terms of the zoning or platting code allowing a relaxation of the strict requirements of the code for extraordinary cases, said Ms. Boyce. The City and Borough of Juneau is a home rule municipality, said Ms. Boyce, enabling the community to make its own rules, she said. Most of the other communities in Alaska follow the state statutes, she added.

The CBJ code states that variances are required to vary dimensions or design standards of the Title, said Ms. Boyce, where hardship and practical difficulties result in an extraordinary situation or a physical feature affecting only a specific parcel of property, read Ms. Boyce. The Board of Adjustment may grant a variance in harmony with the general purpose and intent of the Title, she said. Dimensional standards such as setbacks, lot width and lot depth can be varied, as well as design standards, she said. Design standards are not really defined within the code, said Ms. Boyce. The code is clear about what cannot be varied, she said. The use of land or structures, anything that affects housing density, lot coverage or those establishing construction standards cannot be varied, said Ms. Boyce.

And if too many variances are approved, said Ms. Boyce, then potentially the Land Use Code may be weak. They have looked at the past 30 years of data regarding variances, said Ms. Boyce. They have categorized the variances by type such as setback variances, she noted. For example there have been a total of 42 cases regarding eagle tree buffers, said Ms. Boyce. All of those variance requests have been approved, she noted. Those variances all had conditions attached to them, and the staff decided that it would be wise to change the code to accommodate those conditions, she said.

Eighty-nine percent of the variance requests which have come before the Commission in the past 30 years have been approved, she said. There have been about 1,200 cases that have been created for the past 30 years, but a number of those did not complete the process before the Commission, she said. Over half of the cases have been set back variances, said Ms. Boyce. The area of setbacks needs to be explored so that more flexibility will be allowed within the code, she said. Downtown Douglas and downtown Juneau are both areas that are highly susceptible to setback variance requests, said Ms. Boyce. The current zoning for those areas does not fit the development pattern, she said. They will be utilizing the overlay districts for those areas for the next few years until the code can be finalized for those areas, she said.

They are proposing exterior insulation additions so the exterior of the building would be given an allowance of four inches to homes which could be within the setback, said Ms. Boyce. She also mentioned needed ADA improvements for homes.

Parking variances are the next most sought after variances, said Ms. Boyce. There have been code changes over the years to help with this situation, she noted. More proposed code changes for parking are coming up, she said. Last year new parking standards for senior housing were added to code, as well as a new parking waiver approved allowing for reduction

of spaces in certain cases, while leaving the door open for variances as well, said Ms. Boyce. There is a fee-in-lieu district for certain downtown areas, said Ms. Boyce, for which a fee can be paid in lieu of providing the actual parking space. There are also two parking districts for the downtown area; one providing a 30 percent reduction in spaces and the other a 60 percent reduction, said Ms. Boyce.

Water body buffers were the third most prevalent variance sought, said Ms. Boyce. All 42 variances sought for eagle nests have been approved over the years, said Ms. Boyce. The panhandle section of the code has been amended so that the width of one of the lots could be reduced so that it could accommodate panhandle development, she said. They are currently working on panhandle changes which could affect that area of the code, she added.

Access related types of variances as an amendment to the code in 2015 allows for a privately maintained access road option which is available outside of the urban service area boundary, said Ms. Boyce. This year the shared access road, where up to four lots can share a road, has been added to the code, she said. The access standards have been moved to the subdivision portion of the code, said Ms. Boyce. The panhandle section of the code in which two lots can share a driveway will be coming before the Commission for review, said Ms. Boyce. They are also looking into the possibility of making the shared access road option available within the urban service area as well, she noted.

Design standards are not clearly defined in code, said Ms. Boyce. One of the proposed changes the staff is reviewing is the expansion of the Conditional Use Permit approval process for major developments to incorporate design standards as part of that review, she said.

Commission Comments and Questions

Mr. Voelckers asked if proposed code changes would be applied to only the five categories or if all Conditional Use Permit requests would be allowed.

Ms. Boyce replied that she thought any major development going through a Conditional Use Permit review process could incorporate the design standard review as well.

They used to get lots of variance requests for vegetative cover, particularly in the Mixed-Use zone districts, said Ms. Boyce. For this district the fact that they could have 100 percent lot coverage but at the same time require a five percent vegetative cover resulted in a conflict, she said. In 2012 they removed the requirement for vegetative cover within a Mixed-Use district, she said. In the future the staff would like to amend the vegetative cover section of the code, because it is not clear what the purpose of vegetative cover is, she said. They would like to clarify what the purpose of vegetative cover is and review the requirements for the different zone districts, said Ms. Boyce.

There have also been flood zone related variances as well as sign related variances, said Ms. Boyce. Title 49 states that these types of variances can be requested before the Board of Adjustment, she said. They will be working on sign code changes in the future, she said.

There are currently six criteria which must be met in order to be granted a variance, with number five containing four sub criteria, one of which must be met, said Ms. Boyce. Over the past year the Title 49 committee has come up with five criteria that they feel provide more clarity, she said.

The Title 49 committee has not yet addressed the Olmo decision, said Ms. Boyce. One of the questions they have is if the five criteria developed by the Title 49 committee are relevant in light of the Olmo decision, she said. One of the questions the staff would like the Commission to answer is if the current five criteria developed by the Title 49 committee are still relevant in light of the Olmo decision, said Ms. Boyce.

In summary, said Ms. Boyce, the changes to the code they are recommending provide for the development of flexibility:

- ✓ Parking waiver
- ✓ Additional setback exceptions
- ✓ Zone changes
- ✓ Revise the Conditional Use Permit to allow for design modification consideration
- ✓ Code changes to provide greater flexibility for those variances requested most often
- ✓ Streamside water body buffers
- ✓ Shared access
- ✓ Eagle nests

Commission Comments and Questions

Mr. Voelckers commented that the new variance review created by the Olmo decision is already currently in place. It is stopping the approval of variances that would otherwise probably be approved by the traditional variance criteria, he said. Mr. Voelckers said he would like to get the new language in place as soon as possible, currently with the relaxations and improvements discussed by Ms. Boyce. The overlay districts will help with the downtown Juneau and Douglas areas, he added.

Mr. Miller said he agreed that it would be beneficial to leave the current variances in place until the other code changes are set in place. Once code changes are in place it makes sense to tighten up the variances, said Mr. Miller. The Olmo decision tightens up the process to the extent that flexibility is severely limited, he said. Mr. Miller said he has had a hard time understanding how the Olmo decision was made. He said he is appreciative that the Olmo decision was actually included in the staff report.

He read through this decision several times, said Mr. Miller, trying to identify the specific content that clearly stated what portion of the interpretation has been brought before the Commission as law. He could not come up with clear direction from the decision, said Mr. Miller. The very next section in the Title under variances is Article Three “Interpretations”, said Mr. Miller. He said it is not actually the Law department that interprets the code. It is the Board of Adjustment, said Mr. Miller, which is authorized to interpret the text of this title. He said he felt that the threshold determination for variances established by the Olmo decision should be interpreted by the Board of Adjustment.

Mr. Miller said he agreed with Mr. Voelckers that the variance criteria should remain as they are, with the six criteria. Before the variance criteria are changed, the other code changes should be implemented, he said.

Concurring with the comments already made by Mr. Voelckers and Mr. Miller, Mr. LeVine said that he saw the value in simplifying the variance process. The decisions made on variances have been inconsistent in the past, said Mr. LeVine. He said he felt they do run the risk of changing the criteria and then in three years finding themselves back in the same situation, where the new criteria are difficult to interpret and implement, unless great care is taken starting with a “clean slate”.

Mr. Voelckers said in reviewing the proposed new five criteria for a variance that the first condition; (*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*) reminds him of the language introduced through the Olmo decision which stipulates that hardship and practical difficulties result from an extraordinary situation or unique physical feature affecting only a specific parcel of property.... Mr. Voelckers said he would like to get rid of the language in 49.20.250(b) and go with something less restrictive. Almost no variance request will be able to meet that standard, he said. A variance is to allow the Commission to utilize subjective common sense, said Mr. Voelckers, not to place standards that are next to impossible for most applicants to meet. He said he liked the softer language in the new draft, making it less of an impossible standard to meet for a variance.

Mr. Miller said he felt the proposed second criterion was too difficult to meet; “That compliance with the existing standards would unreasonably limit the owner from using the property for a permissible principal use.” According to this criterion, an applicant could always build something, therefore not allowing them to build what it was they wanted to build, he said.

Mr. LeVine said this criterion also caught his attention. They discussed that criterion and its connection to takings, said Mr. LeVine. Mr. LeVine also asked why the third criterion was relevant: “The deviation from the requirement of this title is no more than is necessary to permit a reasonable use of the property”. It doesn’t matter that the variance is as little as

possible, said Mr. LeVine. He said what matters is that a variance is granted which makes the most sense.

Mr. Palmer said the variance provision in code is necessary to avoid takings. The safety relief valve of a variance is to avoid the constitutional takings. This is so the City does not have to pay somebody for unreasonably regulating their property, explained Mr. Palmer. He said he felt this ties into number three.

Mr. Voelckers asked Mr. Palmer for the definition of a “taking”.

The basic “takings” concept is that the government cannot take your land without providing fair compensation, said Mr. Palmer. The Supreme Courts have narrowed this a little bit to say that reasonable regulations are fine, but that unreasonable regulations are “takings”, he explained. In the context of Title 49, the basic concept is that the government cannot unreasonably regulate your land. The core to variances is that land cannot be unreasonably regulated, he said.

Mr. LeVine agreed with the explanation of Mr. Palmer, but asked why proposed criterion number two was necessary at all.

Mr. Palmer said he felt that number two and number three functionally related to each other. These nuances come into play when the municipality is adding some variation to the code proposed by the state. He said he could not articulate the distinction between the proposed criteria number two and number three. In response to a question from Mr. Voelckers, Mr. Palmer clarified that he could not identify the distinction between number two and number three, or the fundamental need for either of the two criteria.

Ms. Boyce said that number three outlines what already exists within the code. She said the staff felt it was important to have a variance request for what was actually needed and not in excess of what was needed by the applicant.

Ms. Shelton-Walker noted that everyone’s definition of what is “reasonable” could differ. She asked what standard was used to define that term.

Mr. Palmer said that is where past decisions are helpful. For example, he said, when the Assembly makes a decision such as the Olmo decision, it can be followed and the decision can be affirmed. To deviate from that decision a really good distinction must be provided, he explained.

Mr. LeVine asked if there is a reason why the Planning Commission could not suggest to the Assembly that a code provision be formulated that has the effect of temporarily removing the

Olmo decision while the code is being updated and modified. He asked if there could be changes made in the code to obviate the Olmo decision.

Mr. Palmer said there may be a way, but that he was not quite sure at this time how that could be accomplished. If they create new standards and start from a new slate, then the Olmo decision would be irrelevant, said Mr. Palmer. Or, he said, another case could be put forward challenging that decision. Then the Assembly would have to decide, he said.

Mr. LeVine asked if the determination of the Olmo decision is interpreted largely to mean that variances are appropriate only when a taking would otherwise be the result.

Mr. Palmer answered that he did not think it was quite that narrow in scope.

Mr. Miller said the Assembly has ruled that the threshold that exists is as a result of the CBJ vs. Thibodeau in 1979.

Mr. Palmer responded that is one of the cases they relied upon.

Mr. Miller said they were told in 1979 that is how they should be complying with variances. He said the Commission has not been complying with that decision since 1979. The code was tightened up in 1995 with regard to that 1979 decision, said Mr. Miller. Mr. Miller said he did not think that they needed to meet Olmo threshold determination.

Mr. Voelckers asked if the proposed criteria could supplant the Olmo threshold currently applied.

Mr. Palmer confirmed that through the legislative process in writing new code the Commission could retain or reject the Olmo decision.

Mr. LeVine said it is better to fix the code than to make the granting of variances standard operating procedure.

Mr. Dye asked if Juneau has a variance problem or if it is just assuming that it has a problem. He asked how this community compares with other communities within Alaska regarding the number of variances issued.

A lot of the feedback they garnered from other planners at the State Planners Conference last year, said Ms. Boyce, was that variances were often used in other communities and that they were used as a tool for flexibility.

Ms. McKibben said she has worked in three other communities within Alaska and that Juneau issues a higher number of variances than any of the other communities in which she worked.

Mr. Voelckers said a variance was granted for the construction of the Marine Exchange building currently being constructed by the bridge. He said that construction would not have been approved under the current standards, and yet it is a very beneficial project for the community. They have to be careful to keep everything in context, he said.

The Walter Soboleff building was a great project for Juneau, said Mr. Miller, and it would never have met the threshold criteria by today's standards. There is no way the Assembly would have wanted the Planning Commission to deny the variance for that project, said Mr. Miller. That is another great example for a reason to say "yes" to a variance, he added.

Mr. LeVine said the problem he has with the way variances have been executed in the past is that they were inconsistent. If there are standards, he said, then those standards need to be abided by. Witnessing the variances approved he has seen on his past three years on the Planning Commission has made him wonder whether any variance denials would stand up were they to be challenged. That creates an inconsistency in the way that standards are applied, he said. They need to find a way to streamline the process and make it work in a consistent way, said Mr. LeVine.

Mr. Dye asked why the municipality cannot simply use the state standards for variances.

Mr. Steedle clarified that the state standards do not apply to Juneau, since it is a home rule community.

Chairman Haight said he cannot grasp the meaning of the new criteria for variances as well as the old criteria, since they were backed up by explanatory language. He said he would like to see explanatory language for the new criteria so that he could place it in context. He said he also liked Mr. Dye's idea of building off of the state's variance language.

Mr. Steedle suggested the Commission take a look at the third state criterion in light of its recent Tyler Rental decision. He said that variance could never have been granted had they been using the state criteria, because that reason for a variance was entirely monetary. He said he did not think the state criteria were a panacea for what the Planning Commission was trying to accomplish.

It would be useful for the Planning Commission to be given another vehicle to facilitate the granting of variances for projects of community worth such as the Soboleff building or the Marine Exchange, said Mr. Voelckers.

Mr. LeVine said it would be interesting to go through the past variances and identify which variances would have been accommodated by the recently developed overlay districts, and which variances would not have been addressed by the overlay district. Then they would have a better idea of where to place their focus.

Mr. Miller said he felt that was a great way to begin the process. He also recommended that any applications which come before the Commission as a Conditional Use Permit which needed variances could also be identified. He said he felt that the Conditional Use Permit process was a great way to deal with all of the issues at one time. Whether it is called a variance or a Conditional Use Permit, the important aspect was that there be a public hearing, said Mr. Miller.

Ms. McKibben clarified Mr. Miller's statement to mean that the Conditional Use Permit process be an opportunity to provide flexibility. She said what Ms. Boyce has stated is that the Conditional Use Permit process gives projects the opportunity to have that flexibility.

Mr. Miller said the applications already requiring a Conditional Use Permit and a variance be accomplished at once during the Conditional Use Permit review.

Mr. Steedle asked if the direction from the Commission was to do the analysis that Mr. LeVine requested, as well as develop alternative language modeled after the Alaska statute.

Ms. Shelton-Walker asked if creating language off of the Alaska statute would deal with the Olmo decision as well.

Mr. Voelckers said he was not sure that the Alaska statute language could be used to supplant the proposed criteria for the code. He said he felt they should keep working with the existing proposed criteria, with serious consideration as to whether criteria two and three are helpful.

Mr. LeVine said he agreed that the Alaska statute language was not what was needed as a basis for the new criteria. He asked if they were trying to develop standards that were flexible creating the opportunity for the granting of a lot of variances or with trying to create strict standards and only allow a few variances. He said he felt the best situation would be a flexible code and limited variances.

Chairman Haight said he felt they needed to address the variance criteria and also to address the code that affects the variances.

Mr. Miller said he liked the idea of identifying those variances which could be dealt with through the overlay district and then see what was left to help them identify what was needed in the process. It may be clear after that, said Mr. Miller, or it may remain just as obscure as it is now.

Mr. Frisby said he liked the approach mentioned by Mr. Miller. He asked when they could expect to be deciding on variances by the new code.

Mr. Steedle said two of those code changes are next on the agenda. He said they would return to the Commission with new proposed code language and further analysis.

Mr. Voelckers asked if the work the staff will be doing on the proposed code changes would come back before the Committee of the Whole or if it would first go to the Title 49 committee.

Mr. LeVine said this seems like an important topic and that it would be good to bring it back before the Committee of the Whole.

Chairman Haight clarified that the staff will bring the new information back before the Committee of the Whole at a future scheduled meeting.

b. AME2016 0019: Proposed amendments to buffers around eagle nests.

Ms. Camery said they are before the Commission for specific direction on how to deal with eagle nests. The current ordinance prohibits development within 330 feet of an eagle nest on public land, and within 50 feet of an eagle nest on private land. That buffer increases to 330 feet during the nesting season if the nest has actively nesting eagles, said Ms. Camery.

The eagle ordinance is tied to the code definition of development which includes a lot of irrelevant activities which has caused a lot of unnecessary restrictions and variances in the past, said Ms. Camery. The United States Fish and Wildlife Service (USFWS) has an optional federal permit, entitled an eagle take permit, which allows applicants to disturb an eagle and avoid violating the federal bald Eagle protection act, often with mitigation conditions attached to minimize harm, explained Ms. Camery.

Virtually all past variances requested for eagle nests have been approved, said Ms. Camery. They have had great difficulty with implementation of the eagle ordinance, said Ms. Camery, with identification of the eagle nests and especially with the identification of active eagle nests. They can no longer rely on active staff with the Fish and Wildlife Service for those identification purposes, she said. Their staff has been cut and they can no longer offer those services, she added.

CDD needs a scientific, defensible, rational basis for regulations, said Ms. Camery. CDD has looked at regulating non-urban eagles versus urban eagles, since urban eagles are not as sensitive to development as non-urban eagles, she said. CDD could not come up with any definable regulation monitors for eagles, such as noise, heavy equipment, or activity, said Ms. Camery. Also, CDD cannot even identify where current eagle nests exist and whether they are active or not, said Ms. Camery.

There is also the potential option of deleting the ordinance, she said. The eagle take permit of the Fish and Wildlife Service has often been cited as a reason for a variance, said Ms. Camery.

The local population of eagles is increasing, said Ms. Camery. They are not endangered, she added. Either deletion or revision of the ordinance could potentially be justified by the Comprehensive Plan, said Ms. Camery.

CDD would like direction from the Planning Commission on whether or not they should continue evaluating revision options or whether the direction would be to delete the ordinance, said Ms. Camery.

Mr. Frisby asked how it was determined whether a nest was active or inactive.

That is exactly the problem, said Ms. Camery. They have relied on the Fish and Wildlife Service for this information in the past, and that agency can no longer provide that information, she said.

Ms. McKibben said another issue raised by the Fish and Wildlife Service is that eagles do not necessarily use the same nest year after year. An active nest one year does not mean that it will be an active nest the following year, she explained.

Commission Comments and Questions

Mr. Voelckers asked if the question has come up as to whether The Fish and Wildlife Service has perceived that the CBJ should have any role in protecting eagles. He said perhaps this is simply a redundancy from which the municipality can remove itself.

The Fish and Wildlife Service is supportive of the City's ordinance, said Ms. Camery. The federal eagle permit is not required, said Ms. Camery. It is a liability shield for major developments, she said. The City's ordinance is a requirement and it does offer protection which the federal regulation does not, she explained.

Mr. LeVine said he sees the problem that the municipality has standards but there is no way to ascertain if those standards are being met. He said he is of the opinion that the lack of information makes it impossible to know if the standards are being met and there is no way to enforce those standards. It is difficult to have an eagle ordinance when it cannot be ascertained if it is needed and if needed, could not be reviewed and could not be enforced, he added.

Mr. Dye asked if Ms. McKibben knew the nesting range of eagles.

Ms. Camery said she thought it was a range of at least a half mile to a mile.

Mr. Dye said the urban service area boundary would not be beneficial, then.

Mr. Miller asked if the U.S. Fish and Wildlife Service with their take permit has supplemental information for the public such as brochures. He said it would be helpful if there is already a

pamphlet listing general standards which could be identified which could then be dispersed to the public.

Ms. McKibben said they have spent hours with Fish and Wildlife, and if there was some easily identifiable criteria which they could use they would have already presented that to the Commission.

Mr. Voelckers said if there is no perception of a vulnerability, and the City has no resources and no evidence or criteria, it is a fight in which the City should not engage in. Mr. Voelckers said he would be comfortable with the City getting out of the eagle regulation business.

Mr. LeVine said if they were going to regulate eagle nests it would be the best solution to put the onus on the property developer to identify the nest. If they found a nest, they would then need to come speak with a City representative, he said.

Mr. Dye asked how they would enforce the above scenario.

There is a prohibition on the taking of eagles under the Migratory Bird Treaty Act, said Mr. LeVine.

Chairman Haight asked if this is something that could be added to a building permit.

Mr. Voelckers said if there were not clear objective criteria and some way to implement those rules then they could easily develop into a scenario where conscientious people would identify eagle nests and those who were not so scrupulous would not.

Mr. Miller said perhaps they could have no code for those eagles already acclimated to the urban service area and some form of a checklist regarding eagles for those constructing outside of the urban service area.

Mr. Steedle said the urban service area boundary has been discussed by the staff, but that it is actually a poor proxy for where eagles are habituated. He said that Stabler's Quarry is outside of the urban service area boundaries and that the eagles are just fine in that location. He said with the resources that they have perhaps as far as they can take it is educating the public about the necessity of being aware and respectful of eagle nests. The City does not have the ability to enforce an eagle ordinance, he added.

Mr. Frisby said he felt that giving up on the eagle nest issue altogether was not a positive way to address the issue.

Mr. Hickok asked if they were to remove the ordinance if it would need to go before the Assembly. They will not even know where the eagle nests are if they do not have the capacity to inspect the property for those nests, said Mr. Hickok.

Mr. Miller said in the Community Development Department reception area there are a number of handouts. He said perhaps they could have the handout available for those seeking a building permit to educate on the subject.

Mr. Steedle asked the Commission if they would like the staff to bring forward the ordinance with the deletion of the eagle nest portion for their review, or if there is some further research the Commission would like the staff to conduct on this matter.

Mr. LeVine said he felt this may be the best recommendation. He said they cannot direct staff to go work harder on something that they have already worked very hard to resolve.

Mr. Steedle said they will be back at the next Committee of the Whole with streamside buffers and variances.

c. AME2017 0001: Update on proposed amendments to buffers for anadromous waterbodies.

III. **OTHER BUSINESS** - None

IV. **REPORT OF REGULAR AND SPECIAL COMMITTEES** - None

V. **ADJOURNMENT**

The meeting was adjourned at 6:59 p.m.



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DATE: June 5, 2017

TO: Committee of the Whole of the Planning Commission

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

SUBJECT: AME2016 0002
 Update regarding proposed Title 49 Revisions to Variances

Attachments:

- Attachment A Existing Variance Code Requirements
- Attachment B Olmo, LLC. v. Board of Adjustment Appeal Assembly Decision
- Attachment C Variance Case History Types and Approvals Since 1987

Introduction

Staff recommends changes to Title 49 regarding variances. The intent of a variance is to provide relief from Title 49 Land Use Code requirements in cases of hardship when exact application of the Code requirement would place an unreasonable burden on the property owner. Over time, the variance has become a tool for flexibility instead, offering relief to property owners to relax Code requirements or even waiving requirements outright. Because it is the only tool available to modify Code requirements as they pertain to individual properties, the variance process has been used often and broadly and, in some cases, inappropriately.

Staff has been working with the Title 49 Committee over the past year to propose changes to the Land Use Code ("Code") to provide clarity regarding variances, as well as to provide more flexibility in Code, since it is evident that this is a community desire. CDD would like feedback from the full Commission regarding proposed changes to variances. The proposed changes to Title 49 regarding variances are as follows:

- Amend the variance criteria to provide clarity and reduce any potential subjectivity,
- Make it clear what is and isn't variable,
- Rename "de minimis variance" to "administrative variance" to provide clarity,
- Remove design standards as being variable, and
- Make code changes elsewhere in Title 49 to build in flexibility and reduce the need for variances.

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Criteria Changes

Attachment A includes the current Title 49 variance requirements. The purpose of the proposed criteria amendments is to deter the inappropriate use of the variance process where no extraordinary situation exists.

Existing criteria

There are six primary criteria which must be met in order to approve a variance application, with criterion 5 having four sub-criteria. Only one of the sub-criteria must be met in order to meet criterion 5. A discussion of the current criteria is included below.

Criterion 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;

Criterion 1 analyzes whether the applicant is requesting the minimum variance from the specific regulation that would allow them to develop their property similarly to other properties in the neighborhood and meet code requirements.

Criterion 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;

Criterion 2 analyzes whether public safety and welfare requirements, which are fundamental to the Land Use Code, will still be met. These concepts are also addressed in CBJ 49.05.100, *Purpose and Intent*.

Criterion 3

The authorization of the variance will not injure nearby property;

This criterion addresses whether the requested variance will cause harm to nearby property.

Criterion 4

The variance does not authorize uses not allowed in the district involved;

This criterion addresses whether the granting of the variance will allow a prohibited use from being allowed in the district. Variances regarding use, density, lot coverage, and those establishing construction standards are not allowed.

Criterion 5

(5) *Compliance with the existing standards would:*

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- (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;*

Sub-criterion A analyzes whether compliance would unreasonably prevent the owner from using the property for a permissible principle use. This is one of the more challenging criteria to meet since most lots can accommodate a permissible principle use that complies with the standards and regulations of Title 49 with the appropriate design choices. This concept is important because the city should ensure there is not a taking of property.

Sub-criterion B analyzes whether compliance would prevent the owner from developing their lot in a manner similar to existing development in the neighborhood. This criterion allows new development to take advantage of the preexisting nonconforming conditions of a neighborhood should there be any and also benefit from the conforming development on lots that do not have any hardship. This criterion is similar to the justice and equality concepts found in criterion 1, but from the perspective of the applicant.

Sub-criterion C analyzes any topographic constraints that may make development so expensive that a variance is warranted. This criterion is unique in that it is rare to allow pecuniary hardship as a reason to grant a variance. Alaska Statute Title 29 granting land use regulation powers to local municipalities specifically states that a variance may not be granted solely for pecuniary hardship. It is also difficult to objectively assess what is unreasonably expensive for a property owner.

Sub criterion D analyzes whether the variance would create a net decrease in overall compliance with both the land use code and the building code when taking into account preexisting nonconforming conditions. Therefore, if an owner wanted to reconstruct a dilapidated garage on a nonconforming footprint, there would be a net increase in compliance because Title 19, the building code, standards and regulations would be met while there would be a neutral effect on Title 49, the land use code. This criterion can allow for the continuation of nonconforming conditions.

The overall fundamental concept analyzed in criterion 5 is whether the regulations will result in a taking of the property.

Criterion 6

A grant of the variance would result in more benefits than detriments to the neighborhood.

This criterion is challenging for staff as it asks them to identify benefits and detriments supported by Title 49 that are not simply subjective.

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Olmo, LLC. V. Board of Adjustment Assembly Appeal Decision

The recent Olmo, LLC. appeal resulted in a decision that affects all variances. The Assembly ruled that in a variance, 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 criteria for granting a variance. (See Attachment B)

This decision affects CBJ 49.20.250(b), Variances other than de minimis. That section 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 criteria only. Analysis regarding this “threshold,” as determined by the Olmo decision, was not specifically made. Some variance cases over the years were analyzed with both the criteria and the hardship factor in the threshold, but this was not common practice or consistently done.

In light of this, the Planning Commission may wish to incorporate the threshold into a new criterion. The Title 49 Committee has not addressed this threshold finding as the Olmo decision is recent.

Proposed Changes

Staff met with the Title 49 Committee in 2016 and 2017 to discuss proposed changes to CBJ 49.20.250, *Grounds for variances*. In addition to changes in the criteria to be applied by the Board of Adjustment, the committee wanted a list of what code sections cannot be varied. The committee also wanted staff to propose what changes would be made to make the code more flexible to reduce the need for variances. The grounds for variances and variance criteria below reflect the changes requested by the committee. As stated above, these changes did not reflect the Olmo ruling as it was not yet decided.

Proposed variance grounds and criteria

CBJ 49.20.200 Variances other than administrative. Where hardship and practical difficulties result from an extraordinary situation or unique physical feature affecting only a specific parcel of property or structures lawfully existing thereon and render it difficult to carry out the provisions of this title, the board of adjustment may grant a variance in harmony with the general purpose and intent of this title. A variance may not be granted solely to prevent financial hardship or inconvenience. The granting of a variance shall not allow uses prohibited in the district.

A variance may not vary those standards concerning;

- *use of land or structures*
- *housing density*
- *lot coverage*

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- *PUD standards*
- *cottage housing standards*
- *common wall standards*
- *construction standards as found in CBJ 49.35*
- *accessory apartment standards*
- *vegetative cover*
- *financial responsibility*
- *mobile home park standards*
- *Historic District standards and guidelines*

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

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

Other Changes

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

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

Lacking additional parameters regarding these categories, staff has applied these categories quite broadly since 1987. In fact, previous policy has been that almost any section of Code, other than a construction standard, use, or density, may be varied. The issue with varying design standards – those standards that result in how a project is designed – is that there usually is not a true hardship involved; the applicant usually wants greater flexibility than that allowed by Code. Allowing modifications during the project approval process might be a better way to provide greater flexibility.

Attachment C provides a summary of the types of variances applied for since 1987, as well as the Board of Adjustment decision results by type. Since the Land Use Code was updated in 1987

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with the design and dimensional standard categories for variances, applying it broadly has resulted in the following approval of design standards:

- Parking Requirements -
 - allowing back out parking where it isn't allowed
 - modifying parking space sizes and drive aisle dimensions
 - allowing greater distance of off-site parking
 - reduction in the number of required parking spaces
- Access Requirements –
 - allowing subdivisions not fronting on a publicly maintained right-of-way
 - allowing lot access through private easement
 - allowing subdivision along an unbuilt platted right-of-way
 - reduction to minimum 30 feet of frontage requirement
 - allowing a common driveway rather than an interior access street for subdivisions along an arterial
 - allowing lots less than 36,000 sf (D-1 lot size requirement) when subdivision is proposed along an arterial
 - allowing subdivision for lots that won't have direct access to a publicly maintained right-of-way
- Panhandle Subdivision Requirements –
 - reduction in lot sizes
 - allowing separate driveways instead of a shared common driveway
 - allowing more than two changes in direction
 - allowing a reduction in the panhandle portion width
- Planned Unit Developments –
 - allowing encroachment into required perimeter buffer
- Canopies –
 - allowing increases in canopy height
 - approving a canopy waiver when one is required to be provided
- Mobile Home Parks –
 - reduction in size of minimum required playground area
 - allowing setback reductions
- Cottage Housing –
 - allowing different floor area ratios than code specifies
- Accessory Apartments -
 - allowing an increase in apartment size
- Common wall
 - allowing reduced lot sizes
- Vegetative cover –
 - allowing reductions to the minimum vegetative cover requirements

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As outlined above, the variance has been used quite broadly to provide development flexibility. In many cases, making the case that there is a true hardship to justify many of these Code design standard relaxations or waivers is difficult to do.

No consensus has been reached from the Title 49 Committee whether design standards should remain variable or not. CDD recommends removing design standards as something that can be varied. Instead of using the variance as a flexibility tool, CDD would like to amend the Code to allow for more design flexibility. The following chart outlines proposed changes to Code to provide more flexibility. Since a number of recent development types, such as planned unit developments (PUDs) or mobile home parks, go through the conditional use permit review process for consideration and approval, staff recommends that this process and review also be used for consideration of design modifications as well.

Type	Variable?	Code Amendment
Setbacks	Yes	Add additional exceptions to allow such encroachments as ADA requirements as well as exterior energy efficiency additions
Lot width	Yes	
Lot depth	Yes	
Sign standards	No	
Parking	In some cases	A parking waiver process was also recently adopted into Code
Eagle nest buffer	?	Proposed code change to provide flexibility
Streamside buffer	?	Proposed code change to provide flexibility
PUD standards	No	Can use the existing Conditional Use process to modify design requirements
Cottage Housing standards	No	Can use the existing Conditional Use process to modify design requirements
Panhandles	Yes – lot width, depth, setbacks	Staff is currently working on Code changes to provide more flexibility regarding the panhandle option of lot design

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Bungalow lot/housing standards	No	Cannot be varied – would no longer meet the intent or definition of the bungalow requirements
Common wall standards	No	Cannot be varied – would no longer meet the intent or definition of the common wall requirements
Accessory apartment standards	No	Cannot be varied
Vegetative Cover		Previous amendment to Code removed Mixed Use district from vegetative cover requirements. Future amendment to vegetative cover to provide clarity and potential reductions
Financial responsibility requirements – CBJ 49.55	No	
Public and Private Improvements – CBJ 49.35	No	In limited cases, the Planning Commission may waive certain requirements. The Code also gives discretion to the CBJ Public Works and Engineering Director to waive or modify limited requirements.
Mobile home park requirements	No	Can use the existing Conditional Use process to modify design standards
Historic District design standards and guidelines	No	

ARTICLE I. APPEALS**49.20.110 Appeals to the planning commission.**

(a) Review by the commission of a decision of the director, may be requested by filing a notice of appeal stating with particularity the grounds therefor with the department within 20 days of the date of the decision appealed. The notice shall be considered by the commission at a regular scheduled meeting. The department and any aggrieved person, including the developer, may appear at that meeting and explain to the commission why it should hear the appeal. The appeal shall be heard unless it presents only minor or routine issues and is clear from the notice of appeal and any evidence offered at the consideration thereof, that the decision appealed was supported by substantial evidence and involved no policy error or abuse of discretion.

(b) If the commission decides to hear the appeal, it shall announce whether it intends to review the entire decision, or merely a portion thereof and whether review shall be de novo or on the record. If the commission decides to hear the appeal, it shall give public notice thereof in a newspaper of general circulation in the municipality. The department shall prepare the record on appeal, which shall consist of the original application and supporting materials, written public comment thereon, and all notes, memoranda, minutes and other department material in relation thereto. The burden of proof in the appeal shall be on the party challenging the decision of the director. In a hearing de novo, proof shall be established by a preponderance of the evidence. If the appeal is heard on the record, argument may be heard, but no evidence outside the record shall be admitted and the decision of the department shall be upheld if there is substantial evidence in support thereof and no policy error or abuse or discretion therein. The commission may confirm, reverse, or modify the director's decision, or change the conditions which the director placed on approval. The commission shall support its action with written findings.

(c) Upon its own motion, the commission may certify a case directly to the assembly without review, hearing or recommendation.

(Serial No. 87-49, § 2, 1987; Serial No. 92-10, § 3, 1992; Serial No. 95-35, § 4, 1995; Serial No. 97-01, § 6, 1997)

49.20.120 Appeal to the assembly.

Appeal to the assembly is a matter of right. Unless ordered otherwise by the commission or the assembly, a decision by the commission shall not be stayed pending appeal, but action by the appellee in reliance on the decision shall be at the risk that the decision may be reversed on appeal. The appeal of a commission decision not to hear a case shall be limited to that issue, the remedy for which shall be a remand to the commission for a hearing on the merits of the case. Appeals shall be conducted according to chapter 01.50 of this Code, except as provided in this section.

(Serial No. 87-49, § 2, 1987; Serial No. 91-41, § 2, 1991)

ARTICLE II. VARIANCES**49.20.200 Variance.**

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

(Serial No. 87-49, § 2, 1987)

49.20.210 Submittal.

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.

(Serial No. 87-49, § 2, 1987; Serial No. 95-33, § 2, 1995)

49.20.220 Scheduling and fee.

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

(b) If the director determines that the variance applied for is other than de minimis and the application is complete, it shall be scheduled for public hearing. If the application is filed in con-

APPEALS, VARIANCES AND INTERPRETATIONS

49.20.250

junction 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.

(Serial No. 87-49, § 2, 1987; Serial No. 95-33, § 3, 1995; Serial No. 2010-15(c), § 2, 5-19-2010)

49.20.230 Public notice.

(a) 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 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.

(Serial No. 87-49, § 2, 1987; Serial No. 95-33, § 4, 1995)

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.

(Serial No. 87-49, § 2, 1987; Serial No. 95-33, § 5, 1995)

49.20.250 Grounds for variances.

(a) *De minimis variances.*

(1) Where a minor setback infraction could be corrected only at unreasonable expense or inconvenience the director may, after taking into account the views of the owners of adjoining property, and upon a finding that the infraction was not the result of a deliberate effort to evade the dimensional requirement, grant a de minimis variance in harmony with the general purpose and intent of this title. A de minimis variance may be granted after it is shown that all the following conditions have been met.

(A) The variance is for one or more projections into yard setbacks, none of which extend beyond 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) *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;

49.20.250

PART II: CODE OF ORDINANCES

- (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.

(Serial No. 87-49, § 2, 1987; Serial No. 95-33, § 6, 1995)

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.

(Serial No. 87-49, § 2, 1987)

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.

(Serial No. 87-49, § 2, 1987)

ARTICLE III. INTERPRETATIONS

49.20.300 Authorization to interpret.

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

(Serial No. 87-49, § 2, 1987)

49.20.310 Submittal.

An application for a map or text interpretation shall be submitted to the board of adjustment by filing a copy of the application with the director in the department of community development. The application shall contain information sufficient to enable the board to make the necessary interpretation. The interpretation shall be scheduled for consideration by the commission. Individual mailed notice of boundary line interpretations shall be provided to adjacent property owners.

(Serial No. 87-49, § 2, 1987)

49.20.320 Use not listed.

After public notice and a hearing, the board may permit in any district any use which is not specifically listed in the table of permissible uses but which is determined to be of the same general character as those which are listed as permitted in such district. Once such determination is made, the use will be deemed as listed in the table of permissible uses.

(Serial No. 87-49, § 2, 1987)

BEFORE THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU

OLMO, LLC,

Appellant,

vs.

CBJ BOARD OF ADJUSTMENT,

Appellee.

Appeal of:
Notice of Decision
CDD File No. VAR2015 0030

DECISION ON APPEAL

Appellant Olmo, LLC, filed an appeal of the Planning Commission sitting as the Board of Adjustment's (Board) decision to deny Olmo's application for a variance regarding frontage and access requirements for Olmo's proposed subdivision.

The record was prepared by the Community Development Department based upon the materials considered by the Board and application of CBJ 01.50.110.

The issues on appeal were as set forth in the presiding officer's July 25, 2016, Order re Joint Stipulation of Issues on Appeal and Briefing Schedule.

The parties filed briefs on the merits of the appeal. On December 14, 2016, the Assembly heard oral argument from the parties. The Assembly deliberated in closed session, and directed the Municipal Attorney to prepare a draft decision based on the Assembly's findings. As required by the CBJ Appeals Code, the draft decision was circulated to the parties for comment.

The Assembly, having been fully advised, denies the appeal for the reasons stated below.

I. Burden of Proof and Standard of Review.

Under CBJ Code, variance applications are decided by the Planning Commission sitting

as the Board of Adjustment. (CBJ 49.20.240.) The Board’s decision is appealable to the Assembly, and appeals are heard in accordance with CBJ Chapter 01.50. (CBJ 49.20.120.) The appellant bears the burden of proof. (CBJ 01.50.070(b).)

In this case, the parties stipulated to two issues on appeal:

1. Whether the Board’s interpretation of CBJ 49.20.250 was reasonable. The parties have agreed that the Assembly should apply the reasonable basis standard of review to this question.¹

2. Whether the Board’s decision to deny the variance was supported by substantial evidence. In this context, “substantial evidence” is defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” (CBJ 01.50.010.) The Alaska Supreme Court has held that with respect to decisions made within its “sphere of expertise,” a Planning Commission’s decisions are “entitled to considerable deference.”² In reviewing the Commission’s decisions (or the Commission sitting as the Board of Adjustment as is the case here), a “presumption of validity” must be applied.³ When a fact-finding agency such as the Board chooses between conflicting determinations and there is substantial evidence in the record to support either conclusion, the Board’s findings should be affirmed on appeal.⁴ This direction, in conjunction with the standard of appeal articulated in CBJ 01.50, suggests that the role of the Assembly on appeal is limited. The Assembly does not re-weigh the evidence or second-guess the Board’s findings as long as there is evidence in the record to support those findings.

¹ See, *City of Kenai v. Friend of Recreation Ctr.*, 129 P.3d 452 (Alaska 2006).

² *Lazy Mountain Land Club v. Matanuska-Susitna Borough Bd. of Adjustment & Appeals*, 904 P.2d 373, 386 (Alaska 1995).

³ *South Anchorage Concerned Citizens, Inc. v. Coffey*, 862 P.2d 168, 173 (Alaska 1993).

⁴ *Anderson v. State*, 26 P.3d 1106 (Alaska 2009).

II. Relevant Facts.

CBJ Code requires that lots have direct and practical access to a publicly maintained right-of way. CBJ 49.15.424. As explained in the March 3, 2016, staff report, Olmo filed a variance application in connection with a proposed three-lot subdivision (intended to be further subdivided into six common wall lots.) Although Olmo's parcel abuts North Douglas Highway, it does not have direct access to a right-of-way. The parcel is currently accessed via a shared driveway located within a 20 foot easement that travels over two neighboring lots.⁵ Thus, the only way for the proposed subdivision to meet the requirement for frontage and access called for by CBJ 49.15.424 would be for Olmo to create direct access from each lot to North Douglas Highway or to construct a public street dedicated to serve the subdivision. In support of the variance application, Olmo argued that neither option was practical due to the extreme steepness of the terrain leading to its parcel.

III. The Board's Interpretation of CBJ 49.15.424 Was Reasonable.

Though not specifically identified as an issue on appeal, Olmo argues that the only reason a variance was needed in this case was because of the Board's misinterpretation of CBJ 49.15.424. (Olmo Opening Brief at p. 28.)

CBJ 49.15.424, Access, provides in part:

(b) *Publicly maintained access within a subdivision.* Unless otherwise provided, all lots must either have direct and practical access to, and a minimum of 30 feet of frontage on, the right-of-way, or the minimum lot width for the zoning district or use as provided in CBJ 49.25.400. These requirements for frontage and access can be accomplished by:

⁵ One of the neighboring lots is owned by the only member of Olmo, LLC. The owners of the other parcel objected to Olmo's variance application. As noted in the Board's brief, the driveway used to access Olmo's parcel is located almost entirely on this third lot.

- (1) Dedication of a new right-of-way with construction of the street to public standards. This street must connect to an existing publicly maintained street;
- (2) Use of an existing publicly maintained street;
- (3) Upgrading the roadway within an existing right-of-way to public street standards. This existing right-of-way must be connected to another publically maintained street; or
- (4) A combination of the above.

We find the Board's interpretation of CBJ 49.15.424(b), as articulated in its Opposition Brief, reasonable. (Opposition Brief at pp. 9 – 12.) CBJ 49.15.424(b) is properly read to apply to access *within* a subdivision (as opposed to access *to* a subdivision as provided by 49.15.424(a)). The code explicitly requires lots to have direct and practical access to a public right-of-way and either a minimum of 30 feet of frontage on the right-of-way or the minimum lot width provided for in CBJ 49.25.400, Minimum dimensional standards. We cannot find ambiguity in the ordinance as proposed by Olmo.⁶ We find the Board's interpretation of 49.15.424(b) to require each lot of the subdivision to have direct and practical access to a public right-of-way reasonable in light of the plain language of the text, and, as argued by the Board in its Opposition, the legislative history and the general policy reasons justifying the imposition of frontage requirements.

IV. The Board's Interpretation of CBJ 49.20.250 Was Reasonable.

We find the Board's application of CBJ 49.20.250 reasonable in light of the plain language of the ordinance, and consistent with the Alaska Supreme Court's analysis of the same code section in *City and Borough of Juneau v. Thibodeau*, 595 P.2d 626 (Alaska 1979).

The standards for granting a variance application are set forth in CBJ 49.20.250. First, an

⁶ See *Ward v. State, Dept. of Public Safety*, 288 P.2d 94 (Alaska 2012); *City of Homer v. Gangl*, 650 P.3d 396 (Alaska 1992); *City and Borough of Juneau v. Thibodeau*, 595 P.2d 626 (Alaska 1979).

applicant must show that "hardship and practical difficulties result[ing] from an extraordinary situation or unique physical feature" make it difficult for the owner to comply with the provisions of Title 49. Once the Board determines an applicant has made a sufficient showing that this threshold question has been met, a variance may be granted if the Board determines 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.

(CBJ 49.20.250(b).)

Significantly, when asked what hardship would result if the variance were not granted, Olmo told the Board that it would be 'unable' to proceed with the subdivision because of "financial hardship" and that "constructing a public street to the lots is not financially feasible, and the street would have to pass through an adjacent lot that the developer does not own." In analyzing the CBJ's variance ordinance, the Alaska Supreme Court in *City & Borough of Juneau*

v. Thibodeau, 595 P.2d 626, 635-636 (Alaska 1979) stated:

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.

It is undisputed that Olmo's lot presents a challenging topography, but we find it significant that Olmo has the ability to develop its property without the need to subdivide and thus, without requiring improved access

While it would have been helpful if the Board's finding on this threshold issue had been more clearly articulated, we nevertheless find that the Board's decision is supported by substantial evidence for the reasons explained below.

V. The Board's Decision to Deny the Variance Was Supported by Substantial Evidence.

The Board considered whether the variance should be granted by applying the criteria articulated in CBJ 49.20.250(b). After consideration of the issue at three separate hearings held on March 8, 2106, March 22, 2016, and April 12, 2016, the Board adopted the findings made in the March 3, 2016, staff report that the variance would not meet the standards in CBJ 49.20.250(b)(1), (2), (5) or (6). Olmo argues on appeal that the Assembly should reverse the Board's decision as not supported by substantial evidence.

A. CBJ 49.20.250(b)(1).

The Board determined that granting Olmo a variance to the direct and practical access requirement would be inconsistent with justice to other property owners. In reaching this

conclusion, the Board considered the history behind the approval of Olmo's existing driveway easement in 1982 (both the fact that it was to serve only a single family dwelling and that it was approved with the intention that a public street would be built if future development were to occur), the policy considerations embodied in the comprehensive plan and code behind the requirement for direct and practical access, and the safety concerns that arise when lots do not meet Title 49's access requirements. Based on these considerations, we find the Board's determination with respect to CBJ 49.20.250(b)(1) was supported by substantial evidence.

B. CBJ 49.20.250(b)(2).

The Board determined that neither the intent behind Title 49, nor public safety and welfare, would be preserved if the variance were granted. The Board considered Olmo's proposal – to allow what would eventually be a six lot subdivision use a steep, narrow driveway located in a narrow twenty foot easement – to be too far outside the minimum public health, safety, and welfare standards embodied in Title 49. The Board specifically noted that the narrowest roadway allowed by CBJ Code to serve subdivisions in the urban service area (where Olmo's proposed subdivision is located) is a twenty-two feet wide paved roadway within a sixty foot right-of way, and also considered the International Fire Code's requirement that travel ways be a minimum of twenty feet.

We conclude that the Board's finding on this point was supported by substantial evidence.

C. CBJ 49.20.250(b)(5)(A – D)

1. CBJ 49.20.250(b)(5)(A). The Board determined that denying Olmo's variance application would not unreasonably prevent Olmo from using its property for a permissible use. The Board considered that the only reason why Olmo needed to apply for a

variance was because of Olmo's decision to subdivide. As noted in the Board's opposition and as stated in the staff report, Olmo could have developed its property without subdividing, and therefore without triggering the requirement that the development comply with the access requirements in CBJ 49.15.424. The Board specifically considered that Olmo could have constructed up to fourteen multi-family units, or could have constructed up to three two-unit buildings as was being proposed, without subdividing the property.

We find the Board's conclusion supported by substantial evidence.

2. CBJ 49.20.250(b)(5)(B). Similarly, the Board found that denying the variance would not unreasonably prevent Olmo from using its property in a manner consistent with existing, neighboring development in the neighborhood. Noting the property was zoned D-18 and identified as Medium Density Residential, the Board again relied upon its finding that the property could be developed with up to fourteen multi-family units with a conditional use permit, or up to eight units with nothing more than a building permit, without the need to subdivide.

3. CBJ 49.20.250(b)(5)(C). In concluding that denying the variance would not be unnecessarily burdensome, the Board relied upon staff's assertion that other smaller, similar subdivisions had been required to comply with the access requirements in CBJ 49.15.424. Given that Olmo's request for a variance was not related to an inability to construct a road but rather the financial implication of doing so, and in light of the Supreme Court's holding in the *Thibodeau* case, *supra*, we find the Board's decision on this point supported by substantial evidence.

4. CBJ 49.20.250(b)(5)(D). The Board found that granting the variance would result in an overall net decrease in overall compliance with Title 49 based upon the fact that the requirements in CBJ 49.15.424 would not be met.

D. 49.20.250(b)(6).

With respect to CBJ 49.20.250(b)(6), the Board concluded that granting the variance would not result in more benefits than detriments to the surrounding neighborhood. The Board relied upon staff's finding that the proposed development would "increase the use of the existing substandard access" located in the easement, and that the increased development could "result in detriments to users of North Douglas Highway because the existing access may cause traffic impacts on North Douglas Highway." (Record at p. 27).

We disagree with the Board's finding. While there are significant policy and safety and welfare concerns to support denial of the variance, we cannot find the Board's conclusion regarding traffic impacts to be supported by substantial evidence. Additionally, we agree with Olmo's assertion that the Board failed to consider the benefits of Olmo's proposal. Given the significant need in the community for housing, we cannot find that the Board's decision on this issue was supported by substantial evidence.

VI. Conclusion

In light of the deferential standard of review the Assembly must apply to Board of Adjustment decisions and the applicable burden of proof, we must deny Olmo's appeal. We find the Board's decision to deny Olmo's variance was supported by substantial evidence. We agree with the Board's finding that Olmo can develop its property without subdividing and that granting the variance to allow for the creation of lots with such substandard access would result in a development that fails to meet the minimum health, safety and welfare considerations embodied in the CBJ's Land Use Code. We also agree with the Board's finding that approving the variance in order to allow Olmo more profitable development than presented by the other permissible development opportunities Olmo has available to it is not justified. For these

reasons, the Board of Adjustment's decision is affirmed.

DATED _____, 2017.

ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU,
ALASKA

By: _____
Maria Gladziszewski
Presiding Officer on Appeal

Variance Approval History 1987 - 2015

**Total and
By Type**

From 1987 through 2015 (2016 data is not included), 964 cases were decided by the Board of Adjustment. Of those:

856 approved – 88.8%

108 denied – 11.2%

Year	Total Cases Decided by BoA	Approved	Approval %	Denied	Denial %
1987	10	10	100.0%	0	0.0%
1988	14	11	78.6%	3	17.6%
1989	15	12	80.0%	3	16.7%
1990	28	19	67.9%	9	25.0%
1991	24	18	75.0%	6	25.0%
1992	41	35	85.4%	6	13.6%
1993	48	40	83.3%	8	14.0%
1994	50	39	78.0%	11	20.0%
1995*	48	41	85.4%	7	11.7%
1996	49	39	79.6%	10	14.9%
1997	43	38	88.4%	5	8.6%
1998	43	33	76.7%	10	17.5%
1999	43	39	90.7%	4	7.5%
2000	44	41	93.2%	3	6.1%
2001	26	26	100.0%	0	0.0%
2002	40	37	92.5%	3	6.0%
2003	37	35	94.6%	2	3.9%
2004	47	44	93.6%	3	5.4%
2005	45	44	97.8%	1	1.5%
2006	43	38	88.4%	5	9.8%
2007	33	33	100.0%	0	0.0%
2008	23	22	95.7%	1	3.1%
2009	31	29	93.5%	2	5.4%
2010	27	24	88.9%	3	7.5%
2011	22	22	100.0%	0	0.0%
2012	27	25	92.6%	2	5.7%
2013	23	23	100.0%	0	0.0%
2014	23	23	100.0%	0	0.0%
2015	17	16	94.1%	1	2.8%

* The variance criteria changed in 1995 making it less difficult to meet the criteria for approval

Variance Approval History 1987 - 2015

**Total and
By Type**

The following types of variances have been decided by the BoA since 1987:

Type	Total Decided by BoA	Approved	Approval %	Denied	Denial %
Access-related	49	40	81.6%	9	18.4%
Design Standards*	39	31	79.5%	8	20.5%
De Minimus	12	12	100.0%		0.0%
Density	0		0		0
DOA	0		0		0
Dimensional Standards (lot width, low depth)	65	57	87.7%	8	12.3%
Extensions	0		0		0
Fence-related	4	4	100.0%		0.0%
Flood Zone-related	4	3	75.0%	1	25.0%
Height	19	18	94.7%	1	5.3%
Lot Area	6	5	83.3%	1	16.7%
Lot Coverage	4	3	75.0%	1	25.0%
Other	1		0.0%	1	100.0%
Parking	114	92	80.7%	22	19.3%
Setbacks	492	451	91.7%	41	8.3%
Setback – Eagles	42	42	100.0%		0.0%
Sign-related	18	8	44.4%	10	55.6%
Setback Waterbody	70	66	94.3%	4	5.7%
Use	0		0.0%		0.0%
Vegetative Cover	25	24	96.0%	1	4.0%
TOTAL	964	856	88.8%	108	11.2%

*Design Standards-related variances are to the following standards: Accessory apartments, arterials, bungalows, canopies, common wall, conservation lots, cottage housing, historic district, minimum rectangle, mobile home, panhandle, and PUDs.

MINUTES
Planning Commission
COMMITTEE OF THE WHOLE
CITY AND BOROUGH OF JUNEAU
Ben Haight, Chairman
August 8, 2017

I. ROLL CALL

Ben Haight, Chairman, called the Committee of the Whole meeting of the City and Borough of Juneau (CBJ) Planning Commission (PC), held in the Assembly Chambers of the Municipal Building, to order at 5:08 p.m.

Commissioners present: Ben Haight, Chairman; Paul Voelckers, Vice Chairman; Nathaniel Dye, Dan Miller, Percy Frisby, Kirsten Shelton, Carl Greene

Commissioners absent: Dan Hickok, Michael LeVine

Staff present: Rob Steedle, CDD Director; Beth McKibben, Planning Manager; Laura Boyce, Senior Planner; Jill Maclean, Senior Planner, Chrissy McNally, Planner II

II. APPROVAL OF MINUTES - None

III. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS - None

IV. PLANNING COMMISSION LIAISON REPORT - None

V. RECONSIDERATION OF THE FOLLOWING ITEMS - None

VI. CONSENT AGENDA - None

VII. CONSIDERATION OF ORDINANCES AND RESOLUTIONS - None

VIII. UNFINISHED BUSINESS - None

IX. REGULAR AGENDA

AME2016 0002 – Amend Title 49 regarding variances.

Ms. Boyce told the Commission the staff would dive into the data of downtown Juneau and downtown Douglas first, focusing specifically on where the boundaries of the new Alternative Development Overlay District (ADOD) will apply, and ascertain how this would affect the variances in these areas. They would then next address revised criteria, said Ms. Boyce.

Showing the Commission a map of downtown Juneau, Ms. Boyce indicated the properties which have been granted variances since the current code was adopted in 1987. One hundred forty-three variances have occurred in this ADOD area, she noted. One hundred fourteen of those variances are setbacks, she noted. Most of these setback variances could most likely benefit from the newly approved ADOD, said Ms. Boyce.

The ADOD applies to residential properties that can provide relief for setbacks, vegetative cover, and lot coverage, explained Ms. Boyce. This applies to accessory structures such as garages as well, she noted. Roughly 10 percent of these 143 setbacks in the Juneau downtown area are for parking and roughly half of those could also find relief with the new parking waiver, said Ms. Boyce. Another small portion of those variances are for vegetative cover which could also be helped by the ADOD, said Ms. Boyce.

In downtown Douglas the majority of the variances granted are for setbacks, said Ms. Boyce. Roughly 80 percent of the 47 properties granted variances are setbacks which could find relief under ADOD, she noted. Five of those variances are for parking, and three of those could potentially find relief under the new parking standard, she said. Five properties are for other types of variances, she said.

They have amended the criteria from the last version viewed by the Commission, said Ms. Boyce. What they call the “threshold” in the current code has been moved and combined into variance criterion number one, she said. All of the criteria must be met in order for a variance to be granted, she said. Ms. Boyce said she is also proposing a sixth criterion exhibiting a clear finding that the granting of a variance would not result a variance for density, lot coverage, construction standards, or use.

Commission Comments and Questions

Referring to the last sentence of criterion one in the new draft, Mr. Dye said that developers do have some control over the division of their lots. He asked how this would be interpreted according to the new criterion. He mentioned a scenario where a property owner could claim that an irregularity of their property was something of which they were not aware when they purchased the property.

Ms. Boyce said it would need to be determined if the property owner had knowledge of the irregularities when they purchased the property.

Mr. Greene added that he felt this was a good point. If the property owner had knowledge of the irregularities of the property when purchased, then why would they be eligible for relief in the form of a variance?

This would also pertain to the reasonable use of the property, said Ms. Boyce.

Ms. McKibben stated a few years ago a variance was requested to reduce the number of parking spaces for back-out parking. The building had a very large footprint, she said. If it was designed a little differently they would not need to request a variance, she explained. By denying the variance, they were not eliminating the reasonable use of the property by the owner, she said. The property owner just needed to make some modifications in their building design, she added.

Mr. Dye asked if the second sentence in criterion one was necessary. *(These conditions result from the lot size or shape, topography, or other conditions that the property owners cannot control.)*

That sentence would not be crucial, said Ms. Boyce. She said it was added to clarify the meaning of the criterion.

Mr. Voelckers commented that overall he was pleased with the amendment to Title 49 regarding variances, but that he felt it was time to delve into the particulars of the verbiage. He said he felt it was good to have a purpose statement, but that he felt some changes in the wording were warranted.

A variance may be granted to provide property owners ~~from~~ relief from Code requirements when, due to the strict application of standards and to unusual circumstances regarding the subject property or structure, the property owners are deprived of privileges commonly enjoyed by other properties in the same vicinity, ~~and~~ zone and under the same land use regulations.

Mr. Voelckers said he felt the first “from” in the first sentence was just a typo and should not be there. He said in the last sentence he felt the word “and” should be eliminated and supplanted with the word “or”.

Referring to the Purpose sentences, Mr. Dye asked if the word “strict” needed to be applied to modify the word “application”. He said he felt that may infer that at other times the Commission was not being diligent in its application of the code.

Mr. Miller said that the code is black and white. If the staff cannot give an absolute answer “yes” to someone’s question about code application, then it was incumbent upon them to say “no”. However, said Mr. Miller, there can be gray areas that are not black and white. He said he felt that is why there are nine members of the Planning Commission. It is their job to delve into those gray areas, explained Mr. Miller.

Chairman Haight said he felt the word “strict” was a point of reference. It was referencing the black and white aspects of the code, he said.

Review of Criterion One

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 ;)

Mr. Voelckers said he felt that philosophically it was useful to reference “structure” as well as property. There are circumstances when all aspects of the property are not disclosed at the time of its purchase to the new owner. He said he felt that referencing structure would at times become germane to interpretation of this criterion. He said he would like to insert the words “or structure relative to other properties or structures” after the word “property” in the first sentence of criterion one. The word “or” should also be added after the word “vicinity”, said Mr. Voelckers.

Mr. Miller said the first person obtaining a variance on their property may qualify because the “circumstances that exist are peculiar to the property”. However, he said, a subsequent property owner would not be able to claim the peculiarity of the property, he said. The analysis of the proposed criterion one states that if there are similar requests in the neighborhood, then the zoning or standard that applies for that area might need to be corrected. Mr. Miller said he would not want the new variance criteria to be quite so short-lived. He added that he felt that criterion one and two could quite possibly cancel each other out in some circumstances.

Ms. Boyce said the current language says “unique”. She said the words “peculiar” and “unusual” step down from that. If they do see a trend in an area, then maybe the zoning needs changing or some type of setback exception can be added to the code that best fits that neighborhood’s character, she added.

Mr. Miller said he wasn’t quite sure how rigid the standard the word “peculiar” would be interpreted.

Ms. Shelton said she viewed the interpretation a bit differently. She said she liked the existence of criterion two as it supported the notion that the property did not have to be unique. Ms. Shelton suggested supplanting the first sentence in criterion one with: “Special conditions or circumstances exist that the property owners cannot control”.

Mr. Voelckers said he felt the word “unique” in existing language was a killer term and that the new verbiage proposed by the staff was a good compromise. There has to be something about the circumstance that sets it aside, he said.

Mr. Dye said he liked the suggestion of Ms. Shelton, and that he would also like to recommend that the second sentence in criterion one be eliminated. He said he felt the intent of that language was duplicated in criterion number four. In answer to Mr. Voelckers question about his meaning, Mr. Dye said criterion four states that “The hardship is not self-imposed...” He said he felt that criterion one should be less explicit and that criterion four could cover what was in the second sentence in criterion one.

Mr. Miller said he really liked the phraseology “that the property owners cannot control” in criterion one. He said criterion four referenced the things that were within the property owner’s control. He said he felt the statements referenced by Mr. Dye in criterion number one and criterion number four referenced two completely different things.

Mr. Dye said he did not see how the Commission would be able to define what was or was not within a property owner’s control.

For example, said Mr. Miller, after a person purchased a lot that had a house upon it, and they wanted to rebuild and they thought that they would be able to rebuild. The new property owners had performed their due diligence and subsequently found out that the foundation was inadequate. Mr. Miller said he felt this would be a circumstance in which he could understand that the situation was not under the property owner’s control.

Mr. Dye agreed with Mr. Miller, and added that he did not feel the second sentence in criterion one detracted from that meaning. The argument can be made that the new property owners could have hired an engineer ahead of time and found out there were problems with the foundation, and therefore it would not be outside of their control. He said if the second sentence in criterion one was removed, that they avoided the whole difficulty of whether it was within or not within the property owner’s control. He said the control level would lie within criterion four which stipulates that the hardship is not self-imposed.

Mr. Steedle said he felt that Ms. Shelton best captured the meaning with her proposed language for criterion one: “Special conditions or circumstances exist that property owners cannot control...”

Mr. Voelckers added they also needed to see how this language plays out when referencing structures as well as land. He said he liked the idea of simplifying the language and putting some of the language within the parentheses within the body of the first sentence.

Mr. Dye said if an individual owns a structure that theoretically it is within that person's control. He said he would like to have the first criterion a little more general and that specificity became more pronounced with the application of criterion four.

Chairman Haight said that many Commission members have witnessed a situation where an individual buys a property or structure and there are existing conditions unknown to the buyer. They subsequently find out the problems with their property when they begin a remodel for example, he said.

Ms. Shelton said she felt that language in criterion one and four was different. For example, she said, in number four, to be extreme, it could be said that the condition was self-imposed because the individual purchased the property.

Ms. Boyce said with criterion number one they are trying to get to the hardship factor pertaining to the property. Criterion four is more about the plight of the land owner, she said, where criterion one referenced the property itself.

Mr. Frisby said that every landowner has different land use intents. There are issues that arise when there is a new purchaser of property who may have different ideas about how that property should be used, said Mr. Frisby. He said to him criterion one and four did seem to be repetitive, but after listening to the discussion he could see how they were not repetitive.

Mr. Voelckers said since the criteria are related, that perhaps Mr. Palmer and Ms. Boyce could rework the phrasing in those two criteria while the Commission progressed through the other criteria.

Criterion Number Two

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;

Mr. Voelckers suggested that instead of having the sentence end with the word "have", that it be amended to read: "The variance is necessary so that the applicant can enjoy a property right that (is consistent with) other owners of properties in the same zone or vicinity;"

Criterion Number Three

The grant of the variance will not be detrimental to public health, safety, or welfare, or is injurious to nearby property;

Ms. Shelton said what the second half of this sentence says to her is that the granting of the variance is injurious to property. She said she felt the words "not be" be used instead of the word "is" prior to the word "property".

The Commission agreed to the above change for criterion number three.

Edited Criterion Number Three

The grant of the variance will not be detrimental to public health, safety, or welfare, and not be injurious to nearby property;

Criterion Number Four

The hardship is not self-imposed and the variance is the minimum that will alleviate the hardship;

Mr. Voelckers said he felt that criterion four may be the most difficult of all. He said it could be argued that all hardship to some degree is self-imposed. He said it he felt it was important to remember that the goal was to give the Planning Commission a common-sense tool to try to parse out what makes the most sense. He said he did not like the words within the criterion that stated, "...the minimum that will alleviate the hardship;"

Mr. Voelckers recommended that the criterion read: "The hardship is not self-imposed and the variance is proportional to the needed relief that will alleviate the hardship;" He said he felt the word "proportional" was better than the word "minimum". The word "minimum" was not very descriptive, he said. The word "proportional" provided some value judgment, he said.

Mr. Palmer responded he felt there were two concepts at work. The whole reason for these criteria is to provide some "objective standards" to deviate from the code, he explained. The purpose of the variance is to provide that unique tool when there is something so special about that property that they cannot comply with the standards that apply to everybody else, he said.

The addition to a building would generally be considered a self-imposed hardship, said Mr. Palmer. The topography of a very steep hillside next to a restricted right-of-way probably would not be a self-imposed hardship, for example, said Mr. Palmer.

Ms. Shelton commented that the steep hillside would have always been present, and would only become a self-imposed hardship when the property owner decided to act.

Mr. Palmer said it may be a good idea for the staff to take the recommendations on this ordinance amendment and work through the language corrections, providing explanations on the intent to accompany each of the criteria.

Mr. Voelckers asked Mr. Palmer what the consequences would be if they struck the words "self-imposed". He said it could be interpreted that any action would be self-imposed. He said those words actually made him a little uncomfortable.

Mr. Palmer said the Commission needed to decide if the “self-imposed” term used in number four was different or duplicative of the language used in criterion one.

Mr. Voelckers asked if the term “self-imposed” needed to be used to meet some legal litmus test.

Mr. Palmer said that specific term did not need to be used, but that the concept needed to be embodied within the variance. It follows a state statute which provides a good general guidance for the variance, said Mr. Palmer.

Mr. Miller said he felt that Mr. Voelckers had an excellent point in that anything that is brought forward could be construed as self-imposed. Then they would not have a mechanism for providing relief from the strict application of the code, he added. The term “self-imposed” could be interpreted very strictly, and then once again they are in a position where variances may not be issued, noted Mr. Miller.

Mr. Dye said he had problems with the terms “cannot control” in criterion one and “self-imposed” in criterion four.

Mr. Voelckers noted that a project he was involved with several years ago received a couple of critical variances so that it could be built. He said it could be argued that the project was completely self-imposed, and there were no unique features about the property. The Commission thought the height variance was useful for the project, so they could proceed with construction, said Mr. Voelckers.

Chairman Haight said he felt they needed more definition of what “self-imposed” really means.

Mr. Palmer said the state statute provides a slightly different standard, but that he felt it arrived at the same concept which the Commission was discussing. “Special conditions that require a variance are not caused by the person seeking the variance,” said Mr. Palmer.

Mr. Steedle said he was curious how this got around the quandary raised by Ms. Shelton, that the property was purchased, therefore the condition is self-imposed.

Providing an example for the discussion, Ms. McKibben said there was a property several years ago out the road on a very steep hill, where the highway has a 100-foot right-of-way. The lot was platted before the highway was 100 feet wide, said Ms. McKibben. Subsequently the property owners were left with a 20-foot portion of property to build upon. They did not create that situation, noted Ms. McKibben.

Criterion Number Five

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.

Ms. Shelton said she did not think “that distinguish it from others in the area” needed to be in this criterion. She said she felt it took away from the meaning of this criterion, rather than clarified it.

Mr. Voelckers said he agreed with Ms. Shelton in that there was some redundancy. He said it made him wonder if they should not remove the words within the parentheses. He said perhaps they should just put; “Literal enforcement of the ordinance would result in unnecessary hardship.”

Ms. Shelton said she did not think they wanted to lose the concept of “reasonable use” in criterion five.

Mr. Dye suggested they just eliminate the language within parenthesis.

Criterion Number Six

This variance if approved would not result in lot coverage, construction standards, etc.

They may want to add the words “maximum density” prior to “lot coverage”, said Mr. Voelckers. Someone may want to add a kitchen to their home which would not result in maximum density to the neighborhood, said Mr. Voelckers.

The Commission agreed that they approved the general concept of criterion number six, which will undergo further wordsmithing by the staff.

Review Incorporating Commission Comments

Purpose Statement

A variance may be granted to provide property owners ~~from~~ relief from Code requirements when, due to the strict application of standards and to unusual circumstances regarding the subject property or structure, the property owners are deprived of privileges commonly enjoyed by other properties {or structures} in the same vicinity ~~and~~ {or} zone and under the same land use regulations.

Criterion One

Special conditions or circumstances exist {that the property owners cannot control} that are peculiar to the property {or structures} in the same zone vicinity. ~~{These conditions result from the lot size or shape, topography, or other conditions that the property owners cannot control};~~

Mr. Palmer suggested that criterion one be changed to state, "Special conditions or circumstances that require the variance are not caused by the person seeking the variance."

Mr. Dye said he liked the phrase suggested by Mr. Palmer because it did away with the "cannot control" verbiage. He said it did not bother him that the conditions were not listed. He said if they were listed then there could always be something that was left out.

Mr. Miller commented that the ADOD in theory should help a lot of people. However, he said, there may be some lots which would not be helped by the ADOD. There could be a nonconforming situation that may be a special condition or circumstance, not caused by the person seeking the variance, he noted.

The Commission approved of the phrase suggested by Mr. Palmer as criterion one.

Criterion Two

The variance is necessary so that the applicant can enjoy a property right that {is consistent with} other owners of properties in the same zone or vicinity have;

Criterion Three

The grant of the variance will not be detrimental to public health, safety, or welfare, ~~or~~ {and} is {not} injurious to nearby property;

Criterion Four

The ~~hardship is not self-imposed and~~ variance is the minimum {proportional to the needed relief} that will alleviate the hardship;

Criterion Five

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.

Criterion Six

The variance would not result in exceeding allowed maximum density, maximum lot coverage, construction standards or use.

The Commission agreed with criterion six.

This amendment to Title 49 will next be presented to the Commission at a regular meeting with a formal hearing.

AME2017 0006 – Text Amendment related to Essential Public Facilities

Mr. Steedle told the Commission this is Ordinance 2017-23 for Essential Public Facilities. He explained this is to develop a process for permitting facilities that the government ought to be providing. This could be via contract rather than directly provided by the government, noted Mr. Steedle. These are facilities that typically individuals are not happy to have adjacent to their residences, said Mr. Steedle. An example would be a winter campground which has been proposed, he noted. There is no provision for that in a downtown location under Mixed Use, he said.

The idea is to come up with another permitting process in which a facility could be deemed by the CBJ Manager to be a candidate to be an essential public facility, said Mr. Steedle. This would be brought to the Commission through the Community Development Department for the Commission's own analysis, he explained. This streamlines the process, said Mr. Steedle. However, he said, currently under the best case scenario permitting could be accomplished within five months. Much of that time is taken up by staff analysis and research, he said. It would then come to the Commission and to the Assembly, he explained.

If the essential public facility process was in effect, said Mr. Steedle, it would come before the Commission and look very much like a Conditional Use Permit, but it would sidestep the Table of Permissible Uses.

Commission Comments and Questions

Mr. Miller asked if this sort of process could have been used for the facility within the Tall Timbers area. He said he recalled that facility did not have a use within the Table of Permissible Uses.

Mr. Steedle said it is correct that facility did not have a use within the Table of Permissible Uses, but that it would probably not have been deemed an essential public facility. The pivotal question would be, "is this an essential function that the CBJ should be providing", he said. The answer in that case is probably "no", he said. That facility was sponsored by a nonprofit organization not under the control of the CBJ, he added. If the CBJ was the source of the grant funding for that operation, then the Commission might make a finding, said Mr. Steedle, that it was an essential public facility and eligible to be placed in the neighborhood in which it resides.

Referring to number one under Determination of Applicability, Mr. Dye asked if the facility within the Tall Timbers neighborhood was completely privately funded.

The funding for that facility does not come via the CBJ, answered Ms. McKibben.

Mr. Dye asked if a warming shelter which was considered by the Salvation Army this winter would come under this essential public facility ordinance.

He was told that it would not, because the City was not involved in that proposal.

Mr. Palmer said the concept is that these are essential public facilities. If there is a strong public need for a facility, it can be expedited for a very good reason, he said. However, it is either a public facility or it is a private facility funded by or under contract by the CBJ.

Mr. Dye distinguished that the way the ordinance is written the essential public facility must have substantial public funding or be under contract by the CBJ, which he noted could entail minimal funding by the CBJ.

Mr. Palmer noted that most contracts have to go through the Procurement Code. That is another check and balance, he noted. And would have to be approved by the Assembly, he added.

Mr. Voelckers asked if there is the assumption that a unique site boundary would be created for the facility. He said he was curious how those limits would be defined to gauge the impacts for this conditional use process.

The ordinance is almost indistinguishable from a Conditional Use Permit. What this really accomplishes is the bypass of the TPU process, noted Mr. Steedle. The Commission is free to impose whatever conditions it thinks would be necessary, he added. Mr. Voelckers asked how the Commission would deal with this if the boundaries were not clearly defined.

Mr. Palmer said the proposed ordinance is deliberately left imprecise to allow for a small area, within a much larger defined parcel, for example, or to allow for trailers to be hauled onto a site, he said.

Mr. Voelckers suggested that on (10) (A) of the ordinance that "impacts on wildlife" be stated instead of specifying an eagle's nest only. Under (11) Sound, instead of specific decibels, just limit "adverse impacts to adjoining properties", he suggested.

Mr. Steedle noted that this language is lifted from Conditional Use Permits. He asked if the Commission would like to see the distinction between a traditional CUP and this ordinance proposal.

Mr. Voelckers said the specificity regarding eagles seemed a little odd in this draft ordinance. There are many other types of wildlife and habitat impacts which should be generally referenced besides just eagles, he said. Past practice has indicated that decibels are difficult to qualify, he said. It may be highly dependent upon where the property is located in comparison to how close it is to a residence, said Mr. Voelckers.

Ms. Shelton said that lines 10, 11, and 12 under Determination of Applicability seemed excessive in their words. She suggested that those lines just state, “Delivered under contract or with substantial funding under a government agency”.

Mr. Miller asked if performance bonds were a part of a Conditional Use Permit.

Mr. Steedle said that they were a part of a Conditional Use Permit. He added that there is a facility currently under development under a Conditional Use Permit and there is a vegetation requirement. He said the developers are currently requesting a performance bond so they could do that work in the spring rather than now. Before the CDD can issue a Certificate of Occupancy they need that performance bond in place, said Mr. Steedle.

Under Purpose Mr. Voelckers asked if the word “and” should supplant the word “or” on line 20.

This draft ordinance will next appear before the Commission during a regular meeting for public input and formal action.

AME2017 0003 – Proposed amendments to 49.15.423

Ms. McKibben told the Commission that this proposed ordinance will allow for the creation of smaller panhandle lots. She stated they are not yet at the point to be editing the language. There have been two Title 49 committee meetings on this proposal, she said.

Currently, the minimum lot size for a lot created by a panhandle subdivision is 20,000 square feet when served by City water and sewer, and 36,000 square feet when sewer is not available, said Ms. McKibben. By allowing smaller lots to be subdivided through the panhandle provisions, more lots could be created in the zoning districts that have smaller minimum lot size requirements, she stated. These lots would have frontage on a public right-of-way. They have a minimum width of the stem to be 30 feet wide with the maximum grade of the driveway to be no more than 15 percent, said Ms. McKibben. The code requires one shared access and that it be shown on the plat, she added, with an easement or a plat note. It also requires a maintenance agreement for the shared driveway, said Ms. McKibben. It is limited to two lots, and the front yard setback is measured from the access easement, she said.

The concept is to allow any lot to be subdivided through the panhandle provisions if the lots created can meet the minimum dimensional standards of the underlying zoning district, said Ms. McKibben. The stem would not be included in the calculation of the lot sizes, she said. This provides another development option and creates infill development, she said. They have a few requests every year from property owners for individuals wanting to buy property looking to subdivide, said Ms. McKibben. The panhandle subdivision might be a good design option for

them, she noted, but the resulting lots would not meet the minimum square footage of 20,000 square feet.

Originally the panhandle subdivision was intended for larger lots, and it is usually used in more rural environments, said Ms. McKibben. There are a number of lots where this panhandle proposal could be used, said Ms. McKibben, including some that are already developed. These are instances where the shared private access would not work, she said. This provides an alternative when shared access is not an option, she noted.

They do preserve the opportunity for lots within the D-1 zone district to use up to 30 feet of the width of the panhandle to calculate the width of the front lot, said Ms. McKibben. For example, there are a number of very long, narrow lots along North Douglas Highway, she said. With each lot being required to meet the minimum lot size, said Ms. McKibben, the integrity of the density of the zoning district is preserved.

The proposed language would remove the maximum grade for the driveway of 15 percent, and instead stipulate that it meet the fire code requirements for that particular lot. It also specifies that access to the rear lot is required to be through the stem, she noted. If there is a shared driveway it still has to be shown in the plat and a maintenance agreement has to be recorded, she said. The front lot can have access through its own driveway, but the panhandle access would still be required, said Ms. McKibben. Some of these larger lots already have two approved driveways, said Ms. McKibben. Lots that are on DOT maintained rights-of-way are still limited to one access, she said.

The proposed ordinance adds language that requires the portion of the driveway in the right-of-way or the first 20 feet from the edge of the public roadway to be paved, said Ms. McKibben. This is consistent with the recently adopted private shared access provisions, she pointed out. It removes the prohibition to limit panhandle subdivisions to two lots, said Ms. McKibben. This intent is that panhandle subdivisions will only include pairs of lots, she noted. It would prohibit three or more lots from being a panhandle and sharing a driveway, she said. This is to provide consistency with the new private shared access, she noted.

Lots with right-of-way frontage on DOT streets will continue to be limited to one shared driveway, said Ms. McKibben. The intent is that one pair of panhandle lots is created and the access to the rear lots will be shared within the stem of the two lots, she said. If the lots do not receive CBJ driveway permits for direct access to CBJ streets, then they will also use the stem for access, she noted. A maintenance agreement would be required for the shared driveway.

The new private shared access section of code requires the front yard setback to be measured from the access easement, said Ms. McKibben. The ordinance requires that the front lot of the panhandle subdivision be treated as a corner lot and choose the front setback and the street

side setback from either the right-of-way or the stem of the panhandle lot, she explained. They advise that shared access regulations be amended to allow lots fronting both the easement and a public right-of-way be able to be treated as a corner lot, and choose the front yard setback and the street yard setback, she noted. This provides consistency with corner lots and the recommendations for panhandle lots, and creates some flexibility for the front lot in the shared private access subdivision, said Ms. McKibben.

This proposed ordinance also removes the lot size requirements for lots not on public sewer, and specific dimensional requirements for lots using marine outfall for wastewater disposal, she noted. The State Department of Environmental Conservation used to have minimum lot sizes for residences on septic and well, and those requirements have been removed, said Ms. McKibben.

Commission Comments and Questions

Mr. Voelckers commented that the only thing he noticed to be missing from this draft ordinance is that the draft does not include the pairing and sharing of all four lots. (1) (E) which should be “up” to 30 feet. Mr. Voelckers said he felt this looked like a solid proposal.

Mr. Miller said he really liked this proposal. He said he liked the reduction of the panhandle to 20 feet if necessary. Mr. Miller said he did have a bit of an argument with the taking issue which could arise. For example, for a lot that is on a DOT right-of-way that fits every criterion, with the owner willing to put the driveway in the panhandle, which could then not be approved by DOT, he said. That person could then put a driveway in a location that would be legal for the DOT but that would then not be within the panhandle, said Mr. Miller. He said that may be a taking because the City would not be allowing the subdivision to happen.

Mr. Palmer noted that there is the shared access provision available in these circumstances. He added that he is not aware that the City could allow someone to create a panhandle, require that panhandle and not to require that access to be in that panhandle.

Ms. McKibben said the shared private access was created for certain circumstances in which a panhandle may not be an available option.

Mr. Miller asked if there has to be road frontage for a shared access when it is subdivided.

Mr. Palmer said that road frontage was not necessary for that circumstance.

Mr. Steedle said that from what they understand now about takings, the CDD would not approve a panhandle subdivision if a driveway permit could not be obtained.

Ms. McKibben said they would like to schedule this proposed ordinance for a hearing before the Commission in September.

X. **REPORT OF REGULAR AND SPECIAL COMMITTEES** - None

XI. **PLANNING COMMISSION COMMENTS AND QUESTIONS** - None

XII. **ADJOURNMENT**

The meeting was adjourned at 6:46 p.m.



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 155 S. Seward Street • Juneau, AK 99801

DATE: July 28, 2017

TO: Planning Commission Committee of the Whole

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

CASE NO.: AME2016 0002

SUBJECT: Amend Title 49 Revisions Regarding Variances

Introduction

At the last Committee of the Whole meeting, staff was asked to revise the variance criteria and to explain the purpose for each proposed criterion. The table below includes the draft criteria discussed at the last meeting as well as the revised draft criteria. A discussion of the revised criteria follows. The existing variance Code criteria are also included below.

Draft Variance Criteria

Last Draft	New Draft
<i>A variance may be granted after the prescribed hearing and after the board of adjustment has determined that:</i>	<i>A variance may be granted after the prescribed hearing and after the board of adjustment has determined that:</i>
<i>(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;</i>	<i>Special conditions or circumstances exist that are peculiar to the property in the same zone vicinity. (These conditions result from the lot size or shape, topography, or other conditions that the property owners cannot control.);</i>
<i>(2) That compliance with the existing standards would unreasonably limit the owner from using the property for a permissible principal use;</i>	<i>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;</i>
<i>(3) The deviation from the requirement of this title is no more than is necessary to permit a reasonable use of the property;</i>	<i>The grant of the variance will not be detrimental to public health, safety, or welfare, or is injurious to nearby property;</i>

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(4) <i>Relief can be granted in such a fashion that the intent of this title found in CBJ 49.05.100 will be observed;</i>	<i>The hardship is not self-imposed and the variance is the minimum that will alleviate the hardship;</i>
(5) <i>The authorization of the variance will not injure nearby property;</i>	<i>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.</i>

Revised Criteria

Purpose:

A variance may be granted to provide property owners from relief from Code requirements when, due to the strict application of standards and to unusual circumstances regarding the subject property or structure, the property owners are deprived of privileges commonly enjoyed by other properties in the same vicinity and zone and under the same land use regulations.

Proposed Criteria:

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

Special conditions or circumstances exist that are peculiar to the property in the same zone vicinity. (These conditions result from the lot size or shape, topography, or other conditions that the property owners cannot control.)

In this criterion the property is discussed. The applicant needs to make the case that the property is unusual in some way or different from neighboring properties.

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;

This criterion seeks to analyze whether the property owner can reasonably use the land similar to others in the vicinity. Will the potential loss by the applicant to reasonably use the land as desired without the variance outweigh any public gain by denying the variance?

The grant of the variance will not be detrimental to public health, safety, or welfare, or is injurious to nearby property;

This criterion analyzes whether the variance will conflict with the purpose of the Code. It also analyzes if the variance will alter the essential character of the neighborhood or injure other public rights.

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The hardship is not self-imposed and the variance is the minimum that will alleviate the hardship;

This is sometimes known as the “self-created hardship”. This criterion also incorporates the concept from State Statutes that a variance may not be granted if “special conditions that require the variance are caused by the person seeking the variance.” This also includes that the variance is the minimum needed to provide relief similar to what others in the vicinity enjoy. This also means that the intent of ordinance is still met by allowing some relief from the requirement; this is not a waiver from the requirement.

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.)

Finally, this criterion analyzes whether a hardship does exist, and if so, to what extent. This differs from the existing criteria in that a hardship was implied, but not explicitly stated or a finding made. As part of the application, the applicant must establish that the property is burdened by the code requirement in a way that is distinct from other similarly situated properties. If there are other similar requests in the neighborhood, then the zoning or standard that applies for that area might need to be corrected.

Existing Criteria – CBJ 49.20.200 - .270

For reference purposes, the existing criteria in the Land Use Code, Title 49, are included below. There is currently a threshold requirement as well as six primary criteria which must be met in order to approve a variance application, with criterion 5 having four sub-criteria. Only one of the sub-criteria must be met in order to meet criterion 5. A discussion of the current criteria is included below.

Threshold

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....

The threshold is meant to analyze that a hardship does exist.

Criterion 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;

Criterion 1 analyzes whether the applicant is requesting the minimum variance from the specific regulation that would allow them to develop their property similarly to other properties in the neighborhood and meet code requirements.

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Criterion 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;

Criterion 2 analyzes whether public safety and welfare requirements, which are fundamental to the Land Use Code, will still be met. These concepts are also addressed in CBJ 49.05.100, *Purpose and Intent*.

Criterion 3

The authorization of the variance will not injure nearby property;

This criterion addresses whether the requested variance will cause harm to nearby property.

Criterion 4

The variance does not authorize uses not allowed in the district involved;

This criterion addresses whether the granting of the variance will allow a prohibited use from being allowed in the district. Variances regarding use, density, lot coverage, and those establishing construction standards are not allowed.

Criterion 5

- (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;*

Sub-criterion A analyzes whether compliance would unreasonably prevent the owner from using the property for a permissible principle use. This is one of the more challenging criteria to meet since most lots can accommodate a permissible principle use that complies with the standards and regulations of Title 49 with the appropriate design choices. This concept is important because the city should ensure there is not a taking of property.

Sub-criterion B analyzes whether compliance would prevent the owner from developing their lot in a manner similar to existing development in the neighborhood. This criterion allows new development to take advantage of the preexisting nonconforming conditions of a neighborhood should there be any and

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also benefit from the conforming development on lots that do not have any hardship. This criterion is similar to the justice and equality concepts found in criterion 1, but from the perspective of the applicant.

Sub-criterion C analyzes any topographic constraints that may make development so expensive that a variance is warranted. This criterion is unique in that it is rare to allow pecuniary hardship as a reason to grant a variance. Alaska Statute Title 29 granting land use regulation powers to local municipalities specifically states that a variance may not be granted solely for pecuniary hardship. It is also difficult to objectively assess what is unreasonably expensive for a property owner.

Sub criterion D analyzes whether the variance would create a net decrease in overall compliance with both the land use code and the building code when taking into account preexisting nonconforming conditions. Therefore, if an owner wanted to reconstruct a dilapidated garage on a nonconforming footprint, there would be a net increase in compliance because Title 19, the building code, standards and regulations would be met while there would be a neutral effect on Title 49, the land use code. This criterion can allow for the continuation of nonconforming conditions.

The overall fundamental concept analyzed in threshold criterion 5 is whether the regulations will result in a taking of the property.

Criterion 6

A grant of the variance would result in more benefits than detriments to the neighborhood.

This criterion is challenging for staff as it asks them to identify benefits and detriments supported by Title 49 that are not simply subjective.

Agenda
Planning Commission
Regular Meeting
CITY AND BOROUGH OF JUNEAU
Ben Haight, Chairman
December 12, 2017

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 7:04 p.m.

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

Commissioners absent: Kirsten Shelton, Percy Frisby

Staff present: Rob Steedle, CDD Director; Laura Boyce, Senior Planner; Teri Camery, Senior Planner; Robert Palmer, Assistant Attorney II

Assembly members: Beth Weldon

II. APPROVAL OF MINUTES - None

III. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS - None

IV. PLANNING COMMISSION LIAISON REPORT

Assembly Liaison to the Planning Commission Beth Weldon reported that the Lands Committee reviewed the application from White Oak Towers of Alaska for a new lease for an existing communication tower located at the end of Jackson Road in West Juneau. They continued their discussion on Indian Point. They discussed purchasing property from Aurora Arms to gain access to a parcel of City land behind Glacier Avenue. At the Committee of the Whole meeting they had a presentation from Docks and Harbors and the Morris communication group discussing their plan with the archipelago property. They allowed Docks and Harbors to move forward with a timeline. They have moved the Lemon Creek Area Plan to the full Assembly with a few minor revisions. Coogan Construction was awarded the bid for Phase 1 of the Pederson Hill Subdivision. The next Lands and Assembly Committee of the Whole (COW) meetings are

scheduled for January 29, 2018, at 5:00 and 6:00 respectively.

V. RECONSIDERATION OF THE FOLLOWING ITEMS – None

VI. CONSENT AGENDA - None

VII. UNFINISHED BUSINESS - None

VIII. REGULAR AGENDA

....

AME2016 0002:	A text amendment to CBJ code 49.20 regarding variances.
Applicant:	City & Borough of Juneau
Location:	Borough-wide

Staff Recommendation

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

The intent of this ordinance is to make the code more flexible, said Ms. Boyce. There are four key parts to the draft ordinance, said Ms. Boyce:

- ✓ Provide clarity regarding what is and is not variable
- ✓ Remove the variance threshold requirement
- ✓ Amends the variance criteria to provide clarity and reduce subjectivity
- ✓ Deletes the De Minimis variance

Since the land use code was updated in 1987, the following types of design and dimensional standard variances have been approved, noted Ms. Boyce:

- ✓ Lot width
- ✓ Lot depth
- ✓ Yard setbacks
- ✓ Building height
- ✓ Anadromous stream/water body buffer setbacks
- ✓ Vegetative cover
- ✓ Flood zones
- ✓ Eagle nest tree buffers
- ✓ Parking requirements
- ✓ Access requirements
- ✓ Panhandle subdivision requirements
- ✓ Sign requirements

- ✓ Design standard changes, including planned unit developments, canopies, mobile home parks, cottage housing, accessory apartments, common walls and historic district requirements

The draft ordinance eliminates the current threshold criteria which is currently required to be met, said Ms. Boyce. For the new draft ordinance, the staff recommends that six criteria be met:

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 is necessary to relieve the hardship.*
6. *The grant of the variance does not result in a density, lot size, or lot coverage less than the minimums for the zone district.*

They have reviewed this draft ordinance thoroughly with the Title 49 Committee as well as reviewed it in two separate Planning Commission COW meetings, noted Ms. Boyce.

The first proposed criterion was not discussed with Title 49 Committee. Ms. Boyce said she suspects that it may be the most debatable criterion before the Commission.

Commission Comments and Questions

1. *The unusual or special conditions identified in the application are not caused by the person seeking the variance.*

Mr. Miller said he liked the way that Criterion 1 is written, but that the explanation of that criterion in the staff report is unsatisfactory. Mr. Miller said he objected to the following sentence within the criterion: *"A self-created hardship will exist if the applicant knew or should have known of any restrictions at the time the site was purchased."* For example, said Mr. Miller, when they created the Walter Sobeloff Building, they knew going into the project that variances were needed to build this spectacular building. Those variances were granted, and Mr. Miller said he felt this was for the benefit of the entire Juneau community. It could be argued that hardship requiring the variance was self-imposed, said Mr. Miller. Most variances are going to be self-created, said Mr. Miller.

Mr. LeVine said he could not think of a variance the Commission has considered that would satisfy this threshold explanation the way that it is written. However, he said, they do not want individuals proceeding far along with the project to which a variance would be required. There should be some restriction on variances, said Mr. LeVine.

Mr. Voelckers said this threshold did address the issue of willful noncompliance. He said Mr. Miller raised a good point in that a lot of times really nice results can be created on severely challenged lots. There needs to be an adequate balance between public benefit and relaxation of the code, he said. This is a nuanced judgment that the Commission needs to make, noted Mr. Voelckers.

Mr. Dye said he had similar thoughts on this topic. If a party asked for a variance on a lot that is too small, they are then creating the hardship, said Mr. Dye. He said he did not feel this portion of the criteria language reflected the will of the Commission.

Mr. LeVine said by applying for the variance they are bringing up the variance debate. Is the threshold language trying to decipher if the applicant has taken unreasonable action or has unreasonable expectations of their property?

Mr. Dye asked if this statement was within the first criterion because otherwise the granting of variances would be too broad in scope.

Mr. Palmer said if this criterion language does not reflect the feelings of the Commission that the language needs to be changed. If the criterion states what the Commission would like to state but that the explanation is not on point, then that needs to be changed, said Mr. Palmer. Mr. Palmer said he thought that they need explanatory language that can be used so that the Commission can evaluate whether or not this is truly an unusual or special situation which warrants a variance.

This draft ordinance language provides an escape hatch for individuals applying for a variance, said Mr. Palmer. The staff report needs to reflect the will of the Commission because it will be used as context for every contentious variance which comes before the Commission, said Mr. Palmer.

Ms. Boyce said the principle incorporated in this criterion is in reference to self-created hardship.

Mr. LeVine asked Ms. Boyce if she could provide an example in which the first criterion would prevent the Commission from granting a variance.

Mr. Hickok asked if this first criterion would serve to eliminate the possibility of individuals building against the code and then asking for a variance after the fact.

In that situation, said Mr. LeVine, they could simply state that retroactive variances are not allowed.

Mr. Palmer suggested that he and the staff do some case analysis with similar cases in courts throughout the United States in which it was decided that there was or was not a self-imposed hardship.

Chairman Haight said he felt that would be most helpful. He said he felt what the Commission was searching for is the demarcation between what is a self-imposed hardship and what is a unique circumstance warranting a variance.

Mr. Voelckers asked Mr. Palmer if he was of the opinion that a variance could at times be used to obtain a higher utilization for a piece of property.

Mr. Palmer said if he had to argue a denial of a variance, that would be a valid argument before the Alaska Supreme Court. If he was a neighbor arguing that a variance should have been denied because it was self-created, it would be very difficult to defend. That is because the entire underlying concept is that the variance tool is really there to prevent an unconstitutional taking of someone's property. If someone is using a variance to get around a height limitation, for example, or a setback limitation, those are circumstances in which a variance is probably not the right tool, said Mr. Palmer. The core problem would be the height or setback requirements of the code, he added.

Mr. Miller said in spite of trying to fix all of the things which are broken within the code, the Commission still needs a tool to be able to accomplish projects. Variances are still a great tool for that, he said. ADOD was an amazing short-term fix, said Mr. Miller. However, he said he wondered if they would actually be able to enact the work they need to do before it lapsed. Mr. Miller said he also had issues with a sentence further down in the staff explanation: "To grant such a variance would reward or excuse the owner's lack of due diligence or poor project planning." Mr. Miller said he did not think asking for a variance was poor planning. He said he felt that it was good planning if it is being requested prior to construction. An example of poor planning is when property owners may either intentionally or unknowingly construct a building that violates the zoning regulations and then later request a variance. Mr. Miller said that is an example of poor planning. Mr. Miller said he just wanted assurance that the mere act of requesting a variance did not automatically place an individual in the situation of a "self-created hardship".

Mr. LeVine said he suspects that the Commission is going to want to retain some variant of this criterion. He said he felt it just needed some rephrasing within the staff report so that the Commission could get behind it.

Mr. Miller said that noncompliant situations can be created which are initially not the fault of the property owner.

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

Mr. LeVine said he wondered if on the side of caution if the word "it and the grant of the variance" should be added after the word "and" in Criterion 3. Mr. LeVine said he just wanted it to be very clear that there were two separate items which needed to be met within that criterion.

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

In answer to a question posed by Mr. Hickok, Mr. Palmer said in general financial hardship is not considered an unreasonable hardship. He said at some point though, as financial hardship escalates, it could be considered as a hardship.

Mr. LeVine said it was not clear to him reading the staff report regarding this criterion that the threshold hardship requirement was being removed, but that it was still required that there be a hardship.

5. The grant of the variance is no more than is necessary to relieve the hardship.

Mr. LeVine said it is more the variance that is of concern here, not the act of granting the variance. He suggested that it read instead: "The variance is no more than is necessary to relieve hardship and maintain neighborhood harmony." This would be to allow some consideration as to what is going on in the neighborhood, he said.

Mr. Voelckers agreed that some sort of balancing statement makes sense. He said he was not sure if it would be limited just to neighborhood harmony, however.

Mr. Dye said he liked the addition of the concept of neighborhood harmony to this criterion. It would help cap what could become unreasonable requests on the part of the applicant, he noted.

Mr. Steedle said he understood the comments of Mr. LeVine on this criterion but that he did not think it belonged here. He said he felt it made this criterion less clear. Criterion three contains the concept of neighborhood harmony, said Mr. Steedle. He said he felt it would be duplicative to attach that onto number five as well.

Mr. Voelckers suggested the following language for number five: "The grant of the variance is appropriate to relieve the hardship."

Mr. LeVine suggested: "The variance is narrowly tailored to relieve the hardship."

Mr. LeVine and Mr. Voelckers both stated they were seeking some limits within the criterion while at the same time providing some flexibility for the Commission in rendering its decisions.

6. The grant of the variance does not result in a density, lot size, or lot coverage less than the minimums for the zone district.

Mr. Voelckers said there may be occasions when the Commission may need to resort to a variance for issues such as lot density or coverage.

Mr. Palmer said he felt that Mr. Voelckers had raised an interesting question that he and the staff could analyze. He said he felt the concept in criterion six is good. He said he felt perhaps the explanation in the staff report accompanying Criterion 6 could be revised. There may be a

very small lot in which the setbacks left only about 200 square feet of buildable space, said Mr. Palmer. It would be good for the staff to revisit its analysis of this criterion so something such as that would be addressed, he said.

Mr. Dye asked if there is any way to build into the criteria those extra items which may need to be varied such as for land which was developed prior to the development of modern zoning districts and code.

Mr. Palmer said on the one hand they have a variance tool and on the other hand they have a nonconforming code. In the variance staff report they should outline that there is relief somewhere in the code before this ordinance is enacted.

Mr. Voelckers said basically they are trying to get out of the variance business for design issues. He said he had seen mention of the expansion of the possibilities for conditional use so that it could become an alternate vehicle for items such as a roof which would not work.

Ms. Boyce said her position is that the way the conditional use process is written in the code it already allows for design modification.

Ms. Boyce said they had looked at all the types of variances which have been applied for in the past 30 years. They are trying to build the flexibility into the code to cover those types of situations, she said. It is the larger projects which would be coming before the Commission for modifications anyway, she said, which would be addressed.

De Minimis Variance

Ms. Boyce said they are proposing that the de minimis variance be deleted. Only 16 de minimis applications have been filed, and 12 of those were approved, said Ms. Boyce. The other four were not denied, but the staff is not certain what happened to them, she said. They would like to rename this as an “administrative variance”, she said. They would like this to be a variance granted before the fact and not after the fact, she said.

Mr. Miller said he moved to Juneau in 1995 and that he has probably constructed 400 homes in Juneau. One of those 16 de minimis variances which were approved, one was his, said Mr. Miller. When he first started constructing in Juneau, the lots were much larger and it was much easier to meet all of the setback requirements, he said. The last five to seven years, said Mr. Miller, more and more lots are infill, and they are smaller lots. Every foundation he has done in the last three years has had to fit the lots like a glove, he said. The margin for making mistakes is extremely small now, he said.

Mr. Palmer said one of the ideas the staff had regarding this draft ordinance and getting it to the Commission quickly was so that the Commission could consider it and make its decision. However, since they have to do more work on Criterion number 1, and the next meeting is in late January, perhaps the staff should work on some language for an administrative variance, and have a Title 49 Committee meeting prior to the September 23, (2018) meeting, so that at that meeting the staff could hopefully present administrative variance language to the

Commission in addition to the regular variance language. They could then consider both options at the same time, he added.

Mr. Palmer asked if the Commission liked that the trigger or scope of the current de minimis variance is such that it is only applicable for setbacks, and it is up to 25 percent of the setback for that specific zone district.

Mr. Voelckers said he has seen de minimis applied to items such as rise, and run of stairs.

Mr. Steedle said that is a different subject. He said that is a determination by the building official. That is what is called a code modification, he added.

This currently does not apply to height, said Mr. Palmer.

Mr. LeVine noted that 25 percent setback is a significant amount. He asked Mr. Miller for his opinion on this.

Mr. Miller said the de minimis variance to which he applied was because a rebar stake had been inaccurately set. Twenty-five percent may be too generous, he added.

There have only been 16 of these de minimis variances granted, said Mr. Miller.

Mr. Palmer said it appeared to him the general consensus of the Commission is that 25 percent is a good starting point from which the staff can work. They will work on a draft for this, he said. It will be limited in scope solely to setbacks, he said. The staff's intent is that the administrative variance would apply to both before and after the fact, he said.

Ms. Boyce noted that the following code changes have occurred that provide additional flexibility regarding these items:

- ✓ Vegetative cover requirement for mixed use zoning districts reduced
- ✓ Accessory apartment code changes regarding design and an increase in apartment size
- ✓ Parking; the parking waiver is now in effect
- ✓ Shared Access; allows four or fewer lots to share access, and frontage on a publicly maintained right-of-way is not required
- ✓ Alternative Development Overlay Districts (ADOD's); the downtown Juneau and in the downtown Douglas overlay districts can provide flexibility regarding lot coverage, vegetative cover, and setbacks until zoning that "fits" the downtown residential areas is proposed
- ✓ Panhandle subdivision requirements; would be in effect

They are currently working on stream buffers, privately maintained access roads, sign standards, and vegetative cover, said Ms. Boyce, as well as other changes in code to provide all the flexibility they have experienced from the variance work, she said.

When the variance language comes back to the Commission, Mr. Dye requested that the upcoming code changes be listed against the percentages of previous variances applied for and that an estimated date of completion be provided. He said this would help with providing information as to when these changes would be coming into effect and it would be balanced against how many times these have occurred in the past with previous variances.

They also have a proposed set back exception to add to the code regarding energy efficiency efforts which should be before the Commission at its January 23, (2018) meeting, said Ms. Boyce. That would amend the section of code that would allow up to six inches to encroach into the setback, she said.

Mr. LeVine said there will be a period of years during which people will not be able to obtain variances according to rules that they know need more flexibility. He said no doubt the very first variance application they get will be for something that people used to be able to obtain a variance for, which can no longer be varied, and for which they know needs more flexibility. Mr. LeVine said this strikes him as unfair. He said he did not know how to address this basic question of fairness.

Mr. Miller said maybe they could do that with a seventh criterion. They could ask if this is on the list of upcoming code changes that need more flexibility, he said.

When the draft ordinance comes back before the Commission, Mr. LeVine asked if the staff could make an attempt to address that foreseeable issue.

VIII. BOARD OF ADJUSTMENT - None

IX. OTHER BUSINESS - None

X. DIRECTOR'S REPORT

Mr. Steedle said the next regular Planning Commission meeting will be January 23, (2018).

Mr. Palmer said the Supreme Court affirmed the Assembly's rejection of the Yankee appeal. The case presents a very unique description of what enforcement powers the director has over land use questions, and the Supreme Court did an incredible favor to the citizens of the state and to local governments in explaining what that scope of enforcement power encompasses, said Mr. Palmer.

XI. REPORT OF REGULAR AND SPECIAL COMMITTEES - None

XII. PLANNING COMMISSION COMMENTS AND QUESTIONS

Mr. Miller asked if the AME2017 0013 rezone request was for D-10 transitioning to LC.

Mr. Palmer suggested that they make a notice of reconsideration, and have a conversation with the staff about this in between, so perhaps that could be reviewed and brought up at the next meeting. That would preserve the opportunity for the Commission to revisit this issue, he said.

Mr. LeVine said he understands that if Mr. Miller makes a motion to reconsider, the Commission would then have until the end of its next meeting to vote on a motion for reconsideration should it be made. If the motion for reconsideration is made and it is approved, the current vote would be stricken and it would be taken back up again, he said.

Mr. Greene asked what a D-10 transitioning to a Light Commercial zone would be.

There currently exist transition zones said Mr. Miller, that are in place for example, when sewer and water arrive to an area that it would automatically transition to the named transition zone, he said.

MOTION: *by Mr. LeVine, to extend the meeting to 11:05 p.m.*

The motion passed with no objection.

Mr. Dye asked how much conversation the commissioners could have before they voted on the motion of reconsideration at the next meeting should it be made.

The commissioners cannot discuss it at all, said Mr. Palmer.

NOTICE: *by Mr. Voelckers, that AME2017 0013 be reconsidered at the next regular meeting.*

Mr. Voelckers said this is a good opportunity to form a special committee to work with the staff on the Auke Bay rezone planning issue. He said he felt a very specific, focused committee working with the staff would be very beneficial to accelerate this process.

Mr. Steedle said he has concerns about the staff workload and that he thinks it would be beneficial to form a working group comprised of staff and Commission members.

Chairman Haight appointed Commissioners Miller, Hickok, Dye and Voelckers to the ad hoc Auke Bay Plan Implementation Committee.

XIII. ADJOURNMENT

The meeting was adjourned at 11:04 p.m.



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

DATE: December 5, 2017

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

The City and Borough of Juneau 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 of the Comprehensive Plan.

ATTACHMENTS:

- Attachment A: Draft Ordinance – Amending CBJ 49.20, *Variances*
- Attachment B: Committee of the Whole Meeting Minutes, June 13, 2017
- Attachment C: Staff Report for the Committee of the Whole Meeting, June 13, 2017
- Attachment D: Committee of the Whole Meeting Minutes, August 8, 2017
- Attachment E: Staff Report for the Committee of the Whole Meeting, August 8, 2017

BACKGROUND

The current variance criteria in Title 49 were established in 1995 with Ordinance 95-33. This ordinance made several substantive changes to the variance section of Title 49. In order to provide more flexibility, the seven criteria were reduced to six, and one of those, criterion 5, included four parts, only one of which needed to be met. This resulted in the criteria being easier to meet. The De Minimis Variance was also added to the Code at this time and was intended to make the Code more flexible. Several setback encroachments were also added to the Code at CBJ 49.25.430, *Yard Setbacks* in order to provide more flexibility for commonly requested encroachments.

The proposed ordinance would amend Title 49, the Land Use Code (“Code”), regarding variances. The intent of a variance is to provide relief from the Code requirements in cases of

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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 when no hardship exists. The variance process has been used often, broadly, and, in some cases, inappropriately.

Staff has worked with the Title 49 Committee, a subcommittee of the Planning Commission, over the past year to propose changes to variance requirements as well as to provide more flexibility elsewhere in the Code, since it is evident that this is something the community values.

The Planning Commission Committee of the Whole discussed the proposed amendment at its June 13, 2017, and August 8th, 2017, meetings (Attachments B through E). The attached ordinance (Attachment A) incorporates the Committee of the Whole's feedback.

DISCUSSION

A variance is intended to provide relief from Code requirements when there is a hardship. The proposed ordinance regarding variances (Attachment A) seeks to accomplish the following and is discussed in more detail, below:

- Provide clarity regarding what is and is not variable;
- Remove the variance threshold requirement;
- Amend the variance criteria to provide clarity and reduce subjectivity; and
- Delete the De Minimis Variance.

What Can Be Varied

Before the major Code revision in 1987, any "standard requirement or regulation" of Title 49 could be varied. Then, in 1987, Ordinance 87-49 specified the requirements and regulations that were variable. These standards included dimensional and design standards. The use of land or structures and construction standards were specifically identified as standards that could not be varied. An amendment in 1995 resulted in the current variance requirements.

The current Code states that a variance is required to vary "dimensions or designs (sic) standards of this title" (CBJ 49.20.200). CBJ 49.20.250(b) further clarifies that:

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

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

- lot width,

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- lot depth,
- yard setbacks,
- building height,
- fence height,
- anadromous stream/waterbody buffer setbacks,
- vegetative cover,
- flood zones,
- eagle nest tree buffers,
- parking requirements,
- access requirements,
- panhandle subdivision requirements,
- sign requirements, and
- design standard changes, including Planned Unit Developments (PUDs), canopies, mobile home parks, cottage housing, accessory apartments, common walls, and historic district requirements.

The proposed draft ordinance includes that in cases of hardship, only the following dimensional standards may be varied:

- lot width,
- lot depth,
- building setbacks, and
- building height.

The City and Borough of Juneau has consistently prohibited variances that could alter density, lot coverage, the use of land or structure, or reduce a construction standard. In the last draft of the proposed changes brought to the Committee of the Whole at its August meeting, staff had proposed this as 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 it 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, Criterion 6 remains; however, the wording has changed. The specifics of proposed Criterion 6 are discussed more below. When the Code specifies what *cannot* be done, it implies that anything *not* listed *can* be done. This is not our intent. Our intent is to make clear that variances that are granted do not result in a secondary impact to lot area, coverage, or density that is less than the minimum requirement of the zoning district.

Design standards are no longer proposed as being variable because a hardship is generally difficult to justify in these instances. These are usually situations where a design modification is “wanted” rather than is “needed”. Additionally, projects that require a Conditional Use Permit may request design modifications during that review process. For instance, in a recent Planned Unit Development case, the Planning Commission approved a variance allowing a portion of the

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roadway to encroach into the required greenbelt buffer. This encroachment was requested so that a less costly street could be built. One of the purposes of the Conditional Use Permit is "...intended to afford the commission the flexibility necessary to make determinations appropriate to individual sites." (CBJ 49.15.330(a)). The ability to modify design requirements as they pertain to individual sites and uses is already conceived of within the Conditional Use Permit review and needs to be properly used when reviewing these major developments to provide needed project flexibility. For the example above, through the Conditional Use Permit review, that buffer could have been reduced to accommodate the design required for safe access, and the lost green space could have been mitigated by increasing green space elsewhere on the site. Other common design standard variances include access and frontage related requests, panhandle lot design, and accessory apartment design requests. Recent Code changes regarding shared access, privately maintained access roads in public rights-of-way, panhandles, and accessory apartments have provided more flexibility in these instances.

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 a hardship exists (threshold requirement) prior to determining if a proposal meets the six criteria for granting a variance.

This decision affects non-de minimis variances. CBJ 49.20.250(b), *Variances other than de minimis* 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. Analysis regarding this threshold, as determined by the Olmo decision, was not specifically made. Some variance cases over the years were analyzed with both the criteria and the hardship factor in the threshold, but this has not been consistently done.

As discussed at recent Committee of the Whole meetings, staff recommends removing this threshold requirement. In the draft ordinance, a variance request would need to meet the proposed six criteria only and not have to meet an initial threshold requirement as is currently required.

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 deter the inappropriate use of the variance process where no extraordinary situation exists, as well as to provide more clarity

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regarding the intent of each criterion. The following six criteria are proposed in the draft ordinance:

1. The unusual or special conditions identified in the application are not caused by the person seeking the variance.

The purpose of this criterion is 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 State Statutes that a variance may not be granted if “special conditions that require the variance are caused by the person seeking the variance.” A self-created hardship will exist if the applicant knew or should have known of any restrictions at the time the site was purchased. This also means that the special conditions or circumstances identified in the application do not result from the actions of the applicant. To grant such a variance would reward or excuse the owner’s lack of due diligence or poor project planning. 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.

2. The variance is necessary so that the applicant can enjoy their property consistent with other property owners in the same area.

This criterion seeks to analyze whether the property owner can reasonably use the land similar to others in the vicinity. Will the potential loss by the applicant to reasonably use the land as desired without the variance outweigh any public gain by denying the variance? Is there a reasonable use of the property consistent with what others in the area enjoy? Will a property taking issue arise if the applicant is not granted the variance?

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

This criterion analyzes whether the variance will conflict with the purpose of the Land Use Code. It also analyzes if the variance will alter the essential character of the neighborhood or injure others. The purpose and intent of the regulations in the Land Use Code are found at CBJ 49.05.100. Public health, safety, and welfare is one of those primary goals. When a variance is requested, the analysis should include that safety will not be impacted by the granting of a variance. 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 will be impaired by reducing the setback, thereby potentially causing a safety issue.

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

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This criterion analyzes whether a hardship does exist, and if so, to what extent. This differs from the existing criteria in that a hardship was implied but not explicitly stated or a finding made as such. As part of the application, the applicant must establish that the property is unreasonably burdened by the code requirement in a way that is distinct from other similarly situated properties. For example, if a residential zoned property has very steep topography and the only moderately buildable site is located adjacent to the right-of-way, a variance to the front yard setback may be appropriate.

5. The grant of the variance is no more than is necessary to relieve the hardship.

This criterion analyzes that the variance requested is the minimum needed to provide relief similar to what others in the vicinity enjoy. This also means that the intent of ordinance is still met by allowing some relief from the requirement, but this is not meant to be a complete waiver from the Code requirements.

6. The grant of the variance does not result in a density, lot size, or lot coverage less than the minimums for the zone district.

This criterion specifically analyzes whether the requested variance to lot width, lot depth, building setbacks, or height will have a secondary effect of reducing the minimum requirements in the Table of Dimensional Standards (CBI 49.25.300) regarding density, lot size, or lot coverage. For example, if a variance is approved to lot depth, the approval cannot result in a lot size less than the minimum area allowed in the zoning district.

Delete the De Minimis Variance

The De Minimis Variance was added to the Code in 1995 but has been rarely used. Only 16 De Minimis applications have been filed, and 12 of those were approved. The other four were not denied, but staff is not certain what happened to them.

Staff proposes that the De Minimis Variance be deleted from Code. In the existing 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 constructed in an erroneous location and that construction was not intentional.

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 what a variance must meet. 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; (3) CDD already has both the enforcement tools and the discretion to appropriately deal with an

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inadvertent encroachment; and (4) determining intent is difficult. Thus, there is a high likelihood that the De Minimis Variance provisions would be considered arbitrary.

This does not mean that the Code cannot have a De Minimis Variance. Such a De Minimis Variance would likely need to be available for all developers, not just after-the-fact requestors, and the intent standard should be eliminated. If those amendments were made, the De Minimis Variance could be a catch all for setback exceptions that are not explicitly codified in CBJ 49.25.430. If the Planning Commission would like to keep some kind of administrative variance for small building setback encroachments, then staff can work on proposed language and bring it forward at a later date so this variance amendment is not held up.

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 waive code requirements where no hardship exists. As the data has shown (Attachment C), the types of variances requested and granted approval indicate that there is a need for more flexibility in Code. Staff intends to offer recommendations for increased flexibility for several sections of code in order to rectify the practice of using the variance as a catch all. The list below identifies the Code changes to 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 as being variable. The following Code changes have occurred that provide additional flexibility regarding these other items:

- Vegetative cover requirement for Mixed Use zone districts reduced (effective February, 2013)
- Accessory apartment code changes – regarding design and an increase in apartment size (effective February, 2015)
- Parking – the parking waiver is now in effect (effective April, 2017)
- Shared access – allows four or fewer lots to share access, and frontage on a publicly maintained right-of-way is not required (effective May, 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 (effective July, 2017)
- Panhandle subdivision requirements – will be in effect (effective December, 2017)

Upcoming proposed Code amendments that CDD is working on include:

- Setbacks from trees with active eagle nests
- Anadromous stream buffers
- Privately Maintained Access Roads in Public Rights-of-Way within the Urban Service Area

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*

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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 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;*

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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.

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 for approval to the Assembly.

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 ~~is required to vary the following dimensional standards of this title: building setbacks, lot width, lot depth, and building height dimensions or designs standards of this title.~~

49.20.210 - Submittal.

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

49.20.220 - Scheduling and fee.

(a) ~~Reserved. 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 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) ~~Reserved. 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 de minimis, public~~ 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 ~~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) 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; and
- (5) The grant of the variance is no more than is necessary to relieve the hardship.
- (6) The grant of the variance does not result in a density, lot size, or lot coverage less than the minimums for the zone district.

~~(a) — De minimis variances.~~

~~(1) — Where a minor setback infraction could be corrected only at unreasonable expense or inconvenience the director may, after taking into account the views of the owners of adjoining property, and upon a finding that the infraction was not the result of a deliberate effort to evade the dimensional requirement, grant a de minimis variance in harmony with the general purpose and intent of this title. A de minimis variance may be granted after it is shown that all the following conditions have been met.~~

(A) ~~The variance is for one or more projections into yard setbacks, none of which extend beyond 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) *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) Reserved ~~De minimis variance, \$120.00;~~

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- (B) Variance ~~other than a de minimis variance~~, \$400.00;
- (C) Alternative development permit, \$400.00.

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

Adopted this _____ day of _____, 2017.

Kendell D. Koelsch, Mayor

Attest:

Laurie J. Sica, Municipal Clerk

Agenda
Planning Commission
Committee of the Whole
 CITY AND BOROUGH OF JUNEAU
Ben Haight, Chairman
 June 13, 2017

I. ROLL CALL

Ben Haight, Chairman, called the Committee of the Whole (COW) meeting of the City and Borough of Juneau (CBJ) Planning Commission (PC), held in the Assembly Chambers of the Municipal Building, to order at 5:11 p.m.

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

Commissioners absent:

Staff present: Rob Steedle, CDD Director; Beth McKibben, Planning Manager; Laura Boyce, Senior Planner; Teri Camery, Senior Planner; Jill Maclean, Senior Planner; Robert Palmer, Assistant Municipal Attorney

Assembly members:

II. REGULAR AGENDA

- a. AME2016 0002:** Variances - Commissioner training and discussion about proposed amendments.

Providing background on this item, Mr. Steedle said that they have been working on variances for quite a while. Most of the work involves clarifying the language and ascertaining that the criteria are very clear. Since there has been a change in the Title 49 Committee, the staff wants to make sure that the entire Commission is aware and involved in the process, said Mr. Steedle. They want to ensure that they have code that is well understood, he said. The behavior of past commissioners has deviated somewhat from the intent of the variance, said Mr. Steedle. The other two items on the agenda for this meeting reflect the other two areas in which they are building flexibility into the code, he said. They have to be careful to develop enough flexibility within the code so that Juneau residents can build on their property, said Mr. Steedle. The Alaska Planning Commission handbook of which all Commission members should have

been provided, said Ms. Boyce, depicts a variance as a “safety valve”. It is an exception from the strict terms of the zoning or platting code allowing a relaxation of the strict requirements of the code for extraordinary cases, said Ms. Boyce. The City and Borough of Juneau is a home rule municipality, said Ms. Boyce, enabling the community to make its own rules, she said. Most of the other communities in Alaska follow the state statutes, she added.

The CBJ code states that variances are required to vary dimensions or design standards of the Title, said Ms. Boyce, where hardship and practical difficulties result in an extraordinary situation or a physical feature affecting only a specific parcel of property, read Ms. Boyce. The Board of Adjustment may grant a variance in harmony with the general purpose and intent of the Title, she said. Dimensional standards such as setbacks, lot width and lot depth can be varied, as well as design standards, she said. Design standards are not really defined within the code, said Ms. Boyce. The code is clear about what cannot be varied, she said. The use of land or structures, anything that affects housing density, lot coverage or those establishing construction standards cannot be varied, said Ms. Boyce.

And if too many variances are approved, said Ms. Boyce, then potentially the Land Use Code may be weak. They have looked at the past 30 years of data regarding variances, said Ms. Boyce. They have categorized the variances by type such as setback variances, she noted. For example there have been a total of 42 cases regarding eagle tree buffers, said Ms. Boyce. All of those variance requests have been approved, she noted. Those variances all had conditions attached to them, and the staff decided that it would be wise to change the code to accommodate those conditions, she said.

Eighty-nine percent of the variance requests which have come before the Commission in the past 30 years have been approved, she said. There have been about 1,200 cases that have been created for the past 30 years, but a number of those did not complete the process before the Commission, she said. Over half of the cases have been set back variances, said Ms. Boyce. The area of setbacks needs to be explored so that more flexibility will be allowed within the code, she said. Downtown Douglas and downtown Juneau are both areas that are highly susceptible to setback variance requests, said Ms. Boyce. The current zoning for those areas does not fit the development pattern, she said. They will be utilizing the overlay districts for those areas for the next few years until the code can be finalized for those areas, she said.

They are proposing exterior insulation additions so the exterior of the building would be given an allowance of four inches to homes which could be within the setback, said Ms. Boyce. She also mentioned needed ADA improvements for homes.

Parking variances are the next most sought after variances, said Ms. Boyce. There have been code changes over the years to help with this situation, she noted. More proposed code changes for parking are coming up, she said. Last year new parking standards for senior housing were added to code, as well as a new parking waiver approved allowing for reduction

of spaces in certain cases, while leaving the door open for variances as well, said Ms. Boyce. There is a fee-in-lieu district for certain downtown areas, said Ms. Boyce, for which a fee can be paid in lieu of providing the actual parking space. There are also two parking districts for the downtown area; one providing a 30 percent reduction in spaces and the other a 60 percent reduction, said Ms. Boyce.

Water body buffers were the third most prevalent variance sought, said Ms. Boyce. All 42 variances sought for eagle nests have been approved over the years, said Ms. Boyce. The panhandle section of the code has been amended so that the width of one of the lots could be reduced so that it could accommodate panhandle development, she said. They are currently working on panhandle changes which could affect that area of the code, she added.

Access related types of variances as an amendment to the code in 2015 allows for a privately maintained access road option which is available outside of the urban service area boundary, said Ms. Boyce. This year the shared access road, where up to four lots can share a road, has been added to the code, she said. The access standards have been moved to the subdivision portion of the code, said Ms. Boyce. The panhandle section of the code in which two lots can share a driveway will be coming before the Commission for review, said Ms. Boyce. They are also looking into the possibility of making the shared access road option available within the urban service area as well, she noted.

Design standards are not clearly defined in code, said Ms. Boyce. One of the proposed changes the staff is reviewing is the expansion of the Conditional Use Permit approval process for major developments to incorporate design standards as part of that review, she said.

Commission Comments and Questions

Mr. Voelckers asked if proposed code changes would be applied to only the five categories or if all Conditional Use Permit requests would be allowed.

Ms. Boyce replied that she thought any major development going through a Conditional Use Permit review process could incorporate the design standard review as well.

They used to get lots of variance requests for vegetative cover, particularly in the Mixed-Use zone districts, said Ms. Boyce. For this district the fact that they could have 100 percent lot coverage but at the same time require a five percent vegetative cover resulted in a conflict, she said. In 2012 they removed the requirement for vegetative cover within a Mixed-Use district, she said. In the future the staff would like to amend the vegetative cover section of the code, because it is not clear what the purpose of vegetative cover is, she said. They would like to clarify what the purpose of vegetative cover is and review the requirements for the different zone districts, said Ms. Boyce.

There have also been flood zone related variances as well as sign related variances, said Ms. Boyce. Title 49 states that these types of variances can be requested before the Board of Adjustment, she said. They will be working on sign code changes in the future, she said.

There are currently six criteria which must be met in order to be granted a variance, with number five containing four sub criteria, one of which must be met, said Ms. Boyce. Over the past year the Title 49 committee has come up with five criteria that they feel provide more clarity, she said.

The Title 49 committee has not yet addressed the Olmo decision, said Ms. Boyce. One of the questions they have is if the five criteria developed by the Title 49 committee are relevant in light of the Olmo decision, she said. One of the questions the staff would like the Commission to answer is if the current five criteria developed by the Title 49 committee are still relevant in light of the Olmo decision, said Ms. Boyce.

In summary, said Ms. Boyce, the changes to the code they are recommending provide for the development of flexibility:

- ✓ Parking waiver
- ✓ Additional setback exceptions
- ✓ Zone changes
- ✓ Revise the Conditional Use Permit to allow for design modification consideration
- ✓ Code changes to provide greater flexibility for those variances requested most often
- ✓ Streamside water body buffers
- ✓ Shared access
- ✓ Eagle nests

Commission Comments and Questions

Mr. Voelckers commented that the new variance review created by the Olmo decision is already currently in place. It is stopping the approval of variances that would otherwise probably be approved by the traditional variance criteria, he said. Mr. Voelckers said he would like to get the new language in place as soon as possible, currently with the relaxations and improvements discussed by Ms. Boyce. The overlay districts will help with the downtown Juneau and Douglas areas, he added.

Mr. Miller said he agreed that it would be beneficial to leave the current variances in place until the other code changes are set in place. Once code changes are in place it makes sense to tighten up the variances, said Mr. Miller. The Olmo decision tightens up the process to the extent that flexibility is severely limited, he said. Mr. Miller said he has had a hard time understanding how the Olmo decision was made. He said he is appreciative that the Olmo decision was actually included in the staff report.

He read through this decision several times, said Mr. Miller, trying to identify the specific content that clearly stated what portion of the interpretation has been brought before the Commission as law. He could not come up with clear direction from the decision, said Mr. Miller. The very next section in the Title under variances is Article Three “Interpretations”, said Mr. Miller. He said it is not actually the Law department that interprets the code. It is the Board of Adjustment, said Mr. Miller, which is authorized to interpret the text of this title. He said he felt that the threshold determination for variances established by the Olmo decision should be interpreted by the Board of Adjustment.

Mr. Miller said he agreed with Mr. Voelckers that the variance criteria should remain as they are, with the six criteria. Before the variance criteria are changed, the other code changes should be implemented, he said.

Concurring with the comments already made by Mr. Voelckers and Mr. Miller, Mr. LeVine said that he saw the value in simplifying the variance process. The decisions made on variances have been inconsistent in the past, said Mr. LeVine. He said he felt they do run the risk of changing the criteria and then in three years finding themselves back in the same situation, where the new criteria are difficult to interpret and implement, unless great care is taken starting with a “clean slate”.

Mr. Voelckers said in reviewing the proposed new five criteria for a variance that the first condition; (*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*) reminds him of the language introduced through the Olmo decision which stipulates that hardship and practical difficulties result from an extraordinary situation or unique physical feature affecting only a specific parcel of property.... Mr. Voelckers said he would like to get rid of the language in 49.20.250(b) and go with something less restrictive. Almost no variance request will be able to meet that standard, he said. A variance is to allow the Commission to utilize subjective common sense, said Mr. Voelckers, not to place standards that are next to impossible for most applicants to meet. He said he liked the softer language in the new draft, making it less of an impossible standard to meet for a variance.

Mr. Miller said he felt the proposed second criterion was too difficult to meet; “That compliance with the existing standards would unreasonably limit the owner from using the property for a permissible principal use.” According to this criterion, an applicant could always build something, therefore not allowing them to build what it was they wanted to build, he said.

Mr. LeVine said this criterion also caught his attention. They discussed that criterion and its connection to takings, said Mr. LeVine. Mr. LeVine also asked why the third criterion was relevant: “The deviation from the requirement of this title is no more than is necessary to permit a reasonable use of the property”. It doesn’t matter that the variance is as little as

possible, said Mr. LeVine. He said what matters is that a variance is granted which makes the most sense.

Mr. Palmer said the variance provision in code is necessary to avoid takings. The safety relief valve of a variance is to avoid the constitutional takings. This is so the City does not have to pay somebody for unreasonably regulating their property, explained Mr. Palmer. He said he felt this ties into number three.

Mr. Voelckers asked Mr. Palmer for the definition of a “taking”.

The basic “takings” concept is that the government cannot take your land without providing fair compensation, said Mr. Palmer. The Supreme Courts have narrowed this a little bit to say that reasonable regulations are fine, but that unreasonable regulations are “takings”, he explained. In the context of Title 49, the basic concept is that the government cannot unreasonably regulate your land. The core to variances is that land cannot be unreasonably regulated, he said.

Mr. LeVine agreed with the explanation of Mr. Palmer, but asked why proposed criterion number two was necessary at all.

Mr. Palmer said he felt that number two and number three functionally related to each other. These nuances come into play when the municipality is adding some variation to the code proposed by the state. He said he could not articulate the distinction between the proposed criteria number two and number three. In response to a question from Mr. Voelckers, Mr. Palmer clarified that he could not identify the distinction between number two and number three, or the fundamental need for either of the two criteria.

Ms. Boyce said that number three outlines what already exists within the code. She said the staff felt it was important to have a variance request for what was actually needed and not in excess of what was needed by the applicant.

Ms. Shelton-Walker noted that everyone’s definition of what is “reasonable” could differ. She asked what standard was used to define that term.

Mr. Palmer said that is where past decisions are helpful. For example, he said, when the Assembly makes a decision such as the Olmo decision, it can be followed and the decision can be affirmed. To deviate from that decision a really good distinction must be provided, he explained.

Mr. LeVine asked if there is a reason why the Planning Commission could not suggest to the Assembly that a code provision be formulated that has the effect of temporarily removing the

Olmo decision while the code is being updated and modified. He asked if there could be changes made in the code to obviate the Olmo decision.

Mr. Palmer said there may be a way, but that he was not quite sure at this time how that could be accomplished. If they create new standards and start from a new slate, then the Olmo decision would be irrelevant, said Mr. Palmer. Or, he said, another case could be put forward challenging that decision. Then the Assembly would have to decide, he said.

Mr. LeVine asked if the determination of the Olmo decision is interpreted largely to mean that variances are appropriate only when a taking would otherwise be the result.

Mr. Palmer answered that he did not think it was quite that narrow in scope.

Mr. Miller said the Assembly has ruled that the threshold that exists is as a result of the CBJ vs. Thibodeau in 1979.

Mr. Palmer responded that is one of the cases they relied upon.

Mr. Miller said they were told in 1979 that is how they should be complying with variances. He said the Commission has not been complying with that decision since 1979. The code was tightened up in 1995 with regard to that 1979 decision, said Mr. Miller. Mr. Miller said he did not think that they needed to meet Olmo threshold determination.

Mr. Voelckers asked if the proposed criteria could supplant the Olmo threshold currently applied.

Mr. Palmer confirmed that through the legislative process in writing new code the Commission could retain or reject the Olmo decision.

Mr. LeVine said it is better to fix the code than to make the granting of variances standard operating procedure.

Mr. Dye asked if Juneau has a variance problem or if it is just assuming that it has a problem. He asked how this community compares with other communities within Alaska regarding the number of variances issued.

A lot of the feedback they garnered from other planners at the State Planners Conference last year, said Ms. Boyce, was that variances were often used in other communities and that they were used as a tool for flexibility.

Ms. McKibben said she has worked in three other communities within Alaska and that Juneau issues a higher number of variances than any of the other communities in which she worked.

Mr. Voelckers said a variance was granted for the construction of the Marine Exchange building currently being constructed by the bridge. He said that construction would not have been approved under the current standards, and yet it is a very beneficial project for the community. They have to be careful to keep everything in context, he said.

The Walter Soboleff building was a great project for Juneau, said Mr. Miller, and it would never have met the threshold criteria by today's standards. There is no way the Assembly would have wanted the Planning Commission to deny the variance for that project, said Mr. Miller. That is another great example for a reason to say "yes" to a variance, he added.

Mr. LeVine said the problem he has with the way variances have been executed in the past is that they were inconsistent. If there are standards, he said, then those standards need to be abided by. Witnessing the variances approved he has seen on his past three years on the Planning Commission has made him wonder whether any variance denials would stand up were they to be challenged. That creates an inconsistency in the way that standards are applied, he said. They need to find a way to streamline the process and make it work in a consistent way, said Mr. LeVine.

Mr. Dye asked why the municipality cannot simply use the state standards for variances.

Mr. Steedle clarified that the state standards do not apply to Juneau, since it is a home rule community.

Chairman Haight said he cannot grasp the meaning of the new criteria for variances as well as the old criteria, since they were backed up by explanatory language. He said he would like to see explanatory language for the new criteria so that he could place it in context. He said he also liked Mr. Dye's idea of building off of the state's variance language.

Mr. Steedle suggested the Commission take a look at the third state criterion in light of its recent Tyler Rental decision. He said that variance could never have been granted had they been using the state criteria, because that reason for a variance was entirely monetary. He said he did not think the state criteria were a panacea for what the Planning Commission was trying to accomplish.

It would be useful for the Planning Commission to be given another vehicle to facilitate the granting of variances for projects of community worth such as the Soboleff building or the Marine Exchange, said Mr. Voelckers.

Mr. LeVine said it would be interesting to go through the past variances and identify which variances would have been accommodated by the recently developed overlay districts, and which variances would not have been addressed by the overlay district. Then they would have a better idea of where to place their focus.

Mr. Miller said he felt that was a great way to begin the process. He also recommended that any applications which come before the Commission as a Conditional Use Permit which needed variances could also be identified. He said he felt that the Conditional Use Permit process was a great way to deal with all of the issues at one time. Whether it is called a variance or a Conditional Use Permit, the important aspect was that there be a public hearing, said Mr. Miller.

Ms. McKibben clarified Mr. Miller's statement to mean that the Conditional Use Permit process be an opportunity to provide flexibility. She said what Ms. Boyce has stated is that the Conditional Use Permit process gives projects the opportunity to have that flexibility.

Mr. Miller said the applications already requiring a Conditional Use Permit and a variance be accomplished at once during the Conditional Use Permit review.

Mr. Steedle asked if the direction from the Commission was to do the analysis that Mr. LeVine requested, as well as develop alternative language modeled after the Alaska statute.

Ms. Shelton-Walker asked if creating language off of the Alaska statute would deal with the Olmo decision as well.

Mr. Voelckers said he was not sure that the Alaska statute language could be used to supplant the proposed criteria for the code. He said he felt they should keep working with the existing proposed criteria, with serious consideration as to whether criteria two and three are helpful.

Mr. LeVine said he agreed that the Alaska statute language was not what was needed as a basis for the new criteria. He asked if they were trying to develop standards that were flexible creating the opportunity for the granting of a lot of variances or with trying to create strict standards and only allow a few variances. He said he felt the best situation would be a flexible code and limited variances.

Chairman Haight said he felt they needed to address the variance criteria and also to address the code that affects the variances.

Mr. Miller said he liked the idea of identifying those variances which could be dealt with through the overlay district and then see what was left to help them identify what was needed in the process. It may be clear after that, said Mr. Miller, or it may remain just as obscure as it is now.

Mr. Frisby said he liked the approach mentioned by Mr. Miller. He asked when they could expect to be deciding on variances by the new code.

Mr. Steedle said two of those code changes are next on the agenda. He said they would return to the Commission with new proposed code language and further analysis.

Mr. Voelckers asked if the work the staff will be doing on the proposed code changes would come back before the Committee of the Whole or if it would first go to the Title 49 committee.

Mr. LeVine said this seems like an important topic and that it would be good to bring it back before the Committee of the Whole.

Chairman Haight clarified that the staff will bring the new information back before the Committee of the Whole at a future scheduled meeting.

b. AME2016 0019: Proposed amendments to buffers around eagle nests.

Ms. Camery said they are before the Commission for specific direction on how to deal with eagle nests. The current ordinance prohibits development within 330 feet of an eagle nest on public land, and within 50 feet of an eagle nest on private land. That buffer increases to 330 feet during the nesting season if the nest has actively nesting eagles, said Ms. Camery.

The eagle ordinance is tied to the code definition of development which includes a lot of irrelevant activities which has caused a lot of unnecessary restrictions and variances in the past, said Ms. Camery. The United States Fish and Wildlife Service (USFWS) has an optional federal permit, entitled an eagle take permit, which allows applicants to disturb an eagle and avoid violating the federal bald Eagle protection act, often with mitigation conditions attached to minimize harm, explained Ms. Camery.

Virtually all past variances requested for eagle nests have been approved, said Ms. Camery. They have had great difficulty with implementation of the eagle ordinance, said Ms. Camery, with identification of the eagle nests and especially with the identification of active eagle nests. They can no longer rely on active staff with the Fish and Wildlife Service for those identification purposes, she said. Their staff has been cut and they can no longer offer those services, she added.

CDD needs a scientific, defensible, rational basis for regulations, said Ms. Camery. CDD has looked at regulating non-urban eagles versus urban eagles, since urban eagles are not as sensitive to development as non-urban eagles, she said. CDD could not come up with any definable regulation monitors for eagles, such as noise, heavy equipment, or activity, said Ms. Camery. Also, CDD cannot even identify where current eagle nests exist and whether they are active or not, said Ms. Camery.

There is also the potential option of deleting the ordinance, she said. The eagle take permit of the Fish and Wildlife Service has often been cited as a reason for a variance, said Ms. Camery.

The local population of eagles is increasing, said Ms. Camery. They are not endangered, she added. Either deletion or revision of the ordinance could potentially be justified by the Comprehensive Plan, said Ms. Camery.

CDD would like direction from the Planning Commission on whether or not they should continue evaluating revision options or whether the direction would be to delete the ordinance, said Ms. Camery.

Mr. Frisby asked how it was determined whether a nest was active or inactive.

That is exactly the problem, said Ms. Camery. They have relied on the Fish and Wildlife Service for this information in the past, and that agency can no longer provide that information, she said.

Ms. McKibben said another issue raised by the Fish and Wildlife Service is that eagles do not necessarily use the same nest year after year. An active nest one year does not mean that it will be an active nest the following year, she explained.

Commission Comments and Questions

Mr. Voelckers asked if the question has come up as to whether The Fish and Wildlife Service has perceived that the CBJ should have any role in protecting eagles. He said perhaps this is simply a redundancy from which the municipality can remove itself.

The Fish and Wildlife Service is supportive of the City's ordinance, said Ms. Camery. The federal eagle permit is not required, said Ms. Camery. It is a liability shield for major developments, she said. The City's ordinance is a requirement and it does offer protection which the federal regulation does not, she explained.

Mr. LeVine said he sees the problem that the municipality has standards but there is no way to ascertain if those standards are being met. He said he is of the opinion that the lack of information makes it impossible to know if the standards are being met and there is no way to enforce those standards. It is difficult to have an eagle ordinance when it cannot be ascertained if it is needed and if needed, could not be reviewed and could not be enforced, he added.

Mr. Dye asked if Ms. McKibben knew the nesting range of eagles.

Ms. Camery said she thought it was a range of at least a half mile to a mile.

Mr. Dye said the urban service area boundary would not be beneficial, then.

Mr. Miller asked if the U.S. Fish and Wildlife Service with their take permit has supplemental information for the public such as brochures. He said it would be helpful if there is already a

pamphlet listing general standards which could be identified which could then be dispersed to the public.

Ms. McKibben said they have spent hours with Fish and Wildlife, and if there was some easily identifiable criteria which they could use they would have already presented that to the Commission.

Mr. Voelckers said if there is no perception of a vulnerability, and the City has no resources and no evidence or criteria, it is a fight in which the City should not engage in. Mr. Voelckers said he would be comfortable with the City getting out of the eagle regulation business.

Mr. LeVine said if they were going to regulate eagle nests it would be the best solution to put the onus on the property developer to identify the nest. If they found a nest, they would then need to come speak with a City representative, he said.

Mr. Dye asked how they would enforce the above scenario.

There is a prohibition on the taking of eagles under the Migratory Bird Treaty Act, said Mr. LeVine.

Chairman Haight asked if this is something that could be added to a building permit.

Mr. Voelckers said if there were not clear objective criteria and some way to implement those rules then they could easily develop into a scenario where conscientious people would identify eagle nests and those who were not so scrupulous would not.

Mr. Miller said perhaps they could have no code for those eagles already acclimated to the urban service area and some form of a checklist regarding eagles for those constructing outside of the urban service area.

Mr. Steedle said the urban service area boundary has been discussed by the staff, but that it is actually a poor proxy for where eagles are habituated. He said that Stabler's Quarry is outside of the urban service area boundaries and that the eagles are just fine in that location. He said with the resources that they have perhaps as far as they can take it is educating the public about the necessity of being aware and respectful of eagle nests. The City does not have the ability to enforce an eagle ordinance, he added.

Mr. Frisby said he felt that giving up on the eagle nest issue altogether was not a positive way to address the issue.

Mr. Hickok asked if they were to remove the ordinance if it would need to go before the Assembly. They will not even know where the eagle nests are if they do not have the capacity to inspect the property for those nests, said Mr. Hickok.

Mr. Miller said in the Community Development Department reception area there are a number of handouts. He said perhaps they could have the handout available for those seeking a building permit to educate on the subject.

Mr. Steedle asked the Commission if they would like the staff to bring forward the ordinance with the deletion of the eagle nest portion for their review, or if there is some further research the Commission would like the staff to conduct on this matter.

Mr. LeVine said he felt this may be the best recommendation. He said they cannot direct staff to go work harder on something that they have already worked very hard to resolve.

Mr. Steedle said they will be back at the next Committee of the Whole with streamside buffers and variances.

c. AME2017 0001: Update on proposed amendments to buffers for anadromous waterbodies.

III. **OTHER BUSINESS** - None

IV. **REPORT OF REGULAR AND SPECIAL COMMITTEES** - None

V. **ADJOURNMENT**

The meeting was adjourned at 6:59 p.m.



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DATE: June 5, 2017

TO: Committee of the Whole of the Planning Commission

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

SUBJECT: AME2016 0002
 Update regarding proposed Title 49 Revisions to Variances

Attachments:

- Attachment A Existing Variance Code Requirements
- Attachment B Olmo, LLC. v. Board of Adjustment Appeal Assembly Decision
- Attachment C Variance Case History Types and Approvals Since 1987

Introduction

Staff recommends changes to Title 49 regarding variances. The intent of a variance is to provide relief from Title 49 Land Use Code requirements in cases of hardship when exact application of the Code requirement would place an unreasonable burden on the property owner. Over time, the variance has become a tool for flexibility instead, offering relief to property owners to relax Code requirements or even waiving requirements outright. Because it is the only tool available to modify Code requirements as they pertain to individual properties, the variance process has been used often and broadly and, in some cases, inappropriately.

Staff has been working with the Title 49 Committee over the past year to propose changes to the Land Use Code ("Code") to provide clarity regarding variances, as well as to provide more flexibility in Code, since it is evident that this is a community desire. CDD would like feedback from the full Commission regarding proposed changes to variances. The proposed changes to Title 49 regarding variances are as follows:

- Amend the variance criteria to provide clarity and reduce any potential subjectivity,
- Make it clear what is and isn't variable,
- Rename "de minimis variance" to "administrative variance" to provide clarity,
- Remove design standards as being variable, and
- Make code changes elsewhere in Title 49 to build in flexibility and reduce the need for variances.

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Criteria Changes

Attachment A includes the current Title 49 variance requirements. The purpose of the proposed criteria amendments is to deter the inappropriate use of the variance process where no extraordinary situation exists.

Existing criteria

There are six primary criteria which must be met in order to approve a variance application, with criterion 5 having four sub-criteria. Only one of the sub-criteria must be met in order to meet criterion 5. A discussion of the current criteria is included below.

Criterion 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;

Criterion 1 analyzes whether the applicant is requesting the minimum variance from the specific regulation that would allow them to develop their property similarly to other properties in the neighborhood and meet code requirements.

Criterion 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;

Criterion 2 analyzes whether public safety and welfare requirements, which are fundamental to the Land Use Code, will still be met. These concepts are also addressed in CBJ 49.05.100, *Purpose and Intent*.

Criterion 3

The authorization of the variance will not injure nearby property;

This criterion addresses whether the requested variance will cause harm to nearby property.

Criterion 4

The variance does not authorize uses not allowed in the district involved;

This criterion addresses whether the granting of the variance will allow a prohibited use from being allowed in the district. Variances regarding use, density, lot coverage, and those establishing construction standards are not allowed.

Criterion 5

(5) *Compliance with the existing standards would:*

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- (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;*

Sub-criterion A analyzes whether compliance would unreasonably prevent the owner from using the property for a permissible principle use. This is one of the more challenging criteria to meet since most lots can accommodate a permissible principle use that complies with the standards and regulations of Title 49 with the appropriate design choices. This concept is important because the city should ensure there is not a taking of property.

Sub-criterion B analyzes whether compliance would prevent the owner from developing their lot in a manner similar to existing development in the neighborhood. This criterion allows new development to take advantage of the preexisting nonconforming conditions of a neighborhood should there be any and also benefit from the conforming development on lots that do not have any hardship. This criterion is similar to the justice and equality concepts found in criterion 1, but from the perspective of the applicant.

Sub-criterion C analyzes any topographic constraints that may make development so expensive that a variance is warranted. This criterion is unique in that it is rare to allow pecuniary hardship as a reason to grant a variance. Alaska Statute Title 29 granting land use regulation powers to local municipalities specifically states that a variance may not be granted solely for pecuniary hardship. It is also difficult to objectively assess what is unreasonably expensive for a property owner.

Sub criterion D analyzes whether the variance would create a net decrease in overall compliance with both the land use code and the building code when taking into account preexisting nonconforming conditions. Therefore, if an owner wanted to reconstruct a dilapidated garage on a nonconforming footprint, there would be a net increase in compliance because Title 19, the building code, standards and regulations would be met while there would be a neutral effect on Title 49, the land use code. This criterion can allow for the continuation of nonconforming conditions.

The overall fundamental concept analyzed in criterion 5 is whether the regulations will result in a taking of the property.

Criterion 6

A grant of the variance would result in more benefits than detriments to the neighborhood.

This criterion is challenging for staff as it asks them to identify benefits and detriments supported by Title 49 that are not simply subjective.

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Olmo, LLC. V. Board of Adjustment Assembly Appeal Decision

The recent Olmo, LLC. appeal resulted in a decision that affects all variances. The Assembly ruled that in a variance, 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 criteria for granting a variance. (See Attachment B)

This decision affects CBJ 49.20.250(b), Variances other than de minimis. That section 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 criteria only. Analysis regarding this “threshold,” as determined by the Olmo decision, was not specifically made. Some variance cases over the years were analyzed with both the criteria and the hardship factor in the threshold, but this was not common practice or consistently done.

In light of this, the Planning Commission may wish to incorporate the threshold into a new criterion. The Title 49 Committee has not addressed this threshold finding as the Olmo decision is recent.

Proposed Changes

Staff met with the Title 49 Committee in 2016 and 2017 to discuss proposed changes to CBJ 49.20.250, *Grounds for variances*. In addition to changes in the criteria to be applied by the Board of Adjustment, the committee wanted a list of what code sections cannot be varied. The committee also wanted staff to propose what changes would be made to make the code more flexible to reduce the need for variances. The grounds for variances and variance criteria below reflect the changes requested by the committee. As stated above, these changes did not reflect the Olmo ruling as it was not yet decided.

Proposed variance grounds and criteria

CBJ 49.20.200 Variances other than administrative. Where hardship and practical difficulties result from an extraordinary situation or unique physical feature affecting only a specific parcel of property or structures lawfully existing thereon and render it difficult to carry out the provisions of this title, the board of adjustment may grant a variance in harmony with the general purpose and intent of this title. A variance may not be granted solely to prevent financial hardship or inconvenience. The granting of a variance shall not allow uses prohibited in the district.

A variance may not vary those standards concerning;

- *use of land or structures*
- *housing density*
- *lot coverage*

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- *PUD standards*
- *cottage housing standards*
- *common wall standards*
- *construction standards as found in CBJ 49.35*
- *accessory apartment standards*
- *vegetative cover*
- *financial responsibility*
- *mobile home park standards*
- *Historic District standards and guidelines*

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

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

Other Changes

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

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

Lacking additional parameters regarding these categories, staff has applied these categories quite broadly since 1987. In fact, previous policy has been that almost any section of Code, other than a construction standard, use, or density, may be varied. The issue with varying design standards – those standards that result in how a project is designed – is that there usually is not a true hardship involved; the applicant usually wants greater flexibility than that allowed by Code. Allowing modifications during the project approval process might be a better way to provide greater flexibility.

Attachment C provides a summary of the types of variances applied for since 1987, as well as the Board of Adjustment decision results by type. Since the Land Use Code was updated in 1987

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with the design and dimensional standard categories for variances, applying it broadly has resulted in the following approval of design standards:

- Parking Requirements -
 - allowing back out parking where it isn't allowed
 - modifying parking space sizes and drive aisle dimensions
 - allowing greater distance of off-site parking
 - reduction in the number of required parking spaces
- Access Requirements –
 - allowing subdivisions not fronting on a publicly maintained right-of-way
 - allowing lot access through private easement
 - allowing subdivision along an unbuilt platted right-of-way
 - reduction to minimum 30 feet of frontage requirement
 - allowing a common driveway rather than an interior access street for subdivisions along an arterial
 - allowing lots less than 36,000 sf (D-1 lot size requirement) when subdivision is proposed along an arterial
 - allowing subdivision for lots that won't have direct access to a publicly maintained right-of-way
- Panhandle Subdivision Requirements –
 - reduction in lot sizes
 - allowing separate driveways instead of a shared common driveway
 - allowing more than two changes in direction
 - allowing a reduction in the panhandle portion width
- Planned Unit Developments –
 - allowing encroachment into required perimeter buffer
- Canopies –
 - allowing increases in canopy height
 - approving a canopy waiver when one is required to be provided
- Mobile Home Parks –
 - reduction in size of minimum required playground area
 - allowing setback reductions
- Cottage Housing –
 - allowing different floor area ratios than code specifies
- Accessory Apartments -
 - allowing an increase in apartment size
- Common wall
 - allowing reduced lot sizes
- Vegetative cover –
 - allowing reductions to the minimum vegetative cover requirements

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As outlined above, the variance has been used quite broadly to provide development flexibility. In many cases, making the case that there is a true hardship to justify many of these Code design standard relaxations or waivers is difficult to do.

No consensus has been reached from the Title 49 Committee whether design standards should remain variable or not. CDD recommends removing design standards as something that can be varied. Instead of using the variance as a flexibility tool, CDD would like to amend the Code to allow for more design flexibility. The following chart outlines proposed changes to Code to provide more flexibility. Since a number of recent development types, such as planned unit developments (PUDs) or mobile home parks, go through the conditional use permit review process for consideration and approval, staff recommends that this process and review also be used for consideration of design modifications as well.

Type	Variable?	Code Amendment
Setbacks	Yes	Add additional exceptions to allow such encroachments as ADA requirements as well as exterior energy efficiency additions
Lot width	Yes	
Lot depth	Yes	
Sign standards	No	
Parking	In some cases	A parking waiver process was also recently adopted into Code
Eagle nest buffer	?	Proposed code change to provide flexibility
Streamside buffer	?	Proposed code change to provide flexibility
PUD standards	No	Can use the existing Conditional Use process to modify design requirements
Cottage Housing standards	No	Can use the existing Conditional Use process to modify design requirements
Panhandles	Yes – lot width, depth, setbacks	Staff is currently working on Code changes to provide more flexibility regarding the panhandle option of lot design

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Bungalow lot/housing standards	No	Cannot be varied – would no longer meet the intent or definition of the bungalow requirements
Common wall standards	No	Cannot be varied – would no longer meet the intent or definition of the common wall requirements
Accessory apartment standards	No	Cannot be varied
Vegetative Cover		Previous amendment to Code removed Mixed Use district from vegetative cover requirements. Future amendment to vegetative cover to provide clarity and potential reductions
Financial responsibility requirements – CBJ 49.55	No	
Public and Private Improvements – CBJ 49.35	No	In limited cases, the Planning Commission may waive certain requirements. The Code also gives discretion to the CBJ Public Works and Engineering Director to waive or modify limited requirements.
Mobile home park requirements	No	Can use the existing Conditional Use process to modify design standards
Historic District design standards and guidelines	No	

ARTICLE I. APPEALS

49.20.110 Appeals to the planning commission.

(a) Review by the commission of a decision of the director, may be requested by filing a notice of appeal stating with particularity the grounds therefor with the department within 20 days of the date of the decision appealed. The notice shall be considered by the commission at a regular scheduled meeting. The department and any aggrieved person, including the developer, may appear at that meeting and explain to the commission why it should hear the appeal. The appeal shall be heard unless it presents only minor or routine issues and is clear from the notice of appeal and any evidence offered at the consideration thereof, that the decision appealed was supported by substantial evidence and involved no policy error or abuse of discretion.

(b) If the commission decides to hear the appeal, it shall announce whether it intends to review the entire decision, or merely a portion thereof and whether review shall be de novo or on the record. If the commission decides to hear the appeal, it shall give public notice thereof in a newspaper of general circulation in the municipality. The department shall prepare the record on appeal, which shall consist of the original application and supporting materials, written public comment thereon, and all notes, memoranda, minutes and other department material in relation thereto. The burden of proof in the appeal shall be on the party challenging the decision of the director. In a hearing de novo, proof shall be established by a preponderance of the evidence. If the appeal is heard on the record, argument may be heard, but no evidence outside the record shall be admitted and the decision of the department shall be upheld if there is substantial evidence in support thereof and no policy error or abuse or discretion therein. The commission may confirm, reverse, or modify the director's decision, or change the conditions which the director placed on approval. The commission shall support its action with written findings.

(c) Upon its own motion, the commission may certify a case directly to the assembly without review, hearing or recommendation.

(Serial No. 87-49, § 2, 1987; Serial No. 92-10, § 3, 1992; Serial No. 95-35, § 4, 1995; Serial No. 97-01, § 6, 1997)

49.20.120 Appeal to the assembly.

Appeal to the assembly is a matter of right. Unless ordered otherwise by the commission or the assembly, a decision by the commission shall not be stayed pending appeal, but action by the appellee in reliance on the decision shall be at the risk that the decision may be reversed on appeal. The appeal of a commission decision not to hear a case shall be limited to that issue, the remedy for which shall be a remand to the commission for a hearing on the merits of the case. Appeals shall be conducted according to chapter 01.50 of this Code, except as provided in this section.

(Serial No. 87-49, § 2, 1987; Serial No. 91-41, § 2, 1991)

ARTICLE II. VARIANCES

49.20.200 Variance.

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

(Serial No. 87-49, § 2, 1987)

49.20.210 Submittal.

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.

(Serial No. 87-49, § 2, 1987; Serial No. 95-33, § 2, 1995)

49.20.220 Scheduling and fee.

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

(b) If the director determines that the variance applied for is other than de minimis and the application is complete, it shall be scheduled for public hearing. If the application is filed in con-

APPEALS, VARIANCES AND INTERPRETATIONS

49.20.250

junction 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.

(Serial No. 87-49, § 2, 1987; Serial No. 95-33, § 3, 1995; Serial No. 2010-15(c), § 2, 5-19-2010)

49.20.230 Public notice.

(a) 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 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.

(Serial No. 87-49, § 2, 1987; Serial No. 95-33, § 4, 1995)

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.

(Serial No. 87-49, § 2, 1987; Serial No. 95-33, § 5, 1995)

49.20.250 Grounds for variances.

(a) *De minimis variances.*

(1) Where a minor setback infraction could be corrected only at unreasonable expense or inconvenience the director may, after taking into account the views of the owners of adjoining property, and upon a finding that the infraction was not the result of a deliberate effort to evade the dimensional requirement, grant a de minimis variance in harmony with the general purpose and intent of this title. A de minimis variance may be granted after it is shown that all the following conditions have been met.

(A) The variance is for one or more projections into yard setbacks, none of which extend beyond 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) *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;

49.20.250

PART II: CODE OF ORDINANCES

- (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.

(Serial No. 87-49, § 2, 1987; Serial No. 95-33, § 6, 1995)

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.

(Serial No. 87-49, § 2, 1987)

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.

(Serial No. 87-49, § 2, 1987)

ARTICLE III. INTERPRETATIONS

49.20.300 Authorization to interpret.

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

(Serial No. 87-49, § 2, 1987)

49.20.310 Submittal.

An application for a map or text interpretation shall be submitted to the board of adjustment by filing a copy of the application with the director in the department of community development. The application shall contain information sufficient to enable the board to make the necessary interpretation. The interpretation shall be scheduled for consideration by the commission. Individual mailed notice of boundary line interpretations shall be provided to adjacent property owners.

(Serial No. 87-49, § 2, 1987)

49.20.320 Use not listed.

After public notice and a hearing, the board may permit in any district any use which is not specifically listed in the table of permissible uses but which is determined to be of the same general character as those which are listed as permitted in such district. Once such determination is made, the use will be deemed as listed in the table of permissible uses.

(Serial No. 87-49, § 2, 1987)

BEFORE THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU

OLMO, LLC,

Appellant,

vs.

CBJ BOARD OF ADJUSTMENT,

Appellee.

Appeal of:
Notice of Decision
CDD File No. VAR2015 0030

DECISION ON APPEAL

Appellant Olmo, LLC, filed an appeal of the Planning Commission sitting as the Board of Adjustment's (Board) decision to deny Olmo's application for a variance regarding frontage and access requirements for Olmo's proposed subdivision.

The record was prepared by the Community Development Department based upon the materials considered by the Board and application of CBJ 01.50.110.

The issues on appeal were as set forth in the presiding officer's July 25, 2016, Order re Joint Stipulation of Issues on Appeal and Briefing Schedule.

The parties filed briefs on the merits of the appeal. On December 14, 2016, the Assembly heard oral argument from the parties. The Assembly deliberated in closed session, and directed the Municipal Attorney to prepare a draft decision based on the Assembly's findings. As required by the CBJ Appeals Code, the draft decision was circulated to the parties for comment.

The Assembly, having been fully advised, denies the appeal for the reasons stated below.

I. Burden of Proof and Standard of Review.

Under CBJ Code, variance applications are decided by the Planning Commission sitting

as the Board of Adjustment. (CBJ 49.20.240.) The Board’s decision is appealable to the Assembly, and appeals are heard in accordance with CBJ Chapter 01.50. (CBJ 49.20.120.) The appellant bears the burden of proof. (CBJ 01.50.070(b).)

In this case, the parties stipulated to two issues on appeal:

1. Whether the Board’s interpretation of CBJ 49.20.250 was reasonable. The parties have agreed that the Assembly should apply the reasonable basis standard of review to this question.¹

2. Whether the Board’s decision to deny the variance was supported by substantial evidence. In this context, “substantial evidence” is defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” (CBJ 01.50.010.) The Alaska Supreme Court has held that with respect to decisions made within its “sphere of expertise,” a Planning Commission’s decisions are “entitled to considerable deference.”² In reviewing the Commission’s decisions (or the Commission sitting as the Board of Adjustment as is the case here), a “presumption of validity” must be applied.³ When a fact-finding agency such as the Board chooses between conflicting determinations and there is substantial evidence in the record to support either conclusion, the Board’s findings should be affirmed on appeal.⁴ This direction, in conjunction with the standard of appeal articulated in CBJ 01.50, suggests that the role of the Assembly on appeal is limited. The Assembly does not re-weigh the evidence or second-guess the Board’s findings as long as there is evidence in the record to support those findings.

¹ See, *City of Kenai v. Friend of Recreation Ctr.*, 129 P.3d 452 (Alaska 2006).

² *Lazy Mountain Land Club v. Matanuska-Susitna Borough Bd. of Adjustment & Appeals*, 904 P.2d 373, 386 (Alaska 1995).

³ *South Anchorage Concerned Citizens, Inc. v. Coffey*, 862 P.2d 168, 173 (Alaska 1993).

⁴ *Anderson v. State*, 26 P.3d 1106 (Alaska 2009).

II. Relevant Facts.

CBJ Code requires that lots have direct and practical access to a publicly maintained right-of way. CBJ 49.15.424. As explained in the March 3, 2016, staff report, Olmo filed a variance application in connection with a proposed three-lot subdivision (intended to be further subdivided into six common wall lots.) Although Olmo's parcel abuts North Douglas Highway, it does not have direct access to a right-of-way. The parcel is currently accessed via a shared driveway located within a 20 foot easement that travels over two neighboring lots.⁵ Thus, the only way for the proposed subdivision to meet the requirement for frontage and access called for by CBJ 49.15.424 would be for Olmo to create direct access from each lot to North Douglas Highway or to construct a public street dedicated to serve the subdivision. In support of the variance application, Olmo argued that neither option was practical due to the extreme steepness of the terrain leading to its parcel.

III. The Board's Interpretation of CBJ 49.15.424 Was Reasonable.

Though not specifically identified as an issue on appeal, Olmo argues that the only reason a variance was needed in this case was because of the Board's misinterpretation of CBJ 49.15.424. (Olmo Opening Brief at p. 28.)

CBJ 49.15.424, Access, provides in part:

(b) *Publicly maintained access within a subdivision.* Unless otherwise provided, all lots must either have direct and practical access to, and a minimum of 30 feet of frontage on, the right-of-way, or the minimum lot width for the zoning district or use as provided in CBJ 49.25.400. These requirements for frontage and access can be accomplished by:

⁵ One of the neighboring lots is owned by the only member of Olmo, LLC. The owners of the other parcel objected to Olmo's variance application. As noted in the Board's brief, the driveway used to access Olmo's parcel is located almost entirely on this third lot.

- (1) Dedication of a new right-of-way with construction of the street to public standards. This street must connect to an existing publicly maintained street;
- (2) Use of an existing publicly maintained street;
- (3) Upgrading the roadway within an existing right-of-way to public street standards. This existing right-of-way must be connected to another publically maintained street; or
- (4) A combination of the above.

We find the Board's interpretation of CBJ 49.15.424(b), as articulated in its Opposition Brief, reasonable. (Opposition Brief at pp. 9 – 12.) CBJ 49.15.424(b) is properly read to apply to access *within* a subdivision (as opposed to access *to* a subdivision as provided by 49.15.424(a)). The code explicitly requires lots to have direct and practical access to a public right-of-way and either a minimum of 30 feet of frontage on the right-of-way or the minimum lot width provided for in CBJ 49.25.400, Minimum dimensional standards. We cannot find ambiguity in the ordinance as proposed by Olmo.⁶ We find the Board's interpretation of 49.15.424(b) to require each lot of the subdivision to have direct and practical access to a public right-of-way reasonable in light of the plain language of the text, and, as argued by the Board in its Opposition, the legislative history and the general policy reasons justifying the imposition of frontage requirements.

IV. The Board's Interpretation of CBJ 49.20.250 Was Reasonable.

We find the Board's application of CBJ 49.20.250 reasonable in light of the plain language of the ordinance, and consistent with the Alaska Supreme Court's analysis of the same code section in *City and Borough of Juneau v. Thibodeau*, 595 P.2d 626 (Alaska 1979).

The standards for granting a variance application are set forth in CBJ 49.20.250. First, an

⁶ See *Ward v. State, Dept. of Public Safety*, 288 P.2d 94 (Alaska 2012); *City of Homer v. Gangl*, 650 P.3d 396 (Alaska 1992); *City and Borough of Juneau v. Thibodeau*, 595 P.2d 626 (Alaska 1979).

applicant must show that "hardship and practical difficulties result[ing] from an extraordinary situation or unique physical feature" make it difficult for the owner to comply with the provisions of Title 49. Once the Board determines an applicant has made a sufficient showing that this threshold question has been met, a variance may be granted if the Board determines 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.

(CBJ 49.20.250(b).)

Significantly, when asked what hardship would result if the variance were not granted, Olmo told the Board that it would be 'unable' to proceed with the subdivision because of "financial hardship" and that "constructing a public street to the lots is not financially feasible, and the street would have to pass through an adjacent lot that the developer does not own." In analyzing the CBJ's variance ordinance, the Alaska Supreme Court in *City & Borough of Juneau*

v. Thibodeau, 595 P.2d 626, 635-636 (Alaska 1979) stated:

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.

It is undisputed that Olmo's lot presents a challenging topography, but we find it significant that Olmo has the ability to develop its property without the need to subdivide and thus, without requiring improved access

While it would have been helpful if the Board's finding on this threshold issue had been more clearly articulated, we nevertheless find that the Board's decision is supported by substantial evidence for the reasons explained below.

V. The Board's Decision to Deny the Variance Was Supported by Substantial Evidence.

The Board considered whether the variance should be granted by applying the criteria articulated in CBJ 49.20.250(b). After consideration of the issue at three separate hearings held on March 8, 2106, March 22, 2016, and April 12, 2016, the Board adopted the findings made in the March 3, 2016, staff report that the variance would not meet the standards in CBJ 49.20.250(b)(1), (2), (5) or (6). Olmo argues on appeal that the Assembly should reverse the Board's decision as not supported by substantial evidence.

A. CBJ 49.20.250(b)(1).

The Board determined that granting Olmo a variance to the direct and practical access requirement would be inconsistent with justice to other property owners. In reaching this

conclusion, the Board considered the history behind the approval of Olmo's existing driveway easement in 1982 (both the fact that it was to serve only a single family dwelling and that it was approved with the intention that a public street would be built if future development were to occur), the policy considerations embodied in the comprehensive plan and code behind the requirement for direct and practical access, and the safety concerns that arise when lots do not meet Title 49's access requirements. Based on these considerations, we find the Board's determination with respect to CBJ 49.20.250(b)(1) was supported by substantial evidence.

B. CBJ 49.20.250(b)(2).

The Board determined that neither the intent behind Title 49, nor public safety and welfare, would be preserved if the variance were granted. The Board considered Olmo's proposal – to allow what would eventually be a six lot subdivision use a steep, narrow driveway located in a narrow twenty foot easement – to be too far outside the minimum public health, safety, and welfare standards embodied in Title 49. The Board specifically noted that the narrowest roadway allowed by CBJ Code to serve subdivisions in the urban service area (where Olmo's proposed subdivision is located) is a twenty-two feet wide paved roadway within a sixty foot right-of way, and also considered the International Fire Code's requirement that travel ways be a minimum of twenty feet.

We conclude that the Board's finding on this point was supported by substantial evidence.

C. CBJ 49.20.250(b)(5)(A – D)

1. CBJ 49.20.250(b)(5)(A). The Board determined that denying Olmo's variance application would not unreasonably prevent Olmo from using its property for a permissible use. The Board considered that the only reason why Olmo needed to apply for a

variance was because of Olmo's decision to subdivide. As noted in the Board's opposition and as stated in the staff report, Olmo could have developed its property without subdividing, and therefore without triggering the requirement that the development comply with the access requirements in CBJ 49.15.424. The Board specifically considered that Olmo could have constructed up to fourteen multi-family units, or could have constructed up to three two-unit buildings as was being proposed, without subdividing the property.

We find the Board's conclusion supported by substantial evidence.

2. CBJ 49.20.250(b)(5)(B). Similarly, the Board found that denying the variance would not unreasonably prevent Olmo from using its property in a manner consistent with existing, neighboring development in the neighborhood. Noting the property was zoned D-18 and identified as Medium Density Residential, the Board again relied upon its finding that the property could be developed with up to fourteen multi-family units with a conditional use permit, or up to eight units with nothing more than a building permit, without the need to subdivide.

3. CBJ 49.20.250(b)(5)(C). In concluding that denying the variance would not be unnecessarily burdensome, the Board relied upon staff's assertion that other smaller, similar subdivisions had been required to comply with the access requirements in CBJ 49.15.424. Given that Olmo's request for a variance was not related to an inability to construct a road but rather the financial implication of doing so, and in light of the Supreme Court's holding in the *Thibodeau* case, *supra*, we find the Board's decision on this point supported by substantial evidence.

4. CBJ 49.20.250(b)(5)(D). The Board found that granting the variance would result in an overall net decrease in overall compliance with Title 49 based upon the fact that the requirements in CBJ 49.15.424 would not be met.

D. 49.20.250(b)(6).

With respect to CBJ 49.20.250(b)(6), the Board concluded that granting the variance would not result in more benefits than detriments to the surrounding neighborhood. The Board relied upon staff's finding that the proposed development would "increase the use of the existing substandard access" located in the easement, and that the increased development could "result in detriments to users of North Douglas Highway because the existing access may cause traffic impacts on North Douglas Highway." (Record at p. 27).

We disagree with the Board's finding. While there are significant policy and safety and welfare concerns to support denial of the variance, we cannot find the Board's conclusion regarding traffic impacts to be supported by substantial evidence. Additionally, we agree with Olmo's assertion that the Board failed to consider the benefits of Olmo's proposal. Given the significant need in the community for housing, we cannot find that the Board's decision on this issue was supported by substantial evidence.

VI. Conclusion

In light of the deferential standard of review the Assembly must apply to Board of Adjustment decisions and the applicable burden of proof, we must deny Olmo's appeal. We find the Board's decision to deny Olmo's variance was supported by substantial evidence. We agree with the Board's finding that Olmo can develop its property without subdividing and that granting the variance to allow for the creation of lots with such substandard access would result in a development that fails to meet the minimum health, safety and welfare considerations embodied in the CBJ's Land Use Code. We also agree with the Board's finding that approving the variance in order to allow Olmo more profitable development than presented by the other permissible development opportunities Olmo has available to it is not justified. For these

reasons, the Board of Adjustment's decision is affirmed.

DATED _____, 2017.

ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU,
ALASKA

By: _____
Maria Gladziszewski
Presiding Officer on Appeal

Variance Approval History 1987 - 2015

**Total and
By Type**

From 1987 through 2015 (2016 data is not included), 964 cases were decided by the Board of Adjustment. Of those:

856 approved – 88.8%

108 denied – 11.2%

Year	Total Cases Decided by BoA	Approved	Approval %	Denied	Denial %
1987	10	10	100.0%	0	0.0%
1988	14	11	78.6%	3	17.6%
1989	15	12	80.0%	3	16.7%
1990	28	19	67.9%	9	25.0%
1991	24	18	75.0%	6	25.0%
1992	41	35	85.4%	6	13.6%
1993	48	40	83.3%	8	14.0%
1994	50	39	78.0%	11	20.0%
1995*	48	41	85.4%	7	11.7%
1996	49	39	79.6%	10	14.9%
1997	43	38	88.4%	5	8.6%
1998	43	33	76.7%	10	17.5%
1999	43	39	90.7%	4	7.5%
2000	44	41	93.2%	3	6.1%
2001	26	26	100.0%	0	0.0%
2002	40	37	92.5%	3	6.0%
2003	37	35	94.6%	2	3.9%
2004	47	44	93.6%	3	5.4%
2005	45	44	97.8%	1	1.5%
2006	43	38	88.4%	5	9.8%
2007	33	33	100.0%	0	0.0%
2008	23	22	95.7%	1	3.1%
2009	31	29	93.5%	2	5.4%
2010	27	24	88.9%	3	7.5%
2011	22	22	100.0%	0	0.0%
2012	27	25	92.6%	2	5.7%
2013	23	23	100.0%	0	0.0%
2014	23	23	100.0%	0	0.0%
2015	17	16	94.1%	1	2.8%

* The variance criteria changed in 1995 making it less difficult to meet the criteria for approval

Variance Approval History 1987 - 2015

**Total and
By Type**

The following types of variances have been decided by the BoA since 1987:

Type	Total Decided by BoA	Approved	Approval %	Denied	Denial %
Access-related	49	40	81.6%	9	18.4%
Design Standards*	39	31	79.5%	8	20.5%
De Minimus	12	12	100.0%		0.0%
Density	0		0		0
DOA	0		0		0
Dimensional Standards (lot width, low depth)	65	57	87.7%	8	12.3%
Extensions	0		0		0
Fence-related	4	4	100.0%		0.0%
Flood Zone-related	4	3	75.0%	1	25.0%
Height	19	18	94.7%	1	5.3%
Lot Area	6	5	83.3%	1	16.7%
Lot Coverage	4	3	75.0%	1	25.0%
Other	1		0.0%	1	100.0%
Parking	114	92	80.7%	22	19.3%
Setbacks	492	451	91.7%	41	8.3%
Setback – Eagles	42	42	100.0%		0.0%
Sign-related	18	8	44.4%	10	55.6%
Setback Waterbody	70	66	94.3%	4	5.7%
Use	0		0.0%		0.0%
Vegetative Cover	25	24	96.0%	1	4.0%
TOTAL	964	856	88.8%	108	11.2%

*Design Standards-related variances are to the following standards: Accessory apartments, arterials, bungalows, canopies, common wall, conservation lots, cottage housing, historic district, minimum rectangle, mobile home, panhandle, and PUDs.

MINUTES
Planning Commission
COMMITTEE OF THE WHOLE
CITY AND BOROUGH OF JUNEAU
Ben Haight, Chairman
August 8, 2017

I. ROLL CALL

Ben Haight, Chairman, called the Committee of the Whole meeting of the City and Borough of Juneau (CBJ) Planning Commission (PC), held in the Assembly Chambers of the Municipal Building, to order at 5:08 p.m.

Commissioners present: Ben Haight, Chairman; Paul Voelckers, Vice Chairman; Nathaniel Dye, Dan Miller, Percy Frisby, Kirsten Shelton, Carl Greene

Commissioners absent: Dan Hickok, Michael LeVine

Staff present: Rob Steedle, CDD Director; Beth McKibben, Planning Manager; Laura Boyce, Senior Planner; Jill Maclean, Senior Planner, Chrissy McNally, Planner II

II. APPROVAL OF MINUTES - None

III. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS - None

IV. PLANNING COMMISSION LIAISON REPORT - None

V. RECONSIDERATION OF THE FOLLOWING ITEMS - None

VI. CONSENT AGENDA - None

VII. CONSIDERATION OF ORDINANCES AND RESOLUTIONS - None

VIII. UNFINISHED BUSINESS - None

IX. REGULAR AGENDA

AME2016 0002 – Amend Title 49 regarding variances.

Ms. Boyce told the Commission the staff would dive into the data of downtown Juneau and downtown Douglas first, focusing specifically on where the boundaries of the new Alternative Development Overlay District (ADOD) will apply, and ascertain how this would affect the variances in these areas. They would then next address revised criteria, said Ms. Boyce.

Showing the Commission a map of downtown Juneau, Ms. Boyce indicated the properties which have been granted variances since the current code was adopted in 1987. One hundred forty-three variances have occurred in this ADOD area, she noted. One hundred fourteen of those variances are setbacks, she noted. Most of these setback variances could most likely benefit from the newly approved ADOD, said Ms. Boyce.

The ADOD applies to residential properties that can provide relief for setbacks, vegetative cover, and lot coverage, explained Ms. Boyce. This applies to accessory structures such as garages as well, she noted. Roughly 10 percent of these 143 setbacks in the Juneau downtown area are for parking and roughly half of those could also find relief with the new parking waiver, said Ms. Boyce. Another small portion of those variances are for vegetative cover which could also be helped by the ADOD, said Ms. Boyce.

In downtown Douglas the majority of the variances granted are for setbacks, said Ms. Boyce. Roughly 80 percent of the 47 properties granted variances are setbacks which could find relief under ADOD, she noted. Five of those variances are for parking, and three of those could potentially find relief under the new parking standard, she said. Five properties are for other types of variances, she said.

They have amended the criteria from the last version viewed by the Commission, said Ms. Boyce. What they call the “threshold” in the current code has been moved and combined into variance criterion number one, she said. All of the criteria must be met in order for a variance to be granted, she said. Ms. Boyce said she is also proposing a sixth criterion exhibiting a clear finding that the granting of a variance would not result a variance for density, lot coverage, construction standards, or use.

Commission Comments and Questions

Referring to the last sentence of criterion one in the new draft, Mr. Dye said that developers do have some control over the division of their lots. He asked how this would be interpreted according to the new criterion. He mentioned a scenario where a property owner could claim that an irregularity of their property was something of which they were not aware when they purchased the property.

Ms. Boyce said it would need to be determined if the property owner had knowledge of the irregularities when they purchased the property.

Mr. Greene added that he felt this was a good point. If the property owner had knowledge of the irregularities of the property when purchased, then why would they be eligible for relief in the form of a variance?

This would also pertain to the reasonable use of the property, said Ms. Boyce.

Ms. McKibben stated a few years ago a variance was requested to reduce the number of parking spaces for back-out parking. The building had a very large footprint, she said. If it was designed a little differently they would not need to request a variance, she explained. By denying the variance, they were not eliminating the reasonable use of the property by the owner, she said. The property owner just needed to make some modifications in their building design, she added.

Mr. Dye asked if the second sentence in criterion one was necessary. *(These conditions result from the lot size or shape, topography, or other conditions that the property owners cannot control.)*

That sentence would not be crucial, said Ms. Boyce. She said it was added to clarify the meaning of the criterion.

Mr. Voelckers commented that overall he was pleased with the amendment to Title 49 regarding variances, but that he felt it was time to delve into the particulars of the verbiage. He said he felt it was good to have a purpose statement, but that he felt some changes in the wording were warranted.

A variance may be granted to provide property owners ~~from~~ relief from Code requirements when, due to the strict application of standards and to unusual circumstances regarding the subject property or structure, the property owners are deprived of privileges commonly enjoyed by other properties in the same vicinity, ~~and~~ zone and under the same land use regulations.

Mr. Voelckers said he felt the first “from” in the first sentence was just a typo and should not be there. He said in the last sentence he felt the word “and” should be eliminated and supplanted with the word “or”.

Referring to the Purpose sentences, Mr. Dye asked if the word “strict” needed to be applied to modify the word “application”. He said he felt that may infer that at other times the Commission was not being diligent in its application of the code.

Mr. Miller said that the code is black and white. If the staff cannot give an absolute answer “yes” to someone’s question about code application, then it was incumbent upon them to say “no”. However, said Mr. Miller, there can be gray areas that are not black and white. He said he felt that is why there are nine members of the Planning Commission. It is their job to delve into those gray areas, explained Mr. Miller.

Chairman Haight said he felt the word “strict” was a point of reference. It was referencing the black and white aspects of the code, he said.

Review of Criterion One

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 ;)

Mr. Voelckers said he felt that philosophically it was useful to reference “structure” as well as property. There are circumstances when all aspects of the property are not disclosed at the time of its purchase to the new owner. He said he felt that referencing structure would at times become germane to interpretation of this criterion. He said he would like to insert the words “or structure relative to other properties or structures” after the word “property” in the first sentence of criterion one. The word “or” should also be added after the word “vicinity”, said Mr. Voelckers.

Mr. Miller said the first person obtaining a variance on their property may qualify because the “circumstances that exist are peculiar to the property”. However, he said, a subsequent property owner would not be able to claim the peculiarity of the property, he said. The analysis of the proposed criterion one states that if there are similar requests in the neighborhood, then the zoning or standard that applies for that area might need to be corrected. Mr. Miller said he would not want the new variance criteria to be quite so short-lived. He added that he felt that criterion one and two could quite possibly cancel each other out in some circumstances.

Ms. Boyce said the current language says “unique”. She said the words “peculiar” and “unusual” step down from that. If they do see a trend in an area, then maybe the zoning needs changing or some type of setback exception can be added to the code that best fits that neighborhood’s character, she added.

Mr. Miller said he wasn’t quite sure how rigid the standard the word “peculiar” would be interpreted.

Ms. Shelton said she viewed the interpretation a bit differently. She said she liked the existence of criterion two as it supported the notion that the property did not have to be unique. Ms. Shelton suggested supplanting the first sentence in criterion one with: “Special conditions or circumstances exist that the property owners cannot control”.

Mr. Voelckers said he felt the word “unique” in existing language was a killer term and that the new verbiage proposed by the staff was a good compromise. There has to be something about the circumstance that sets it aside, he said.

Mr. Dye said he liked the suggestion of Ms. Shelton, and that he would also like to recommend that the second sentence in criterion one be eliminated. He said he felt the intent of that language was duplicated in criterion number four. In answer to Mr. Voelckers question about his meaning, Mr. Dye said criterion four states that “The hardship is not self-imposed...” He said he felt that criterion one should be less explicit and that criterion four could cover what was in the second sentence in criterion one.

Mr. Miller said he really liked the phraseology “that the property owners cannot control” in criterion one. He said criterion four referenced the things that were within the property owner’s control. He said he felt the statements referenced by Mr. Dye in criterion number one and criterion number four referenced two completely different things.

Mr. Dye said he did not see how the Commission would be able to define what was or was not within a property owner’s control.

For example, said Mr. Miller, after a person purchased a lot that had a house upon it, and they wanted to rebuild and they thought that they would be able to rebuild. The new property owners had performed their due diligence and subsequently found out that the foundation was inadequate. Mr. Miller said he felt this would be a circumstance in which he could understand that the situation was not under the property owner’s control.

Mr. Dye agreed with Mr. Miller, and added that he did not feel the second sentence in criterion one detracted from that meaning. The argument can be made that the new property owners could have hired an engineer ahead of time and found out there were problems with the foundation, and therefore it would not be outside of their control. He said if the second sentence in criterion one was removed, that they avoided the whole difficulty of whether it was within or not within the property owner’s control. He said the control level would lie within criterion four which stipulates that the hardship is not self-imposed.

Mr. Steedle said he felt that Ms. Shelton best captured the meaning with her proposed language for criterion one: “Special conditions or circumstances exist that property owners cannot control...”

Mr. Voelckers added they also needed to see how this language plays out when referencing structures as well as land. He said he liked the idea of simplifying the language and putting some of the language within the parentheses within the body of the first sentence.

Mr. Dye said if an individual owns a structure that theoretically it is within that person's control. He said he would like to have the first criterion a little more general and that specificity became more pronounced with the application of criterion four.

Chairman Haight said that many Commission members have witnessed a situation where an individual buys a property or structure and there are existing conditions unknown to the buyer. They subsequently find out the problems with their property when they begin a remodel for example, he said.

Ms. Shelton said she felt that language in criterion one and four was different. For example, she said, in number four, to be extreme, it could be said that the condition was self-imposed because the individual purchased the property.

Ms. Boyce said with criterion number one they are trying to get to the hardship factor pertaining to the property. Criterion four is more about the plight of the land owner, she said, where criterion one referenced the property itself.

Mr. Frisby said that every landowner has different land use intents. There are issues that arise when there is a new purchaser of property who may have different ideas about how that property should be used, said Mr. Frisby. He said to him criterion one and four did seem to be repetitive, but after listening to the discussion he could see how they were not repetitive.

Mr. Voelckers said since the criteria are related, that perhaps Mr. Palmer and Ms. Boyce could rework the phrasing in those two criteria while the Commission progressed through the other criteria.

Criterion Number Two

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;

Mr. Voelckers suggested that instead of having the sentence end with the word "have", that it be amended to read: "The variance is necessary so that the applicant can enjoy a property right that (is consistent with) other owners of properties in the same zone or vicinity;"

Criterion Number Three

The grant of the variance will not be detrimental to public health, safety, or welfare, or is injurious to nearby property;

Ms. Shelton said what the second half of this sentence says to her is that the granting of the variance is injurious to property. She said she felt the words "not be" be used instead of the word "is" prior to the word "property".

The Commission agreed to the above change for criterion number three.

Edited Criterion Number Three

The grant of the variance will not be detrimental to public health, safety, or welfare, and not be injurious to nearby property;

Criterion Number Four

The hardship is not self-imposed and the variance is the minimum that will alleviate the hardship;

Mr. Voelckers said he felt that criterion four may be the most difficult of all. He said it could be argued that all hardship to some degree is self-imposed. He said it he felt it was important to remember that the goal was to give the Planning Commission a common-sense tool to try to parse out what makes the most sense. He said he did not like the words within the criterion that stated, "...the minimum that will alleviate the hardship;"

Mr. Voelckers recommended that the criterion read: "The hardship is not self-imposed and the variance is proportional to the needed relief that will alleviate the hardship;" He said he felt the word "proportional" was better than the word "minimum". The word "minimum" was not very descriptive, he said. The word "proportional" provided some value judgment, he said.

Mr. Palmer responded he felt there were two concepts at work. The whole reason for these criteria is to provide some "objective standards" to deviate from the code, he explained. The purpose of the variance is to provide that unique tool when there is something so special about that property that they cannot comply with the standards that apply to everybody else, he said.

The addition to a building would generally be considered a self-imposed hardship, said Mr. Palmer. The topography of a very steep hillside next to a restricted right-of-way probably would not be a self-imposed hardship, for example, said Mr. Palmer.

Ms. Shelton commented that the steep hillside would have always been present, and would only become a self-imposed hardship when the property owner decided to act.

Mr. Palmer said it may be a good idea for the staff to take the recommendations on this ordinance amendment and work through the language corrections, providing explanations on the intent to accompany each of the criteria.

Mr. Voelckers asked Mr. Palmer what the consequences would be if they struck the words "self-imposed". He said it could be interpreted that any action would be self-imposed. He said those words actually made him a little uncomfortable.

Mr. Palmer said the Commission needed to decide if the “self-imposed” term used in number four was different or duplicative of the language used in criterion one.

Mr. Voelckers asked if the term “self-imposed” needed to be used to meet some legal litmus test.

Mr. Palmer said that specific term did not need to be used, but that the concept needed to be embodied within the variance. It follows a state statute which provides a good general guidance for the variance, said Mr. Palmer.

Mr. Miller said he felt that Mr. Voelckers had an excellent point in that anything that is brought forward could be construed as self-imposed. Then they would not have a mechanism for providing relief from the strict application of the code, he added. The term “self-imposed” could be interpreted very strictly, and then once again they are in a position where variances may not be issued, noted Mr. Miller.

Mr. Dye said he had problems with the terms “cannot control” in criterion one and “self-imposed” in criterion four.

Mr. Voelckers noted that a project he was involved with several years ago received a couple of critical variances so that it could be built. He said it could be argued that the project was completely self-imposed, and there were no unique features about the property. The Commission thought the height variance was useful for the project, so they could proceed with construction, said Mr. Voelckers.

Chairman Haight said he felt they needed more definition of what “self-imposed” really means.

Mr. Palmer said the state statute provides a slightly different standard, but that he felt it arrived at the same concept which the Commission was discussing. “Special conditions that require a variance are not caused by the person seeking the variance,” said Mr. Palmer.

Mr. Steedle said he was curious how this got around the quandary raised by Ms. Shelton, that the property was purchased, therefore the condition is self-imposed.

Providing an example for the discussion, Ms. McKibben said there was a property several years ago out the road on a very steep hill, where the highway has a 100-foot right-of-way. The lot was platted before the highway was 100 feet wide, said Ms. McKibben. Subsequently the property owners were left with a 20-foot portion of property to build upon. They did not create that situation, noted Ms. McKibben.

Criterion Number Five

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.

Ms. Shelton said she did not think “that distinguish it from others in the area” needed to be in this criterion. She said she felt it took away from the meaning of this criterion, rather than clarified it.

Mr. Voelckers said he agreed with Ms. Shelton in that there was some redundancy. He said it made him wonder if they should not remove the words within the parentheses. He said perhaps they should just put; “Literal enforcement of the ordinance would result in unnecessary hardship.”

Ms. Shelton said she did not think they wanted to lose the concept of “reasonable use” in criterion five.

Mr. Dye suggested they just eliminate the language within parenthesis.

Criterion Number Six

This variance if approved would not result in lot coverage, construction standards, etc.

They may want to add the words “maximum density” prior to “lot coverage”, said Mr. Voelckers. Someone may want to add a kitchen to their home which would not result in maximum density to the neighborhood, said Mr. Voelckers.

The Commission agreed that they approved the general concept of criterion number six, which will undergo further wordsmithing by the staff.

Review Incorporating Commission Comments

Purpose Statement

A variance may be granted to provide property owners ~~from~~ relief from Code requirements when, due to the strict application of standards and to unusual circumstances regarding the subject property or structure, the property owners are deprived of privileges commonly enjoyed by other properties {or structures} in the same vicinity ~~and~~ {or} zone and under the same land use regulations.

Criterion One

Special conditions or circumstances exist {that the property owners cannot control} that are peculiar to the property {or structures} in the same zone vicinity. ~~{These conditions result from the lot size or shape, topography, or other conditions that the property owners cannot control};~~

Mr. Palmer suggested that criterion one be changed to state, "Special conditions or circumstances that require the variance are not caused by the person seeking the variance."

Mr. Dye said he liked the phrase suggested by Mr. Palmer because it did away with the "cannot control" verbiage. He said it did not bother him that the conditions were not listed. He said if they were listed then there could always be something that was left out.

Mr. Miller commented that the ADOD in theory should help a lot of people. However, he said, there may be some lots which would not be helped by the ADOD. There could be a nonconforming situation that may be a special condition or circumstance, not caused by the person seeking the variance, he noted.

The Commission approved of the phrase suggested by Mr. Palmer as criterion one.

Criterion Two

The variance is necessary so that the applicant can enjoy a property right that {is consistent with} other owners of properties in the same zone or vicinity have;

Criterion Three

The grant of the variance will not be detrimental to public health, safety, or welfare, ~~or~~ {and} is {not} injurious to nearby property;

Criterion Four

The ~~hardship is not self-imposed and~~ variance is the minimum {proportional to the needed relief} that will alleviate the hardship;

Criterion Five

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.

Criterion Six

The variance would not result in exceeding allowed maximum density, maximum lot coverage, construction standards or use.

The Commission agreed with criterion six.

This amendment to Title 49 will next be presented to the Commission at a regular meeting with a formal hearing.

AME2017 0006 – Text Amendment related to Essential Public Facilities

Mr. Steedle told the Commission this is Ordinance 2017-23 for Essential Public Facilities. He explained this is to develop a process for permitting facilities that the government ought to be providing. This could be via contract rather than directly provided by the government, noted Mr. Steedle. These are facilities that typically individuals are not happy to have adjacent to their residences, said Mr. Steedle. An example would be a winter campground which has been proposed, he noted. There is no provision for that in a downtown location under Mixed Use, he said.

The idea is to come up with another permitting process in which a facility could be deemed by the CBJ Manager to be a candidate to be an essential public facility, said Mr. Steedle. This would be brought to the Commission through the Community Development Department for the Commission's own analysis, he explained. This streamlines the process, said Mr. Steedle. However, he said, currently under the best case scenario permitting could be accomplished within five months. Much of that time is taken up by staff analysis and research, he said. It would then come to the Commission and to the Assembly, he explained.

If the essential public facility process was in effect, said Mr. Steedle, it would come before the Commission and look very much like a Conditional Use Permit, but it would sidestep the Table of Permissible Uses.

Commission Comments and Questions

Mr. Miller asked if this sort of process could have been used for the facility within the Tall Timbers area. He said he recalled that facility did not have a use within the Table of Permissible Uses.

Mr. Steedle said it is correct that facility did not have a use within the Table of Permissible Uses, but that it would probably not have been deemed an essential public facility. The pivotal question would be, "is this an essential function that the CBJ should be providing", he said. The answer in that case is probably "no", he said. That facility was sponsored by a nonprofit organization not under the control of the CBJ, he added. If the CBJ was the source of the grant funding for that operation, then the Commission might make a finding, said Mr. Steedle, that it was an essential public facility and eligible to be placed in the neighborhood in which it resides.

Referring to number one under Determination of Applicability, Mr. Dye asked if the facility within the Tall Timbers neighborhood was completely privately funded.

The funding for that facility does not come via the CBJ, answered Ms. McKibben.

Mr. Dye asked if a warming shelter which was considered by the Salvation Army this winter would come under this essential public facility ordinance.

He was told that it would not, because the City was not involved in that proposal.

Mr. Palmer said the concept is that these are essential public facilities. If there is a strong public need for a facility, it can be expedited for a very good reason, he said. However, it is either a public facility or it is a private facility funded by or under contract by the CBJ.

Mr. Dye distinguished that the way the ordinance is written the essential public facility must have substantial public funding or be under contract by the CBJ, which he noted could entail minimal funding by the CBJ.

Mr. Palmer noted that most contracts have to go through the Procurement Code. That is another check and balance, he noted. And would have to be approved by the Assembly, he added.

Mr. Voelckers asked if there is the assumption that a unique site boundary would be created for the facility. He said he was curious how those limits would be defined to gauge the impacts for this conditional use process.

The ordinance is almost indistinguishable from a Conditional Use Permit. What this really accomplishes is the bypass of the TPU process, noted Mr. Steedle. The Commission is free to impose whatever conditions it thinks would be necessary, he added. Mr. Voelckers asked how the Commission would deal with this if the boundaries were not clearly defined.

Mr. Palmer said the proposed ordinance is deliberately left imprecise to allow for a small area, within a much larger defined parcel, for example, or to allow for trailers to be hauled onto a site, he said.

Mr. Voelckers suggested that on (10) (A) of the ordinance that "impacts on wildlife" be stated instead of specifying an eagle's nest only. Under (11) Sound, instead of specific decibels, just limit "adverse impacts to adjoining properties", he suggested.

Mr. Steedle noted that this language is lifted from Conditional Use Permits. He asked if the Commission would like to see the distinction between a traditional CUP and this ordinance proposal.

Mr. Voelckers said the specificity regarding eagles seemed a little odd in this draft ordinance. There are many other types of wildlife and habitat impacts which should be generally referenced besides just eagles, he said. Past practice has indicated that decibels are difficult to qualify, he said. It may be highly dependent upon where the property is located in comparison to how close it is to a residence, said Mr. Voelckers.

Ms. Shelton said that lines 10, 11, and 12 under Determination of Applicability seemed excessive in their words. She suggested that those lines just state, “Delivered under contract or with substantial funding under a government agency”.

Mr. Miller asked if performance bonds were a part of a Conditional Use Permit.

Mr. Steedle said that they were a part of a Conditional Use Permit. He added that there is a facility currently under development under a Conditional Use Permit and there is a vegetation requirement. He said the developers are currently requesting a performance bond so they could do that work in the spring rather than now. Before the CDD can issue a Certificate of Occupancy they need that performance bond in place, said Mr. Steedle.

Under Purpose Mr. Voelckers asked if the word “and” should supplant the word “or” on line 20.

This draft ordinance will next appear before the Commission during a regular meeting for public input and formal action.

AME2017 0003 – Proposed amendments to 49.15.423

Ms. McKibben told the Commission that this proposed ordinance will allow for the creation of smaller panhandle lots. She stated they are not yet at the point to be editing the language. There have been two Title 49 committee meetings on this proposal, she said.

Currently, the minimum lot size for a lot created by a panhandle subdivision is 20,000 square feet when served by City water and sewer, and 36,000 square feet when sewer is not available, said Ms. McKibben. By allowing smaller lots to be subdivided through the panhandle provisions, more lots could be created in the zoning districts that have smaller minimum lot size requirements, she stated. These lots would have frontage on a public right-of-way. They have a minimum width of the stem to be 30 feet wide with the maximum grade of the driveway to be no more than 15 percent, said Ms. McKibben. The code requires one shared access and that it be shown on the plat, she added, with an easement or a plat note. It also requires a maintenance agreement for the shared driveway, said Ms. McKibben. It is limited to two lots, and the front yard setback is measured from the access easement, she said.

The concept is to allow any lot to be subdivided through the panhandle provisions if the lots created can meet the minimum dimensional standards of the underlying zoning district, said Ms. McKibben. The stem would not be included in the calculation of the lot sizes, she said. This provides another development option and creates infill development, she said. They have a few requests every year from property owners for individuals wanting to buy property looking to subdivide, said Ms. McKibben. The panhandle subdivision might be a good design option for

them, she noted, but the resulting lots would not meet the minimum square footage of 20,000 square feet.

Originally the panhandle subdivision was intended for larger lots, and it is usually used in more rural environments, said Ms. McKibben. There are a number of lots where this panhandle proposal could be used, said Ms. McKibben, including some that are already developed. These are instances where the shared private access would not work, she said. This provides an alternative when shared access is not an option, she noted.

They do preserve the opportunity for lots within the D-1 zone district to use up to 30 feet of the width of the panhandle to calculate the width of the front lot, said Ms. McKibben. For example, there are a number of very long, narrow lots along North Douglas Highway, she said. With each lot being required to meet the minimum lot size, said Ms. McKibben, the integrity of the density of the zoning district is preserved.

The proposed language would remove the maximum grade for the driveway of 15 percent, and instead stipulate that it meet the fire code requirements for that particular lot. It also specifies that access to the rear lot is required to be through the stem, she noted. If there is a shared driveway it still has to be shown in the plat and a maintenance agreement has to be recorded, she said. The front lot can have access through its own driveway, but the panhandle access would still be required, said Ms. McKibben. Some of these larger lots already have two approved driveways, said Ms. McKibben. Lots that are on DOT maintained rights-of-way are still limited to one access, she said.

The proposed ordinance adds language that requires the portion of the driveway in the right-of-way or the first 20 feet from the edge of the public roadway to be paved, said Ms. McKibben. This is consistent with the recently adopted private shared access provisions, she pointed out. It removes the prohibition to limit panhandle subdivisions to two lots, said Ms. McKibben. This intent is that panhandle subdivisions will only include pairs of lots, she noted. It would prohibit three or more lots from being a panhandle and sharing a driveway, she said. This is to provide consistency with the new private shared access, she noted.

Lots with right-of-way frontage on DOT streets will continue to be limited to one shared driveway, said Ms. McKibben. The intent is that one pair of panhandle lots is created and the access to the rear lots will be shared within the stem of the two lots, she said. If the lots do not receive CBJ driveway permits for direct access to CBJ streets, then they will also use the stem for access, she noted. A maintenance agreement would be required for the shared driveway.

The new private shared access section of code requires the front yard setback to be measured from the access easement, said Ms. McKibben. The ordinance requires that the front lot of the panhandle subdivision be treated as a corner lot and choose the front setback and the street

side setback from either the right-of-way or the stem of the panhandle lot, she explained. They advise that shared access regulations be amended to allow lots fronting both the easement and a public right-of-way be able to be treated as a corner lot, and choose the front yard setback and the street yard setback, she noted. This provides consistency with corner lots and the recommendations for panhandle lots, and creates some flexibility for the front lot in the shared private access subdivision, said Ms. McKibben.

This proposed ordinance also removes the lot size requirements for lots not on public sewer, and specific dimensional requirements for lots using marine outfall for wastewater disposal, she noted. The State Department of Environmental Conservation used to have minimum lot sizes for residences on septic and well, and those requirements have been removed, said Ms. McKibben.

Commission Comments and Questions

Mr. Voelckers commented that the only thing he noticed to be missing from this draft ordinance is that the draft does not include the pairing and sharing of all four lots. (1) (E) which should be “up” to 30 feet. Mr. Voelckers said he felt this looked like a solid proposal.

Mr. Miller said he really liked this proposal. He said he liked the reduction of the panhandle to 20 feet if necessary. Mr. Miller said he did have a bit of an argument with the taking issue which could arise. For example, for a lot that is on a DOT right-of-way that fits every criterion, with the owner willing to put the driveway in the panhandle, which could then not be approved by DOT, he said. That person could then put a driveway in a location that would be legal for the DOT but that would then not be within the panhandle, said Mr. Miller. He said that may be a taking because the City would not be allowing the subdivision to happen.

Mr. Palmer noted that there is the shared access provision available in these circumstances. He added that he is not aware that the City could allow someone to create a panhandle, require that panhandle and not to require that access to be in that panhandle.

Ms. McKibben said the shared private access was created for certain circumstances in which a panhandle may not be an available option.

Mr. Miller asked if there has to be road frontage for a shared access when it is subdivided.

Mr. Palmer said that road frontage was not necessary for that circumstance.

Mr. Steedle said that from what they understand now about takings, the CDD would not approve a panhandle subdivision if a driveway permit could not be obtained.

Ms. McKibben said they would like to schedule this proposed ordinance for a hearing before the Commission in September.

X. **REPORT OF REGULAR AND SPECIAL COMMITTEES** - None

XI. **PLANNING COMMISSION COMMENTS AND QUESTIONS** - None

XII. **ADJOURNMENT**

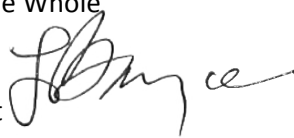
The meeting was adjourned at 6:46 p.m.



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

DATE: July 28, 2017

TO: Planning Commission Committee of the Whole

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

CASE NO.: AME2016 0002

SUBJECT: Amend Title 49 Revisions Regarding Variances

Introduction

At the last Committee of the Whole meeting, staff was asked to revise the variance criteria and to explain the purpose for each proposed criterion. The table below includes the draft criteria discussed at the last meeting as well as the revised draft criteria. A discussion of the revised criteria follows. The existing variance Code criteria are also included below.

Draft Variance Criteria

Last Draft	New Draft
<i>A variance may be granted after the prescribed hearing and after the board of adjustment has determined that:</i>	<i>A variance may be granted after the prescribed hearing and after the board of adjustment has determined that:</i>
<i>(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;</i>	<i>Special conditions or circumstances exist that are peculiar to the property in the same zone vicinity. (These conditions result from the lot size or shape, topography, or other conditions that the property owners cannot control.);</i>
<i>(2) That compliance with the existing standards would unreasonably limit the owner from using the property for a permissible principal use;</i>	<i>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;</i>
<i>(3) The deviation from the requirement of this title is no more than is necessary to permit a reasonable use of the property;</i>	<i>The grant of the variance will not be detrimental to public health, safety, or welfare, or is injurious to nearby property;</i>

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(4) <i>Relief can be granted in such a fashion that the intent of this title found in CBJ 49.05.100 will be observed;</i>	<i>The hardship is not self-imposed and the variance is the minimum that will alleviate the hardship;</i>
(5) <i>The authorization of the variance will not injure nearby property;</i>	<i>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.</i>

Revised Criteria

Purpose:

A variance may be granted to provide property owners from relief from Code requirements when, due to the strict application of standards and to unusual circumstances regarding the subject property or structure, the property owners are deprived of privileges commonly enjoyed by other properties in the same vicinity and zone and under the same land use regulations.

Proposed Criteria:

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

Special conditions or circumstances exist that are peculiar to the property in the same zone vicinity. (These conditions result from the lot size or shape, topography, or other conditions that the property owners cannot control.)

In this criterion the property is discussed. The applicant needs to make the case that the property is unusual in some way or different from neighboring properties.

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;

This criterion seeks to analyze whether the property owner can reasonably use the land similar to others in the vicinity. Will the potential loss by the applicant to reasonably use the land as desired without the variance outweigh any public gain by denying the variance?

The grant of the variance will not be detrimental to public health, safety, or welfare, or is injurious to nearby property;

This criterion analyzes whether the variance will conflict with the purpose of the Code. It also analyzes if the variance will alter the essential character of the neighborhood or injure other public rights.

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The hardship is not self-imposed and the variance is the minimum that will alleviate the hardship;

This is sometimes known as the “self-created hardship”. This criterion also incorporates the concept from State Statutes that a variance may not be granted if “special conditions that require the variance are caused by the person seeking the variance.” This also includes that the variance is the minimum needed to provide relief similar to what others in the vicinity enjoy. This also means that the intent of ordinance is still met by allowing some relief from the requirement; this is not a waiver from the requirement.

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.)

Finally, this criterion analyzes whether a hardship does exist, and if so, to what extent. This differs from the existing criteria in that a hardship was implied, but not explicitly stated or a finding made. As part of the application, the applicant must establish that the property is burdened by the code requirement in a way that is distinct from other similarly situated properties. If there are other similar requests in the neighborhood, then the zoning or standard that applies for that area might need to be corrected.

Existing Criteria – CBJ 49.20.200 - .270

For reference purposes, the existing criteria in the Land Use Code, Title 49, are included below. There is currently a threshold requirement as well as six primary criteria which must be met in order to approve a variance application, with criterion 5 having four sub-criteria. Only one of the sub-criteria must be met in order to meet criterion 5. A discussion of the current criteria is included below.

Threshold

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....

The threshold is meant to analyze that a hardship does exist.

Criterion 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;

Criterion 1 analyzes whether the applicant is requesting the minimum variance from the specific regulation that would allow them to develop their property similarly to other properties in the neighborhood and meet code requirements.

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Criterion 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;

Criterion 2 analyzes whether public safety and welfare requirements, which are fundamental to the Land Use Code, will still be met. These concepts are also addressed in CBJ 49.05.100, *Purpose and Intent*.

Criterion 3

The authorization of the variance will not injure nearby property;

This criterion addresses whether the requested variance will cause harm to nearby property.

Criterion 4

The variance does not authorize uses not allowed in the district involved;

This criterion addresses whether the granting of the variance will allow a prohibited use from being allowed in the district. Variances regarding use, density, lot coverage, and those establishing construction standards are not allowed.

Criterion 5

(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;*

Sub-criterion A analyzes whether compliance would unreasonably prevent the owner from using the property for a permissible principle use. This is one of the more challenging criteria to meet since most lots can accommodate a permissible principle use that complies with the standards and regulations of Title 49 with the appropriate design choices. This concept is important because the city should ensure there is not a taking of property.

Sub-criterion B analyzes whether compliance would prevent the owner from developing their lot in a manner similar to existing development in the neighborhood. This criterion allows new development to take advantage of the preexisting nonconforming conditions of a neighborhood should there be any and

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also benefit from the conforming development on lots that do not have any hardship. This criterion is similar to the justice and equality concepts found in criterion 1, but from the perspective of the applicant.

Sub-criterion C analyzes any topographic constraints that may make development so expensive that a variance is warranted. This criterion is unique in that it is rare to allow pecuniary hardship as a reason to grant a variance. Alaska Statute Title 29 granting land use regulation powers to local municipalities specifically states that a variance may not be granted solely for pecuniary hardship. It is also difficult to objectively assess what is unreasonably expensive for a property owner.

Sub criterion D analyzes whether the variance would create a net decrease in overall compliance with both the land use code and the building code when taking into account preexisting nonconforming conditions. Therefore, if an owner wanted to reconstruct a dilapidated garage on a nonconforming footprint, there would be a net increase in compliance because Title 19, the building code, standards and regulations would be met while there would be a neutral effect on Title 49, the land use code. This criterion can allow for the continuation of nonconforming conditions.

The overall fundamental concept analyzed in threshold criterion 5 is whether the regulations will result in a taking of the property.

Criterion 6

A grant of the variance would result in more benefits than detriments to the neighborhood.

This criterion is challenging for staff as it asks them to identify benefits and detriments supported by Title 49 that are not simply subjective.

AME2016 0002 – Proposed Code Amendment Regarding Variances



Draft Ordinance No. 2018-04 Variances

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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 requested 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 - Submittal.

~~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

- Amend what is and is not variable
- Remove the preliminary threshold requirement
- Require the posting of a public notice sign for public hearing variances
- Amend the variance criteria
- Amend the De Minimis/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 projections that will either:

- Not exceed 25% of the yard setback, or
- 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 Planning Commission.

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 reasonably tailored to relieve the hardship.



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')



Public Notice

Administrative Variance:

- Mailed notice sent to immediately adjacent neighbors, as determined by the Director
- 14 day response period **(NEW)**
- Neighbors provide written concerns/support

Non-Administrative Variance

- Would require posting of red sign on the applicant's property **(NEW)**
- Mailed notice to neighbors within 500 feet
- Neighbors can speak at public hearing



Proposed Variances	
<u>What can be varied – Current Code:</u> • Dimensional standards • Design Standards	<u>What can be varied – Proposed:</u> A variance is required to and can only vary the following 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.



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



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 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 reasonably 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.



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 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.

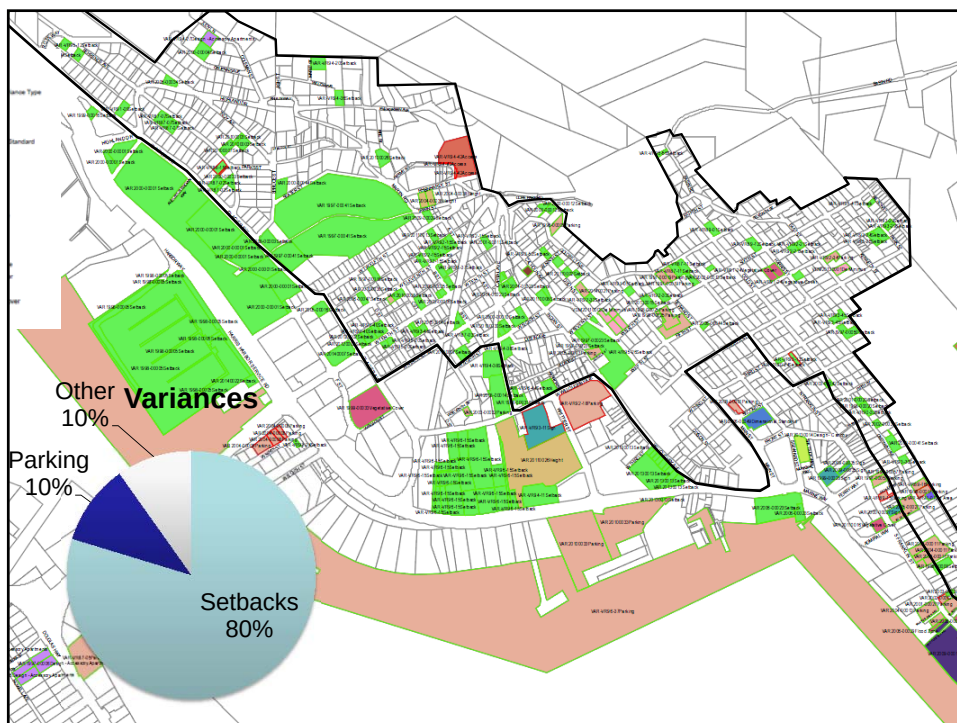


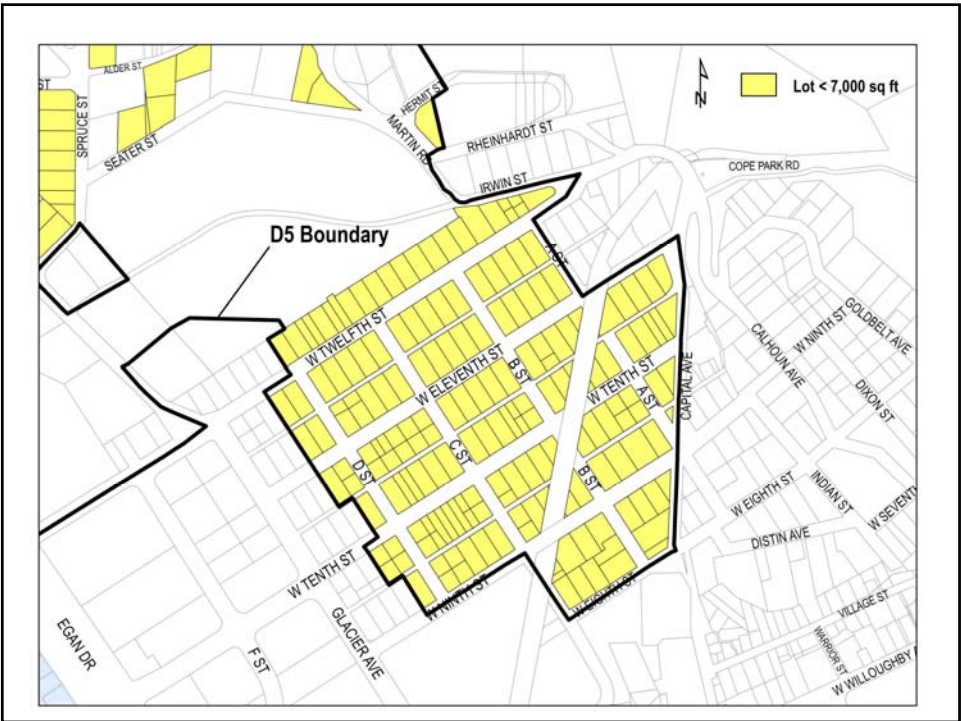
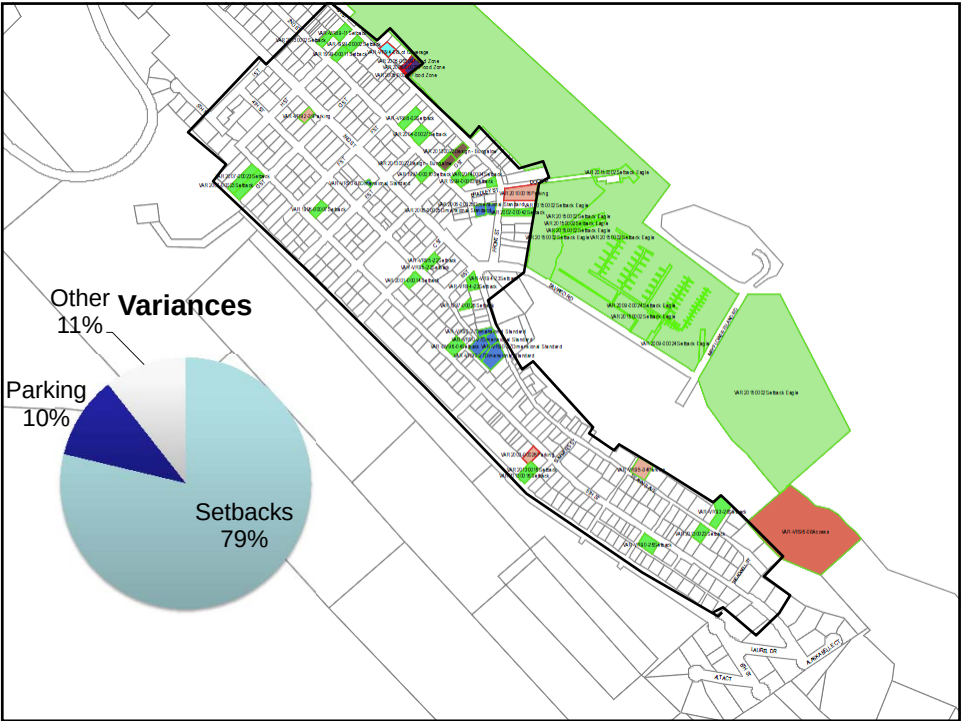


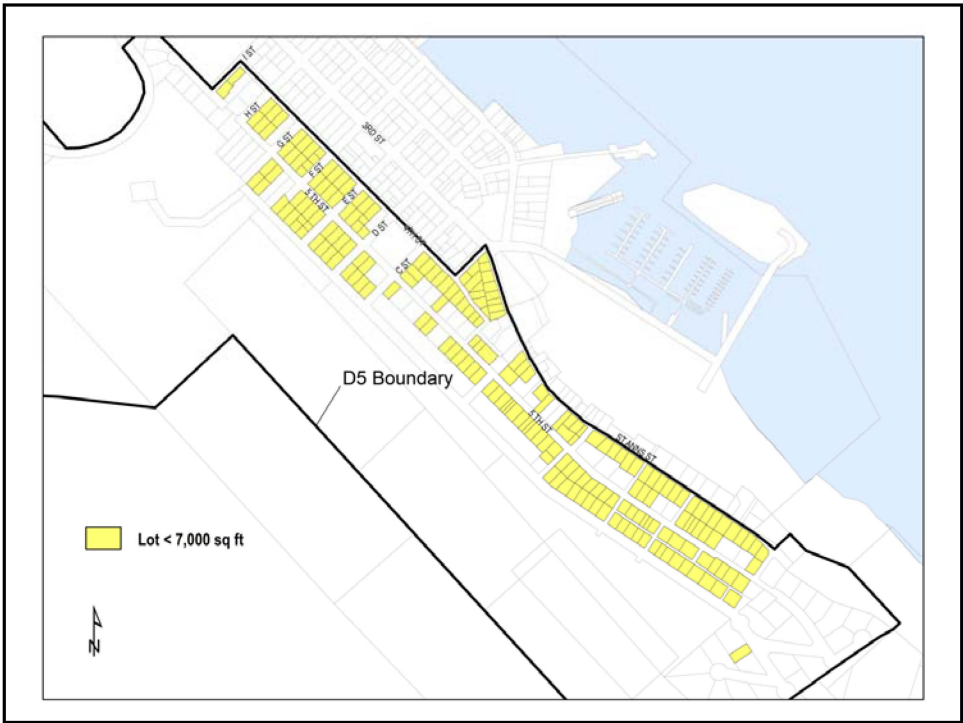
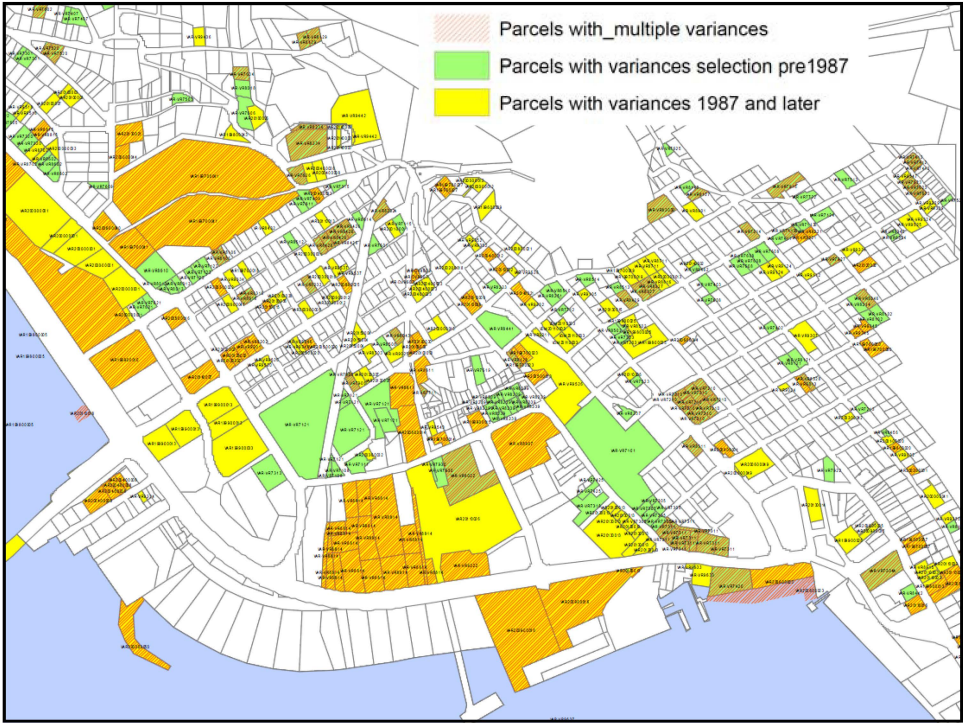
Proposed Variance Criteria

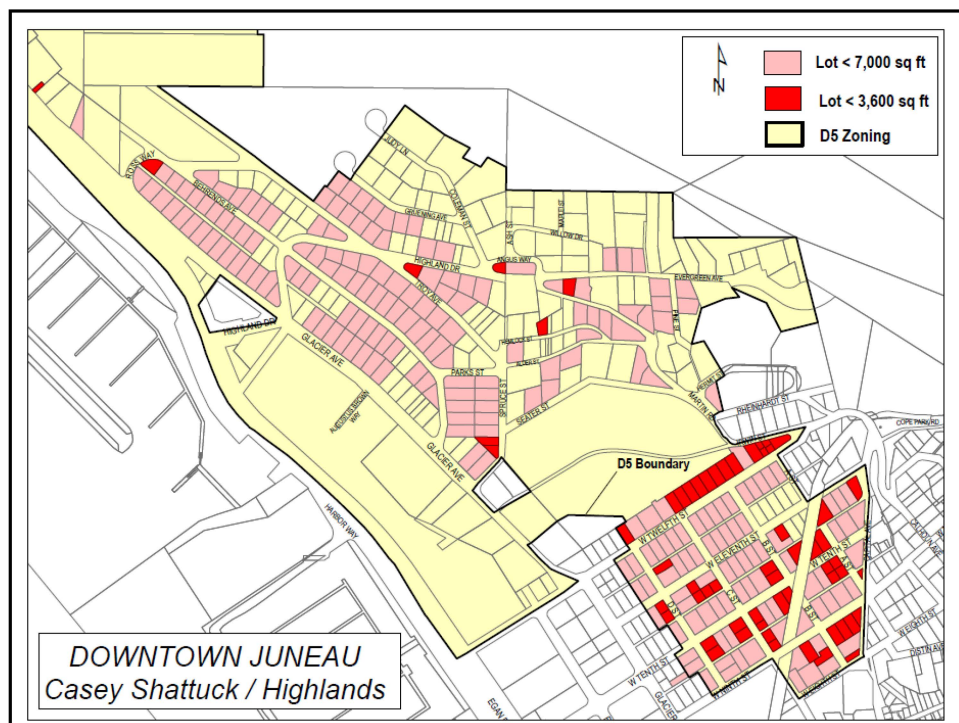
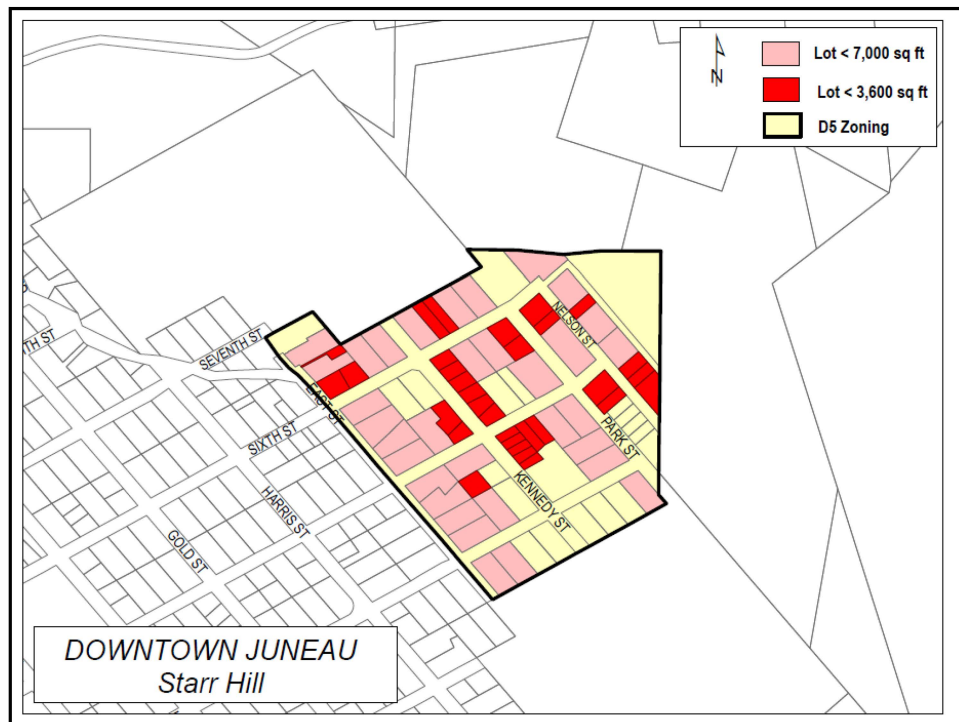
Proposed Variance Criteria:

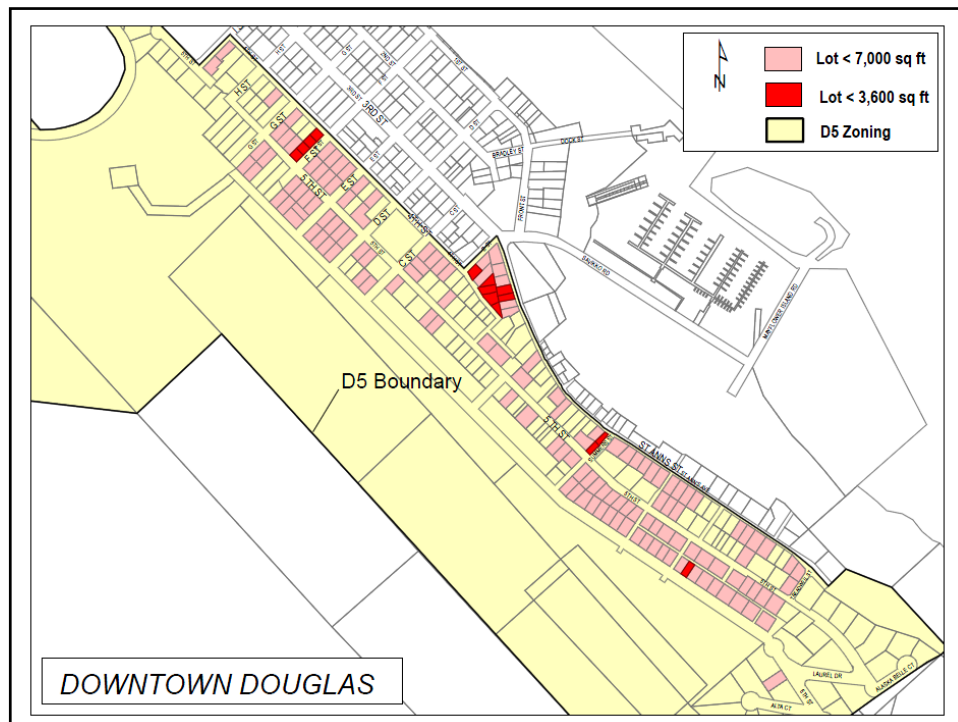
1. *Special conditions and circumstances exist that are peculiar to the land or structures or use involved and are not applicable to other lands and structures in the same district.*
2. *That compliance with the existing standards would unreasonably limit the owner from using the property for a permissible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

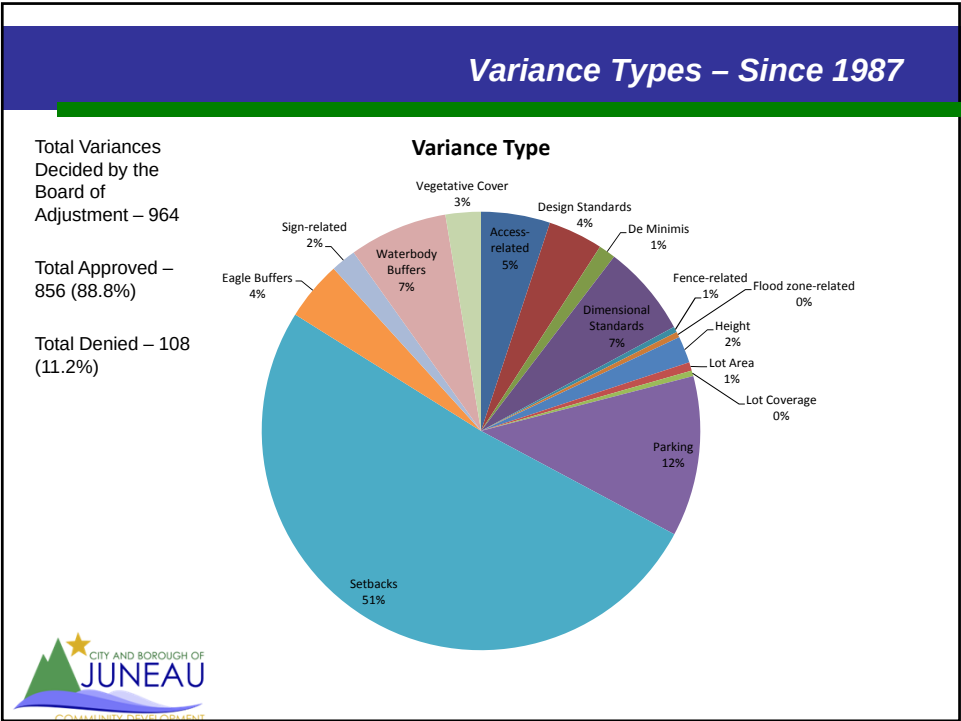
Where hardship and practical difficulties result from an extraordinary situation or physical feature affecting only a specific parcel of property or structures lawfully existing thereon and render it difficult to carry out the provisions of this title, the board of adjustment may grant a variance in 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





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

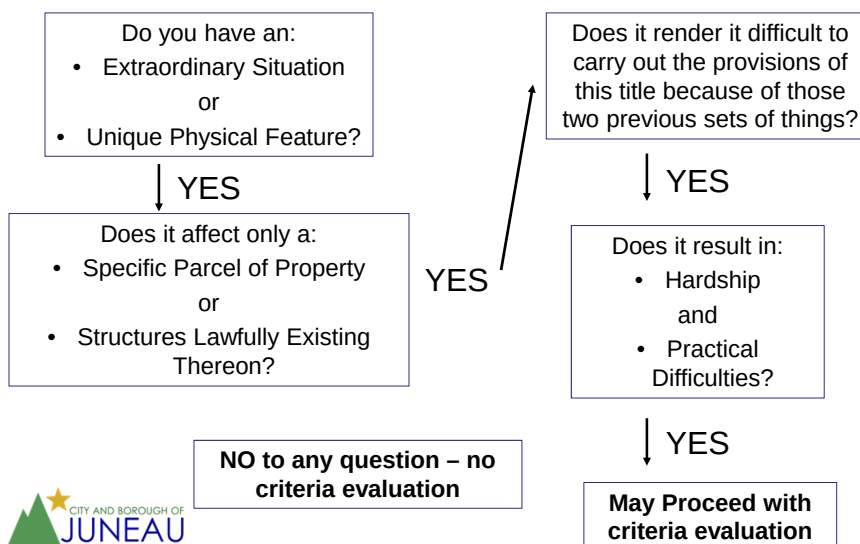
Threshold determination

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)).



Threshold



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.





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

DATE: January 16, 2018

TO: Planning Commission

FROM: Amy Liu, Planner
Community Development Department

CASE NO.: USE2017 0027

PROPOSAL: A Conditional Use Permit to amend USE2016 0018 to include three (3) additional units

A handwritten signature in black ink, appearing to read 'Amy Liu', is written over the 'FROM' line of the letter.

GENERAL INFORMATION

Applicant: Constellation Development LLC

Property Owner: Juneau Condos LLC

Property Address: 4401 Riverside Drive

Legal Description: Riverside Condos

Parcel Code Number: 5B2501510000

Site Size: 3.0368 Acres (132,282 sq. ft.)

Comprehensive Plan Future Land Use Designation: Medium Density Residential (MDR)

Zoning: D15

Utilities: City Water & Sewer

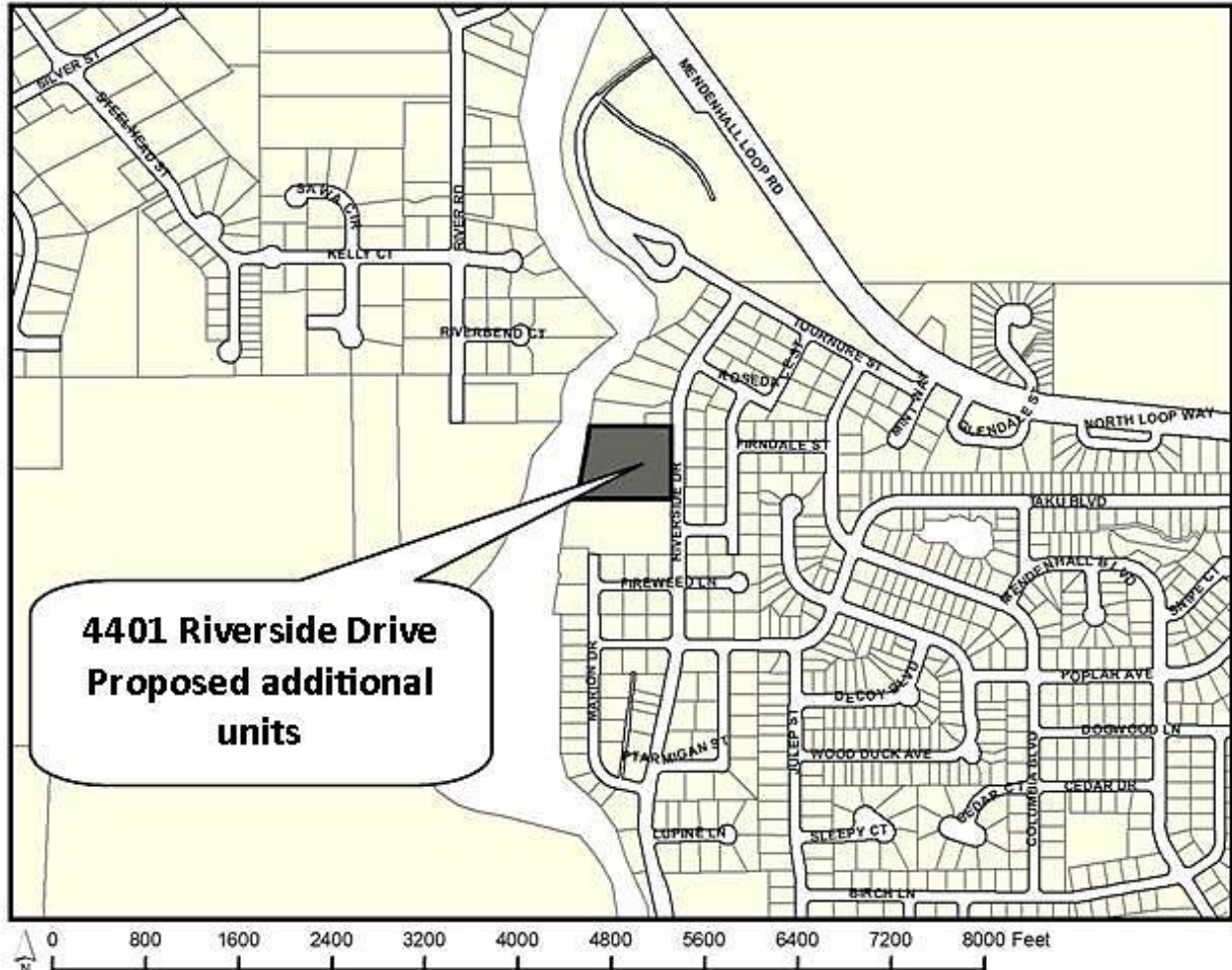
Access: Riverside Drive

Existing Land Use: Condominium Housing

Surrounding Land Use: North - Two Two-unit Dwellings; D-15; Riverside Dr.
South - Riverside Baptist Church; D-15; Riverside Dr.
East - Single Family home; D-15; Riverside Dr.
West - Mendenhall River; Vacant CBJ land

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VICINITY MAP



ATTACHMENTS

- Attachment A – Project Narrative
- Attachment B – Site Plan
- Attachment C – Building Plans
- Attachment D – Subdivision Plat
- Attachment E – Riverside Condo Pictures
- Attachment F – Public Comments
- Attachment G – Public Notice
- Attachment H – USE2016-0018 Notice of Decision
- Attachment I – USE2016-0018 Staff Report
- Attachment J – Assessor’s Comments

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PROJECT DESCRIPTION

The applicant requests a Conditional Use Permit to allow for 3 additional dwelling units at 4401 Riverside Drive in the D-15 zone on a 3.04 acre site accessed via Riverside Drive.

BACKGROUND

The requested Conditional Use Permit would modify the previously approved Conditional Use Permit, USE2016-0018, 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 for two units. The development includes eight structures, each with six units. So far, buildings A-F (Attachment B) have been constructed.

The D-15 zoning district allows for 46 dwelling units at this site. CBJ Title 49.60.140 allows for the approval of a 10% density bonus with the provision of certain amenities. The applicant earned the density bonus with USE2016-0018. During the hearing, the applicant indicated that he was planning to construct 48 units, which is the number of units the Commission approved with the bonus provisions. However, the application was for 51 units and the staff report evaluated and recommended approval of 51 units. The applicant is now seeking to add 3 more units for a total of 51 units by using the previously recommended and approved bonus.

Public Comments

Staff received public comment in response to this proposal. All comments received at the writing of this staff report are included (Attachment F). The majority of comments received are from neighboring residents. Concerns identified include but are not limited to parking, traffic, and snow storage.

ANALYSIS

Project Site

The site is a D-15 zoned single lot along the east bank of the Mendenhall River. The lot is relatively flat. There are four buildings parallel to and along the Mendenhall River. The other four buildings are parallel to and along Riverside Drive. Parking is in the center of the site and is accessed through a driveway from Riverside Drive. There will be one 104 ft. x 6 ft. wooden fence along the north lot line, two 6 ft. tall wooden fences along the east lot line, and two 60 ft. x 6 ft. wooden fences along the south lot line. There will be a 5 ft. concrete sidewalk from the site's driveway along Riverside Drive to a crosswalk that leads to the existing sidewalk at Pinedale Street (Attachment B). The sidewalk and crosswalk will be reviewed in more detail in the density bonus discussion of this report. The fencing and sidewalk were conditions of approval for USE 2016-0018.

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The site is located along the Mendenhall River where record flooding has occurred. The property was not flooded during those events. Furthermore, the mapped 100-year and 500-year flood risk areas are mostly contained within the banks of the river. The proposed structure, like the previously constructed ones, will not be in the flood zone and therefore no special construction standards are required.

Project Design

The proposal consists of a single, three story building with a single unit on each floor. Each unit will have three bedrooms, two bathrooms, living and dining rooms, and a balcony. The proposed building will look similar to the approved buildings (Attachment C).

The proposed building will comply with the maximum allowable height in the D-15 zoning district, which is 35 ft. On a gabled or pitched roof, the height is measured from grade to the midpoint of the roof line, and the tip of the gable may be taller than 35 ft. (49.25.420). Like the previously approved buildings, the proposed building will have a roof midpoint height of 35 ft. and a gable tip height of 38 ft. (Attachment C).

The requested building will satisfy the D-15 setback requirements of 20 ft. for the front, 50 ft. for the rear, which is subject to the 50 ft. anadromous stream setback, and 5 ft. for the side yard. Additionally, bonus points were earned by providing additional green space between the buildings and the required 50 ft. rear setback (Attachment B).

The site will meet the D-15 vegetative cover requirement. At minimum, 30% of the site must have vegetative cover. The project maintains 45% of the lot for vegetative cover. This topic will be further addressed in the density bonus discussion.

A lighting plan was not submitted, but the narrative for USE2016-0018 states that lighting would be recessed under carport roofs and cast down at door entries and stairs (Attachment A). Condition 5 of USE2016-0018 requires, "Prior to issuance of a building permit, the applicant shall show any exterior lighting, which must be downward-directed to minimize horizontal glare." A site visit performed on January 10, 2018, verified that lighting has been provided at carports, stairs, and doors, and glare has been minimized by roofs and siding (Attachment E). Staff recommends that this condition also be applied to the 3 additional units.

Traffic

The staff report for USE2016-0018 evaluated traffic generated by 51 units. The proposed 51 units have projected 296 average daily trips (ADT). The 48 units have projected 279 ADT. These estimates were calculated by using the 2012 Institute of Transportation Engineers Trip Generation Manual 9th Edition Volume 2; Land Use: 230 Residential Condominium/ Townhouse. According to 49.40.300(a)(3), developments having an ADT between 250 and 500 may require

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the developer to submit a traffic impact analysis to determine the project's impact to existing traffic volume. When reviewing USE2016-0018, the CDD Director determined that the existing traffic volume of Riverside Drive will not be negatively affected by 51 units, and the road can adequately capture the additional traffic load.

A 5 ft. concrete sidewalk extending from the site's driveway along Riverside Drive to a crosswalk at Pinedale Street was required through the density bonus process and will comply with conditions of USE2016-0018. The sidewalk will be further addressed in the density bonus discussion.

Parking and Circulation

CBJ49.40.210 –Table of Minimum Parking Standards requires 1.75 spaces per two bedroom units and two spaces per three bedroom units. For USE2016-0018, a total of 84 parking spaces were required and four of those are required to be van accessible. According to the plan submitted and approved, the applicant provided 100 parking spaces, eight of which are van accessible spaces. The addition of three three-bedroom units requires an additional six parking spaces, for a total of 90 required spaces. No additional van accessible spaces are needed. The revised parking plan provides 95 parking spaces, six of which are van accessible spaces.

All parking and circulation areas will be paved and striped prior to receiving the certificate of occupancy. The proposed building will have a carport, and each unit will have one assigned carport space and one uncovered space. The new building will not interfere with vehicle circulation or dedication of required parking spaces (Attachment B). Parking lot circulation and screening was discussed thoroughly for USE 2016-0018, and no significant changes are proposed with the provision of 3 additional units.

Noise

There will be no significant difference in noise levels between the approved 48 units and proposed 51 units. Most noise generated by the site will be from vehicle circulation from residents, trash-pickup, snow plowing, and mail delivery. As indicated earlier, much of the vehicular noise will be contained within the site because of the fences and the centrally-located parking area. The proposed development is not expected to create noise impacts to the neighborhood beyond those expected in D-15 zoning district.

Public Health or Safety

The structures meet all zoning requirements for height and setbacks and will meet all applicable building and fire code standards. Fire vehicle access to the property will be via Riverside Drive. The proposed building will, like the previously approved buildings, provide automatic sprinkler systems for fire suppression. The sidewalk and crosswalk will safely guide pedestrians across

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Riverside Drive to an existing sidewalk because the street has low traffic speeds between 20 mph and 25 mph. The striping and signage will conform to the Alaska Traffic Manual and inform drivers of the presence of pedestrians.

Habitat

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. The applicant has already posted a \$12,500 bond with CBJ to guarantee that landscaping and vegetative cover required by USE2016-0018 will be completed.

Property Value or Neighborhood Harmony

The majority of the neighborhood consists of single-family homes, but the subject lot is zoned D-15 and thus intended for higher density development. The purpose of the D-15 zoning district according to CBJ 49.25.210 is:

D10 and D15...to accommodate primarily multi-family residential development at 10 to 15 dwelling units per acre respectively. These are- relatively low density multi-family zoning districts.

Property value and neighborhood harmony will be upheld by continuing to enforce conditions of USE2016-0018. Buffers at the north and south ends of the parking lot and location of buildings along Riverside Drive will mitigate noise and light disturbance. Snow removal has been and will continue to be confined to the property. The proposed building has same maximum allowed building height of 35 ft. as the single-family homes in the same zoning district. Additionally, the CBJ Assessor has indicated that the addition of 3 more units will not have a negative impact to property values (Attachment J).

Conformity with Adopted Plans

The proposed total of 51 units is consistent with the Medium Density Residential (MDR) land use designation outlined in the CBJ 2013 Comprehensive Plan. MDR is defined as urban lands for multifamily dwellings with a density of 5-20 units per acre. The presence of 51 units results in the site having an overall density of 16.77 dwelling units per acre.

The planned sidewalk along the west edge of Riverside Drive and the crosswalk at Pinedale Street meet 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.

Furthermore, the Comprehensive Plan provides policies to encourage the development of more

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housing:

Policy 4.8. To balance the protection and preservation of the character and quality of life of existing neighborhoods within the urban service area while providing opportunities for a mixture of new housing types.

Policy 10.1. To facilitate availability of sufficient land with adequate public facilities and services for a range of housing types and densities to enable the public and private sectors to provide affordable housing opportunities for all Juneau residents.

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.

Density Bonus

Per 49.60.140, an applicant proposing a major development may receive a 10% increase to the maximum allowed density when additional, non-required features are provided. The Planning Commission shall award the bonus if those features are found to be appropriate. The applicant must provide enough bonus features to accrue a minimum of seven points.

Per the staff report for USE2016-0018, nine points were earned, and the recommended density bonus was a total of 51 units (Attachment I). As stated previously, the applicant indicated he only intended to construct 48 units, and that is the number of units the Commission approved. He is now seeking the additional three units that were earned through the density bonus. The 51-unit bonus may still be recommended if the current proposal provides sufficient amenities to merit that bonus.

1) 49.60.200 Sensitive Area, Section 1 states: “Bonus points for interests in land which protect additional land within or adjacent to such sensitive areas beyond that which is required in chapter 49.70.” This feature is referenced to Title 04 020.010(a)(1).

Title 04 020.010(a)(1) states “Bonus points for the conveyance, dedication or reservation of interests in land which protect additional land within or adjacent to such sensitive areas beyond that which is required in chapter 49.70.”

To meet this criterion, the applicant has preserved the area between the 50-foot streamside setback and the rear of the four buildings along the Mendenhall River. This width of this green space 320 ft. and the depth ranges between 16 ft. and 40 ft. The total area is approximately 10,000 square feet. The applicant also intends to record a no-development easement for this green space. This no-development easement was required with the approval of the bonus provisions for USE 2016-0018.

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Title 04 CBJ 020.010(b)(1) allows a maximum of four points. Applicant was awarded two points. Staff recommends two points because the preserved area is unchanged from the earlier proposal.

2) 49.60.210 Non-vehicular Transportation states: “A development in the urban service area may be awarded bonus points for pedestrian paths, sidewalks, bike paths, and other pedestrian improvements beyond that required.” This feature is referenced to Title 04 025.010 (a).

Through USE2016-0018, staff recommended the applicant provide a new pedestrian connection on the site to the adjacent Riverside Baptist Church, a new sidewalk from the project’s driveway to the church driveway, and a new crosswalk from the church driveway to the existing sidewalk at Pinedale.

During the hearing, the church pastor expressed that he did not want a pedestrian connection from the site to the church property, nor a sidewalk and crosswalk to meet the church driveway. The applicant stated that he would be agreeable to not constructing the on-site pedestrian connection, as it was unnecessary to earning the minimum number of points for the density bonus. Staff affirmed that the pedestrian connection was not needed for the density bonus. Staff still recommended the sidewalk and crosswalk in the public right-of-way from the condominium development driveway to the corner of Pinedale. A crosswalk at an intersection is the most intuitive and useful for drivers, thus more safe for pedestrians. This is why the sidewalk crosses in front of the church, so as to be directly across the street from the intersection of Pinedale and Riverside Drive.

However, the Commission did not amend the recommended conditions regarding the pedestrian connection, sidewalk, or crosswalk. The on-site pedestrian path, sidewalk, and crosswalk are required.

Title 04 CBJ 025.010 (b) allows a maximum of five points. The applicant was awarded five points; two points for the connection to the church site and three points for the sidewalk and crosswalk. The two points for the on-site pedestrian path are not needed to earn the 10% density bonus. Staff recommends removing this requirement from the development based on the concerns expressed by both the applicant and the adjacent property owner during the hearing for USE2016-0018.

3) 49.60.280 Vegetative Cover states: “Multifamily, industrial and commercial development maintaining more than the minimum required percentage of a site in vegetation may be awarded bonus points.” This feature is referenced to Title 04 045.020 (a).

When 45% or more of the site has vegetative cover, two bonus points are earned. The D-15 district requires 30% of the lot be maintained with live vegetative cover (CBJ 49.50.300). For this

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site a total of 39,726 square feet of vegetative cover is required. According to the application materials, 59,590 square feet, or 45% of the site, of vegetative cover will be provided. The bonus points were awarded. The applicant has already posted a \$12,500 bond with CBJ to guarantee that landscaping and vegetative cover required by USE2016-0018 would be completed. The proposed building will not change the percentage of vegetative cover because it will be located in an area that was already considered to not be a part of the vegetative area.

Bonus point summary – Staff recommends a total of seven bonus points:

1) 49.60.200 Sensitive Area, Section 1:	2 Points
2) 49.60.200 Non-vehicular Transportation, Section 2:	3 Points
3) 49.60.280 Vegetative Cover, Section 3:	<u>2 Points</u>
	7 Points

The minimum number of bonus points for the 10% density bonus is seven. The applicant's current proposal continues to provide the amenities that previously merited seven points. Staff previously recommended nine bonus points, two of which were for the on-site pedestrian path, which staff is now recommending not be required. The requirements for the 10% density bonus are met. Staff recommends the Planning Commission approve three additional units for a total of 51 units.

FINDINGS

CBJ 49.15.330(e)(1), Review of Director's Determinations, states that the Planning Commission shall review the Director's report to consider:

1. Whether the application is complete;
2. Whether the proposed use is appropriate according to the Table of Permissible Uses; and,
3. Whether the development as proposed will comply with the other requirements of this chapter.

The Commission shall adopt the Director's determination on the three items above unless it finds, by a preponderance of the evidence, that the Director's determination was in error, and states its reasoning for each finding with particularity.

CBJ 49.15.330 (f), Commission Determinations, states that even if the Commission adopts the Director's determination, it may nonetheless deny or condition the permit if it concludes, based upon its own independent review of the information submitted at the public hearing, that the development will more probably than not:

1. Materially endanger the public health or safety;

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2. Substantially decrease the value of or be out of harmony with property in the neighboring area; or,
3. Not be in general conformity with the comprehensive plan, thoroughfare plan, or other officially adopted plans.

Per CBJ 49.15.330 (e) & (f), Review of Director's & Commission's Determinations, the Director makes the following findings on the proposed development:

1. Is the application for the requested Conditional Use Permit complete?

Yes. Staff finds the application contains the information necessary to conduct full review of the proposed operations. The application submittal by the applicant, including the appropriate fees, substantially conforms to the requirements of CBJ Chapter 49.15.

2. Is the proposed use appropriate according to the Table of Permissible Uses?

Yes. The requested permit is appropriate according to the Table of Permissible Uses. The permit is listed at CBJ §49.25.300, Section 1.300 for the D-15 zoning district.

3. Will the proposed development comply with the other requirements of this chapter?

Yes. The proposed development complies with the other requirements of this chapter. Public notice of this project was provided in the January 12, 2018 and January 22, 2018 issues of the Juneau Empire's "Your Municipality" section, and a Notice of Public Hearing was mailed to all property owners within 500 feet of the subject parcel. Additionally, a public notice sign was posted on the subject parcel, visible from the public right-of-way. Additionally, the proposal has earned 7 bonus points for a 10% density bonus per CBJ 49.60.140.

4. Will the proposed development materially endanger the public health or safety?

No. Based on the above analysis the proposed development, with conditions, will not endanger the public health and safety.

5. Will the proposed development substantially decrease the value of or be out of harmony with property in the neighboring area?

No. Based on the above analysis the use, with conditions, will maintain values and will be in harmony with the neighboring area.

6. Will the proposed development be in general conformity with the land use plan, thoroughfare plan, or other officially adopted plans?

Yes. As discussed above, the proposed development is in general conformity with the 2013 Comprehensive Plan, particularly Policies 4.1, 4.2, 4.6, 6.2 and 10.3, and the Non-Motorized Transportation Plan.

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Per CBJ 49.70.900 (b)(3), General Provisions, the Director makes the following Juneau Coastal Management Program consistency determination:

7. Will the proposed development comply with the Juneau Coastal Management Program?

Yes. As discussed above and with conditions, the proposal will comply with the streamside setback of the Mendenhall River and minimize non-point pollution from entering the river.

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)

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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)

5/30/16 Email from Applicant to CDD Staff

Re: Condos on Riverside Drive.

The anticipated layout will have two rows of four buildings paralleling Riverside Drive. The decks and view windows for four buildings will face Mendenhall River and four buildings will face Riverside Drive. Thus from Riverside Drive the condominiums will appear as four buildings at a similar spacing as to the surrounding residences. Building access, carports and additional parking will be located between the two rows of buildings. This will screen the neighborhood from seeing the parking as well as contain the light from the vehicle headlights. The north and south ends of the parking lot will be screened along the property line to minimize headlights shining in those directions. The screening will likely be either a fence or shrubbery. Centering the driveway between the middle two buildings will align the driveway with a retaining wall and tall shrubbery across Riverside Drive. This will minimize headlights shining into neighboring homes as the vehicles leave the property.

We anticipate building 2 bedroom units which require 1.75 parking spaces / unit. We will provide each unit with one covered carport space with the remaining additional parking located in two rows between the two rows of buildings. With construction of 46 units, there would be 81 required parking spaces. We anticipate providing 100 parking spaces. Two parking spaces for each unit plus 8 ADA van accessible handicap parking spaces.

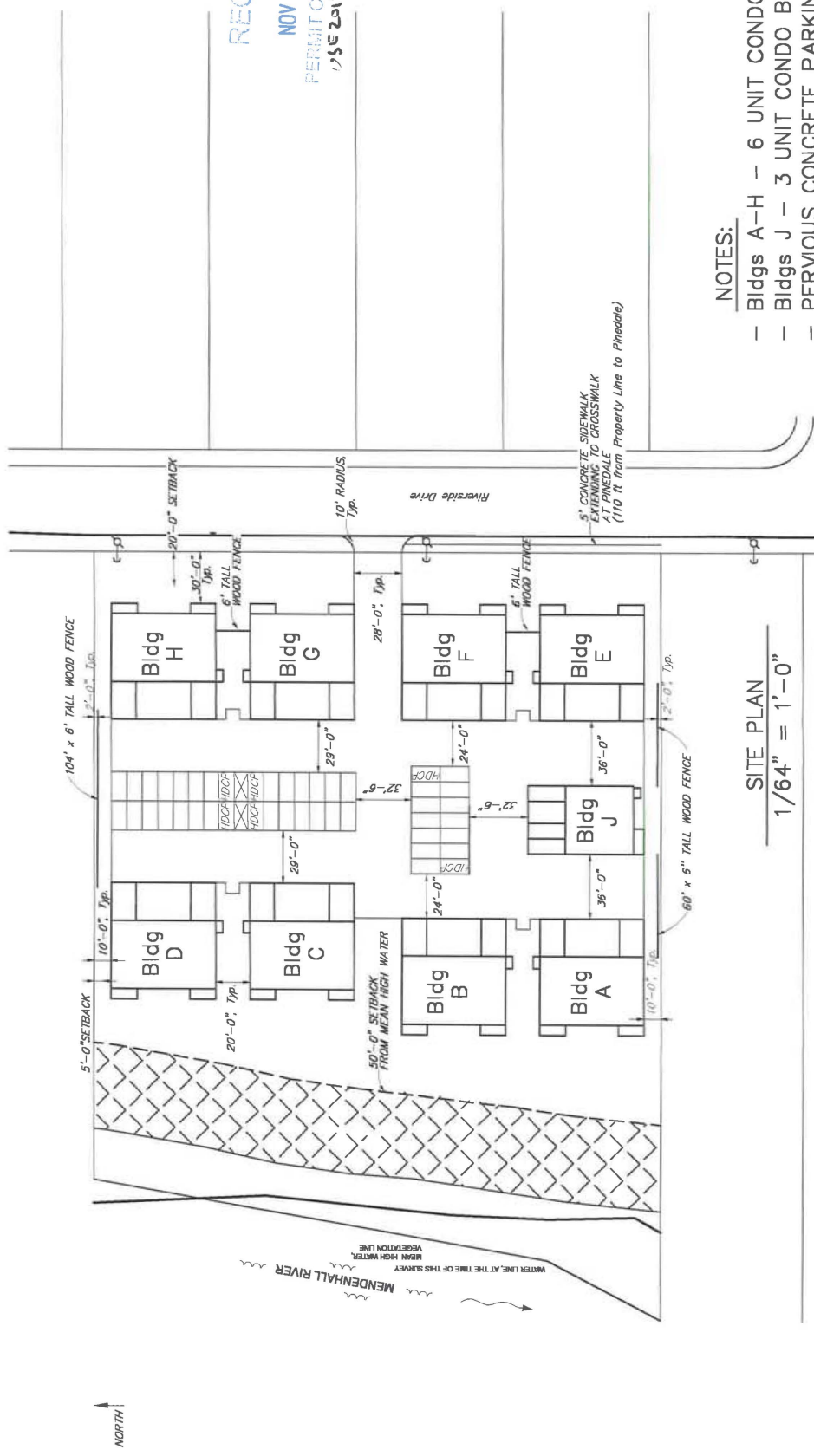
A raised sidewalk will parallel the driveway. It will likely be located on the north side of the driveway to avoid the utility pole. I anticipate placing the mailboxes along the sidewalk. The mail person could then deliver the mail off of Riverside Drive and the residents could collect their mail from the sidewalk. The mailbox location is subject to approval by the US Postmaster and will need to fall within the USPS limitations.

Site lighting is anticipated to be located between to two rows of buildings. Similar to previous projects, each carport space will be lighted with a LED recessed can light below the carport roof. The entries and stair will be lighted with a building mounted fixture on each level. The fixtures will provide sufficient light for the residents while trying to minimize brightening the neighborhood.

Trash collection will be in the form of several dumpsters spaced around the site between buildings to provide easy access for the residents. Trash collection would occur from within the additional parking area between the buildings, away from Riverside Drive.

Snow storage will occur in a number of areas. Ample area will be provided between the buildings and carports to store piled snow. The row of buildings along the river will be located well back of the no development zone. As such, additional area could be used to store the snow by pushing the snow further between the buildings. To minimize the impacts of drainage, provide rainwater infiltration, snow melt infiltration, we anticipate again utilizing pervious concrete pavement. While providing a hard parking and use structure, the pervious pavement accepts and controls runoff instead of creating additional areas of reduced infiltration. The pervious pavement will provide infiltration capacity as opposed to draining the runoff directly towards the Mendenhall River.

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NOTES:

- Bldgs A-H - 6 UNIT CONDO BUILDINGS
- Bldgs J - 3 UNIT CONDO BUILDINGS
- PERVIOUS CONCRETE PARKING
- 95 PARKING SPOTS (91 spots reqd.)

SITE PLAN
1/64" = 1'-0"

CONSTELLATION DEVELOPMENT

Lots 9-12

Riverview Acres Subdiv

SITE PLAN

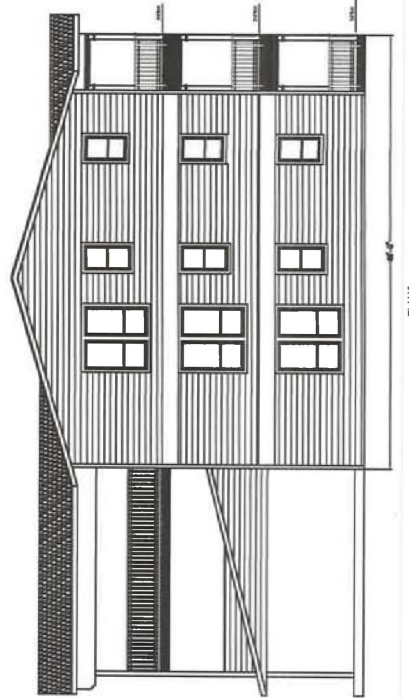
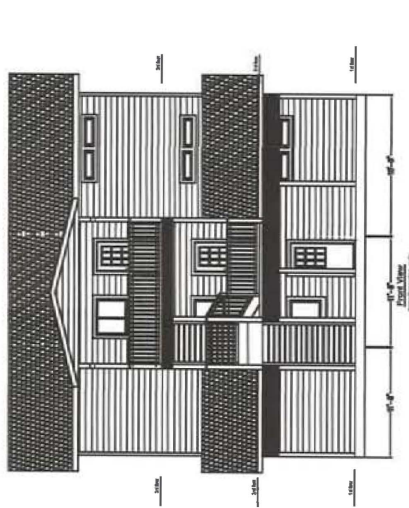
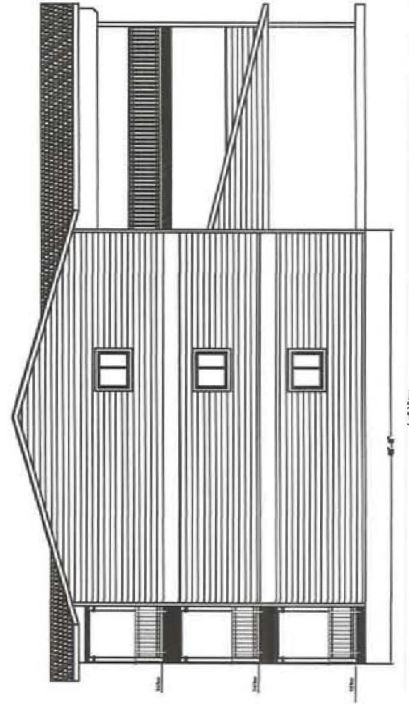
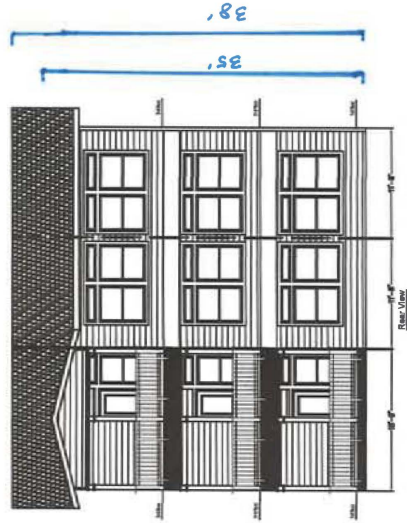
10040 Lico Drive
Jensen, AK 99071
907-381-3118

RECEIVED

NOV 21 2017

PERMIT CENTER/CDD

USE 20170027



Lots 9-12

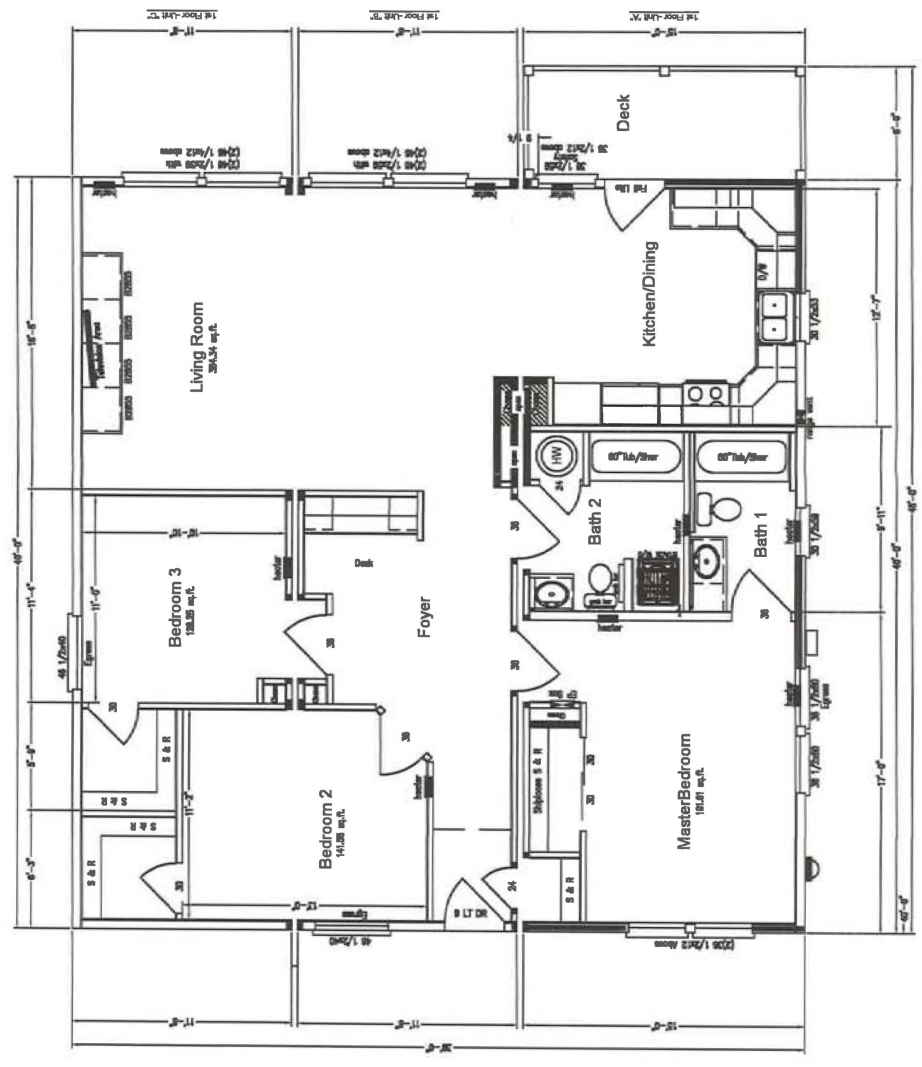
Riverview Acres Subdiv

BUILDING J ELEVATION

CONSTELLATION DEVELOPMENT

10840 Ulster Drive
Atlanta, GA 30328
(404) 331-3118

RECEIVED
NOV 21 2017
PERMIT CENTER/CDD
USG 2017-0027



CONSTELLATION DEVELOPMENT

Lots 9-12

Riverview Acres Subdiv

BUILDING J FLOOR PLAN

10840 Licor Drive
Austin, TX 78758
800-321-3118



Overview of site



Access



Church and Development Side-by-side



Front door light



Mendenhall River setback and additional buffer

Amy Liu

From: PC_Comments
Sent: Tuesday, January 02, 2018 7:52 AM
To: Amy Liu
Cc: Brenwynne Grigg
Subject: FW: Riverside Condos Expansion Case #: USE2017 0027

From: Laura Brooks [<mailto:laurabroox@yahoo.com>]
Sent: Sunday, December 31, 2017 2:40 PM
To: PC_Comments
Subject: Riverside Condos Expansion Case #: USE2017 0027

Dear Planner and/or Commissioners:

I am a member of Riverside Baptist Church, which is next door to the Riverside Condos at 4401 Riverside Drive. We are very concerned about the increased population density in this previously single family and zero lot line area. The population density of the condominiums already exceeds the norm for the area. More units will make it even more congested.

We are also concerned about how additional units will affect the parking situation in the complex. If more condos are built, it will reduce the availability of parking for residents and visitors in the complex. Because our church is next door and has a large parking lot, unauthorized people may park in our lot, which is a potential liability issue for us. We want to be welcoming, but unauthorized parking may force us to put up a gate and no parking signs and possibly have violators towed, which would incur additional expense for our small congregation.

Problems with people not affiliated with our church getting hurt on our property or damaging church property could cause increased insurance costs. With more tightly packed neighbors next door, there is increased likelihood of trespassing, vandalism, and other property crimes.

We also have traffic concerns. Because of additional traffic from the condos, it can sometimes be difficult to get in and out of our parking lot, which would be worsened by increasing the number of units.

Thank you for the opportunity to share our concerns.

Laura Maynard Brooks
 3042 Wood Duck Avenue
 Juneau, AK 99801
 (907) 500-7060

Sent from Yahoo Mail on Android

Amy Liu

From: PC_Comments
Sent: Tuesday, January 02, 2018 7:52 AM
To: Amy Liu
Cc: Brenwynne Grigg
Subject: FW: Conditional Use Permit Riverside Dr.

From: JOHN SCHWINGHAMMER [<mailto:swing@gci.net>]
Sent: Thursday, December 28, 2017 11:54 AM
To: PC_Comments
Subject: Conditional Use Permit Riverside Dr.

To: Amy Liu,Planner

I along with several of my neighbors in the Riverside Dr. area affected by the proposed expansion of 4401 Riverside Dr.have several concerns. These include already- experienced increased levels of traffic,litter, and overall noise issues.Have any CBJ or state studies been conducted on these and other impact issues? A quick observational walk along the Mendenhall River would reveal a situation that does not bode well.Prior to their complete removal, the river bank was supported and reinforced by several glacial-valley recession timber.At least one tree featured an existing bald eagle nest that is gone,site under water.Frankly,how can this property realistically support three units?

As evidenced by the emergence of at least four "For Sale" signs,this development has already produced a profound negative human-impact effect.While conceding and acknowledging the owner's intentions and alleged rights,I feel some consideration should be given to many residences,recent and long-time who have had their lives disrupted and property values driven down.I hope to expound on these issues Jan.23.

Sincerely,
 John T.Schwinghammer
 4312 Riverside Dr,
 Juneau,Ak. 99801
 907-789-2704

RE: USE2017 0027
Parcel: 5B2501510000

Planning Commission;

As a member of Riverside Baptist Church I am concerned about the purposed three additional buildings being considered for 4401 Riverside Drive, also known as Riverside Condominiums. My concerns are as follows:

- 1) Parking: When the project was first placed before the commission the subject of parking was addressed. At that time there were concerns of enough parking spaces for the current units being planned. With this new proposal, do I understand that the three additional buildings are to have the required parking spaces also; two per unit? In speaking with several of the current tenants the parking situation is deplorable before any additional buildings and will be much worse if they are allowed to be constructed.

The original plans include additional parking spaces, will these new building take up that available area so the extra or "guest" parking spaces are eliminated?

The church is concerned that with the lack of appropriate parking in the complex and that the overflow will use the church's parking area, especially those units that are closest to the church. This could develop into a liability issue for the church and also a financial one if we have to tow vehicles. We pride ourselves on being a friendly church and would now want to place a fence and gate at the entrance of our property to keep neighborhood parkers out.

- 2) Drainage: In the construction of the present condominiums the site prep developed is at a much higher elevation than the church site. I am concerned that the additional buildings would make it more difficult for snow removal and rain water to drain correctly for the site and flow onto the church site. I am requesting that this be reviewed, addressed and changed if need be.
- 3) A presumption of the developer that the request for additional units would be passed by the Board: Today as I reviewing the latest MLS listing I found that the developer is already advertising the additional units for sale. Now the listing is for units that will be ready in June of 2018 so I assume these are the buildings already approved and not yet built. But, the listing does say, "New Riverside Condominiums for sale on the banks of the Mendenhall River. The estimated completion date for this unit is June 2018. More units are in the development stages.

These Condo's feature covered carports. . . ." A little too soon to be advertising units that have not even been presented to the board?

We as a church are trying to be good neighbors with the current development and developer. We are letting the construction crew do some staging on the back of our property, and surplus soil from the digging of foundation has been given by the developer to help us level the back of our site for future development we have planned. The developer will in the future place a fence between the church property and the condo site. But the addition of three buildings is just too much density for that site.

Sincerely,
Dora Prince, Treasurer
Riverside Baptist Church
4395 Riverside Dr. Juneau AK

Amy Liu

From: PC_Comments
Sent: Tuesday, January 02, 2018 3:21 PM
To: Amy Liu; 'solidhope@hotmail.com'
Subject: FW: Riverside Dr. Case USE2017 0027

Hello Judy,

I'm forwarding your email to Amy Liu, which is the planner assigned to this case. She will be the most informed to answer your questions.

Thank you

CDD Admin

From: Judy Miller [<mailto:SolidHope@hotmail.com>]
Sent: Tuesday, January 2, 2018 3:16 PM
To: PC_Comments
Subject: Fw: Riverside Dr. Case USE2017 0027

I have not heard back from you. The flyer was sent just a few days before Christmas, and the comments are due the day after New Year's Day (only 13 days, including today and the day postmarked.) That's really short, and lots of people are not available and/or very busy during this time. Is this being done like this to come under the radar of local residents?

During a drive through of the property, it appears each condo has one (1) only parking spot. Four structures line the river in the west. Two structures are on the eastern edge lining the main road. The drive is next to the first unit built. So far, that's 6 buildings each with 6 condos for 36 units. We were told originally there were going to be 48 or 54 condos, which would be 8 or 9 buildings, unless the city allows more than 3 stories in some.

I realize this is past 3 pm, but I was hoping for a response to the first email.

Thank you,

From: Miller, Judith G (DPS) <judith.miller@alaska.gov>
Sent: Tuesday, January 2, 2018 11:37 AM
To: solidhope@hotmail.com
Subject: Riverside Dr. Case USE2017 0027

Regarding Case No USE2017 0027
Parcel No 5B2501510000

Please send details regarding (as is) and planned construction under the most recent

Conditional Use Permit and the proposed plans regarding 3 additional units at 4401 Riverside Drive to me at solidhope@hotmail.com so I can make an informed comment.

I want to know how many units are under the current Conditional Use Permit, and how many more (and whether 2, 3 or 4-bedroom) units will be constructed.

I want to know if there will be more or potentially more issues on sewer lines, parking, internet service (GCI) and traffic.

How will this affect traffic, parking, and snow removal? Will the city commit to clear the snow berms from the middle of the road across from the property? For the last years, the City has not removed the snow but formed a berm down the center, forcing drivers into the bike lanes; to make U-turns at intersections regardless of visibility (looking for headlight glow [if headlights are used], as drivers in cars and low vehicles can't see through or over snow berms to see if cars are coming and it's safe to do a U-turn); and regardless of tightness in making a U-turn if driver is in a big rig such as truck or van. Drivers in cars may not see kids on bikes.

Are all units sold that are currently started/finished? Why not hold off until spring and see if this can be dealt with at that time?

These were supposed to be for people wanting to live near the schools, but 2-bedrooms are basically only good for single parent with a child or two of same gender, or childless adults. There probably is no elevator, so less elderly retirees will want to move in and age in place. Younger adults usually want to have guests over more often, and guests will need additional parking. There should be room for 3 parking spaces per 2-bedroom unit.

What about river erosion? Rivers move and change landscapes.

Thank you,
Judith Miller

From: Jennifer Mondragon <jen_mondragon@hotmail.com>
Sent: Thursday, January 04, 2018 7:25 PM
To: PC_Comments
Subject: comment on case USE2017 0027

Hello,

I am writing to comment on case USE2017 0027 regarding the additional units at 4401 Riverside Drive. My family lives across the river from this development and we are opposed to building additional units at the location for 2 reasons:

1. Light pollution: Since the condo development has been built, we now have lights that shine into our bedroom at night and disrupt our sleep. Additional units will make it even worse. If the commission decides to approve the permit, then we suggest that a condition of the permit would be to address light pollution and put in place lights that don't shine across the river.
2. Traffic congestion: Additional units at this location will have a negative impact on traffic along Riverside Drive. Several factors cause the traffic to get congested on Riverside, including the stop sign at Tournure St and Mint way and the 4-way stop sign at Riverside and Stephen Richards Drive. Adding more units and more people that live on Riverside Drive will only make these traffic congestion issues worse.

With so many State government jobs being (or in danger of being) cut and jobs moved out of Juneau, the commission needs to think carefully about continuing to permit new houses and condos in Juneau. In my opinion, the additional housing is not needed and the short-term financial benefit to one developer is not worth the negative impacts on the neighborhood.

Thank you for the opportunity to comment.

Jennifer

Subject: FW: Comments for 4401 Riverside Drive

From: Paul Sprenger [<mailto:paul.a.sprenger@gmail.com>]

Sent: Wednesday, January 10, 2018 8:55 PM

To: Amy Liu

Subject: Re: Comments for 4401 Riverside Drive

Ms. Liu,

Thanks for the updated site plan. We had not seen it yet. I'm a new part-time staff member and have been filling in for Dean Blood while he was out (he just returned yesterday). The church was under the impression that a fence was going to be built the whole length of the property line to discourage people from parking on church property and walking back over to the condos. I see on the site plan that just two small sections of fence will be built instead, which is not what we had thought. Is there any other planned buffer between the two properties besides those two sections of fence? We would like to see a buffer the whole length of the property line. Thanks again.

- Paul Sprenger

On Jan 10, 2018, at 9:05 AM, Amy Liu <Amy.Liu@juneau.org> wrote:

Good morning,

An access will not be constructed between the two properties. During the June 28, 2016 Planning Commission meeting, where Permit -0018 was discussed, Dean Blood expressed the church's opposition to a pedestrian connection between the church and the project site. The applicant was agreeable to this because the connection was not necessary for him to earn points needed for the density bonus. As such, a connection is not included in the site plan (see attached).

6' wood fences at the north, east, and south sides of the lot are included in the site plan (see attached). Those fences are expected to minimize any glare from vehicles and make the boundaries of the project site clear. As far as dog walkers go, I cannot speculate whether they are residents from condominiums or any of the neighboring single family homes. If you wish to report specific incidents, I will connect you to a CDD staff member who handles complaints.

I suggest you touch base with your church's administrators, some of whom I believe the applicant has already contacted. Your church administrators may have relevant information about issues already discussed and/or needing to be discussed in a forum. If you gather more updates, feel free to pass them along to me, and I will try to facilitate further communication.

Warm regards,
Amy Liu

From: Paul Sprenger [<mailto:paul.a.sprenger@gmail.com>]

Sent: Tuesday, January 09, 2018 7:07 PM

To: Amy Liu

Subject: Re: Comments for 4401 Riverside Drive

Ms. Liu,

Thank you very much for your response. I do have some remaining concerns regarding a buffer between the church property and Riverside Condos.

The original permit indicated that an access would be constructed between the two properties. Is that still the case? I don't believe the church desires an access between the properties, and would actually prefer the opposite - the construction of a fence between the properties. A buffer such as a fence would help to discourage the use of church property for parking and also use as a dog park. The church property is currently being used by people to walk their dogs, and as more units are constructed the problem will only increase. I believe a fence between the properties will help to discourage both parking and dog walking on church property. Perhaps a formal meeting with the church, Riverside Condos, and CBJ would help to clarify the plans and resolve any issues.

Thank you for your time and consideration.

Sincerely,
Paul Sprenger

On Jan 9, 2018, at 3:28 PM, Amy Liu <Amy.Liu@juneau.org> wrote:

Mr. Sprenger,

Thank you for sharing your comments. Hopefully I can address some of your concerns in my responses below.

Parking

CBJ code requires 1.5 spaces for each 2 bedroom unit, and 2 spaces for each 3 bedroom unit. As such, Riverside Condos is required to have 90 spaces. The current site plan includes 95 spaces, thus satisfying the requirement. Calculations:

1.75 (2 bed unit parking) * 48 (total no. of 2 bed units) = 84

2 (3 bed unit parking) * 3 (total no. of 3 bed units) = 6

Total required parking = 90

Additionally, CBJ code states that there must be at least 4 accessible parking spaces included for a parking requirement between 75-100 spaces. Of the 95 spaces, 6 will be accessible.

Drainage

Let me first clarify that Conditional Use Permit 2017-0027 modifies Conditional Use Permit 2016-0018.

- Permit -0018 was granted to develop condominiums along the north end of Riverside Drive in the D-15 zoning district with a density bonus of 48 units total (increase from standard 46 units total).
- CBJ staff determined and recommended that the maximum density be 51 units. The density decreased after the applicant expressed plans to focus on just 48 units. The intent of Permit -0027 is to use the previously recommended bonus of 51 units.

With that being said, drainage issues were considered during the review of Permit -0018. As a condition of approval, the applicant was required to provide documents supporting a drainage plan. He has since then provided those documents, which were reviewed and approved by General Engineering.

Please feel free to let me know if you have more questions.

Regards,

Amy Liu, Planner
Tel: (907) 586-0764
155 S. Seward St. Juneau, AK 99801
<image001.png>

-----Original Message-----

From: Paul Sprenger [mailto:paul.a.sprenger@gmail.com]
Sent: Tuesday, January 02, 2018 7:11 AM
To: PC_Comments
Subject: Comments for 4401 Riverside Drive

Ms. Amy Liu,

I attend Riverside Baptist Church located at 4395 Riverside Drive, and I have two main concerns with the condos being constructed at 4401 Riverside Drive (Case Number USE2017 0027):

1. Parking. The original submission for the construction plans included additional parking spaces to offset the unit density that is over the city's allowable limit. With the addition of new units, the density will be even higher and I assume that planned parking spaces from the original submission will be eliminated. I am concerned that the project will have a significant lack of adequate parking for all the units. There is the very real potential for the church property to be used by tenants as overflow parking. The best solution would be for the project to provide adequate parking for all the units, which I believe would be 2 spaces per unit plus additional overflow parking for guests. However, I don't believe that is possible within the property limits of the project. If this project moves forward as planned, I suggest some sort of delineation be constructed between the two properties to discourage parking on the church property. One suggestion might be a fence between the properties.

2. Drainage. The condos are being built at a much higher elevation than the church property. I am concerned that drainage will flow down to the church property. I request that an examination of drainage be conducted to ensure that water will properly flow away from the church property.

Thank you.

Sincerely,
Paul Sprenger

Subject:

FW: RE: Attn: Amy Liu, RE: Case No. USE2017 0027 / Parcel 5B2501510000

From: Forsling [<mailto:forsling1@yahoo.com>]**Sent:** Wednesday, January 10, 2018 8:26 PM**To:** Amy Liu**Subject:** Re: RE: Attn: Amy Liu, RE: Case No. USE2017 0027 / Parcel 5B2501510000

Thank you, the data and layout helps a lot.

On Monday, January 8, 2018, 3:52:57 PM AKST, Amy Liu <Amy.Liu@juneau.org> wrote:

Mr. Forsling,

Thanks for sharing your comments.

The notice mailed to all neighbors within 500 ft. of the project site is meant to be an alert rather than a complete informational packet. If the recipient of the notice is interested in learning more, he or she may access that information online or make a request via email or phone call. It seems that you've been proactive about a couple of these options.

We're in the process of finalizing the staff report, and so nothing has been uploaded yet. In the meantime, people have emailed and called me to request more information. You are welcome to do the same. I can provide parts of the application to give a general overview, answer specific questions, etc. I have attached the site plan because you mentioned wanting to know more about layout of the site.

Regarding how many have already been approved, please note the following:

Conditional Use Permit 2017-0027 modifies Conditional Use Permit 2016-0018.

- Permit -0018 was granted to develop condominiums along the north end of Riverside Drive in the D-15 zoning district with a density bonus of 48 units total (increase from standard 46 units total).
- CBJ staff actually determined and recommended that the maximum density bonus be 51 units. The density was approved at 48 units after the applicant expressed plans to build just 48 units at that time. The intent of Permit -0027 is to build up to 51 units, the previously recommended maximum density.

Let me know if you would like to discuss more details.

Regards,
Amy Liu, Planner

From: Forsling [<mailto:forsling1@yahoo.com>]**Sent:** Sunday, January 07, 2018 10:16 AM**To:** PC_Comments**Subject:** Attn: Amy Liu, RE: Case No. USE2017 0027 / Parcel 5B2501510000

The CBJ description of the proposed action is woefully inadequate. Three additional units are proposed - but the PN only shows the lot location on the map - no indication of where they will go on the lot itself, or how many have already been approved. The PN indicates the CBJ website will have more information on the case "(staff report, hearing results, meeting minutes)".

So when the public goes to the website, there are no meeting minutes or hearing results, since the meeting (scheduled for Jan. 23rd) hasn't been held yet. There's no staff report, either, apparently they are giving themselves until 4 hours before the meeting to include public comments! So nothing on the website that was promised on the PN.

Looking further on the website at USE2016 0018, nothing shows up except the agenda for the meeting on January 23rd. No clue as to what that permit was granted for, or what debate/discussion there was for this previous permit. No map, either.

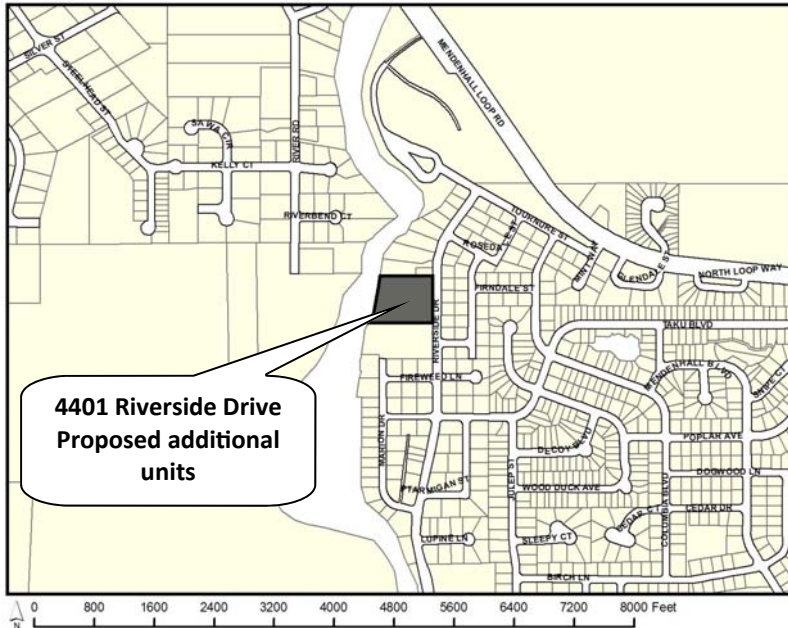
So what sort of public comments are you expecting, when you tell the public nothing specific about the permit request? Please send me some real information and assure me this PN isn't just a bad joke.

Thank you

Peter Forsling

Invitation to Comment

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



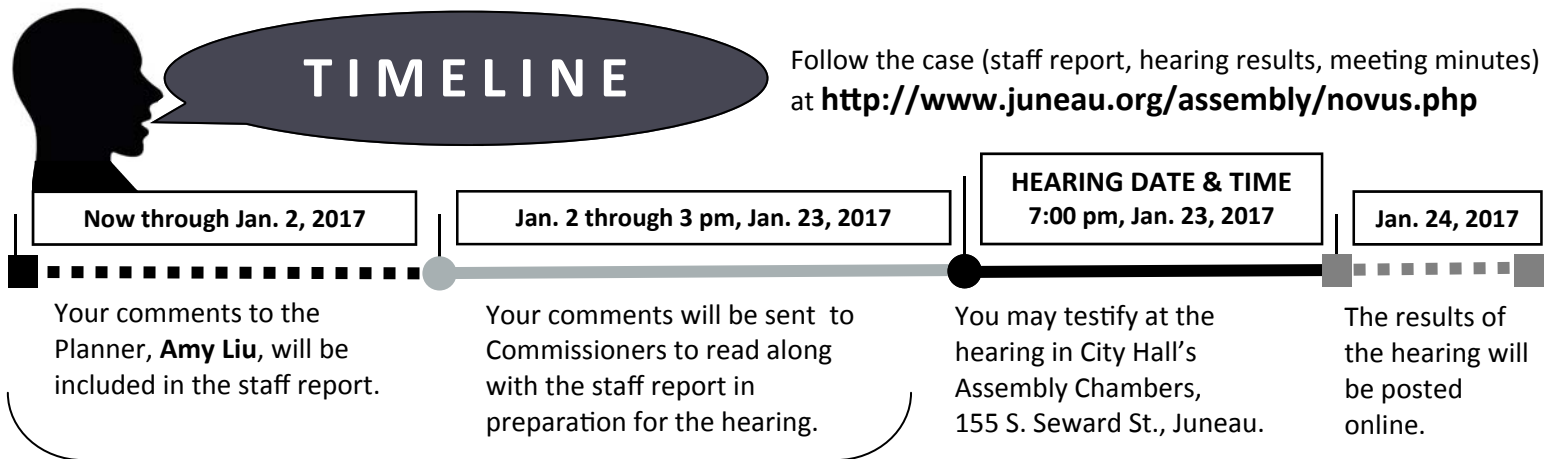
155 S. Seward Street Juneau, Alaska 99801

TO:

An application has been submitted for consideration and public hearing by the Planning Commission for a **Conditional Use Permit** to amend a previously issued **Conditional Use Permit** to include three additional units located at **4401 Riverside Drive** in a **D-15** zone.

TIMELINE

Follow the case (staff report, hearing results, meeting minutes) at <http://www.juneau.org/assembly/novus.php>



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

Case No.: USE2017 0027
Parcel No.: 5B2501510000
CBJ Parcel Viewer: <http://epv.juneau.org>
Date notice was printed: December 20, 2017



Community Development

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

PLANNING COMMISSION NOTICE OF DECISION

Date: June 30, 2016

File No.: USE2016 0018

Juneau Condos LLC
10840 Lilac Drive
Juneau, Alaska 99801

Application For: A Conditional Use Permit for a multifamily condominium development.

Legal Descriptions: RIVERVIEW ACRES LOTS 9, 10, 11, and 12

Property Address: N/A (Vacant property)

Parcel Code Nos.: 5-B25-0-151-007-0, 5-B25-0-151-006-0, 5-B25-0-151-005-0, 5-B25-0-151-004-0

Hearing Date: June 28, 2016

The Planning Commission, at its regular public meeting, adopted the analysis and findings listed in the attached memorandum dated June 16, 2016, and approved the multifamily condominium development to be conducted as described in the project description and project drawings submitted with the application with the following conditions:

Applies to project (regardless of Density Bonus approval)

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.
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.
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.
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:

Attachment H

Juneau Condos LLC
 File No.: USE2016 0018
 June 30, 2016
 Page 2 of 3

- 1) Sight-obscuring fence or vegetation from grade (0 feet) up to six feet; or
 - 2) Sight-obscuring fence or vegetation from grade (0 feet) up to four feet and non-sight-obscuring (porous) fence or vegetation up to six feet in height.
5. Prior to issuance of a building permit, the applicant shall show any exterior lighting, which must be downward-directed to minimize horizontal glare.
 6. 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.
 7. Prior to issuance of CO of last dwelling unit, the parking lot buffers meeting Condition No. 4 shall be in place.
 8. 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.
 9. 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.

Density Bonus Conditions

10. Prior to issuance of a building permit, the applicant shall submit drawings and construction plans showing how the three density bonus features will be constructed in compliance with CBJ Land Use and Street standards.
11. Prior to issuance of a building permit for **48 Units** ~~Units 49—51~~, the applicant shall submit plans and narrative indicating how all conditions will continue to be met. **[Modification to this condition was made by the Planning Commission during the hearing.]**
12. Prior to final CO of the last dwelling unit, the applicant shall coordinate with CDD staff to ensure the three density bonus features as shown on Attachment H are complete. This shall include:
 - a. The applicant shall submit to CDD a recorded easement that preserves the land behind the back buildings, matching Attachment H.
 - b. A site inspection performed by CDD, which concludes the presence of an entrance path to the Bethany Baptist church property.
 - c. A site inspection performed by CDD, which concludes the presence of a sidewalk from the project's driveway to the Bethany Baptist church driveway and a crosswalk from the sidewalk at the

Juneau Condos LLC
File No.: USE2016 0018
June 30, 2016
Page 3 of 3

church connecting to the existing sidewalk at Pinedale Street. Both the sidewalk and crosswalk must comply with CBJ street standards.

13) The developer shall ensure dedicated access for the public from Riverside Drive to Mendenhall River. The dedicated access shall satisfy the provisions CBJ code section 49.35.620. [This condition was added by CDD staff immediately prior to the hearing and then was modified by the Planning Commission during the hearing. As written, this condition reflects the Commission's modification.]

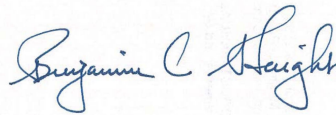
Attachments: June 16, 2016, memorandum from Eric Feldt, Community Development, to the CBJ Planning Commission regarding USE2016 0018.

This Notice of Decision does not authorize construction activity. Prior to starting any project, it is the applicant's responsibility to obtain the required building permits.

This Notice of Decision constitutes a final decision of the CBJ Planning Commission. Appeals must be brought to the CBJ Assembly in accordance with CBJ §01.50.030. Appeals must be filed by 4:30 P.M. on the day twenty days from the date the decision is filed with the City Clerk, pursuant to CBJ §01.50.030 (c). Any action by the applicant in reliance on the decision of the Planning Commission shall be at the risk that the decision may be reversed on appeal (CBJ §49.20.120).

Effective Date: The permit is effective upon approval by the Commission, June 28, 2016.

Expiration Date: The permit will expire 18 months after the effective date, or December 28, 2017, if no Building Permit has been issued and substantial construction progress has not been made in accordance with the plans for which the development permit was authorized. Application for permit extension must be submitted thirty days prior to the expiration date.

Project Planner:

Eric Feldt, Planner
Community Development Department

Ben Haight, Chair
Planning Commission



July 11, 2016

Filed With City Clerk

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. Owners and 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.



Community Development

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

DATE: June 16, 2016

TO: Planning Commission

FROM: Eric Feldt, Planner, AICP, CFM
Community Development Department

FILE NO.: USE2016 0018

PROPOSAL: A Conditional Use Permit for a multifamily development.

GENERAL INFORMATION

Applicant: Juneau Condos LLC
Property Owner: Juneau Condos LLC
Property Address: N/A (Vacant property)
Legal Description: Riverview Acres Lots 9, 10, 11, and 12
Parcel Code Number: 5-B25-0-151-007-0, 5-B25-0-151-006-0, 5-B25-0-151-005-0, and 5-B25-0-151-004-0

Site Sizes: Total: 3.04 Acres (132,461 square feet)
 Lot 9 = 0.71 Acres (31,102 Square Feet)
 Lot 10 = 0.74 Acres (32,286 Square Feet)
 Lot 11 = 0.77 Acres (33,652 Square Feet)
 Lot 12 = 0.81 Acres (35,421 Square Feet)

Comprehensive Plan Future Land Use Designation: Medium Density Residential (MDR)

Zoning: D-15
Utilities: City Water & Sewer
Access: Riverside Drive

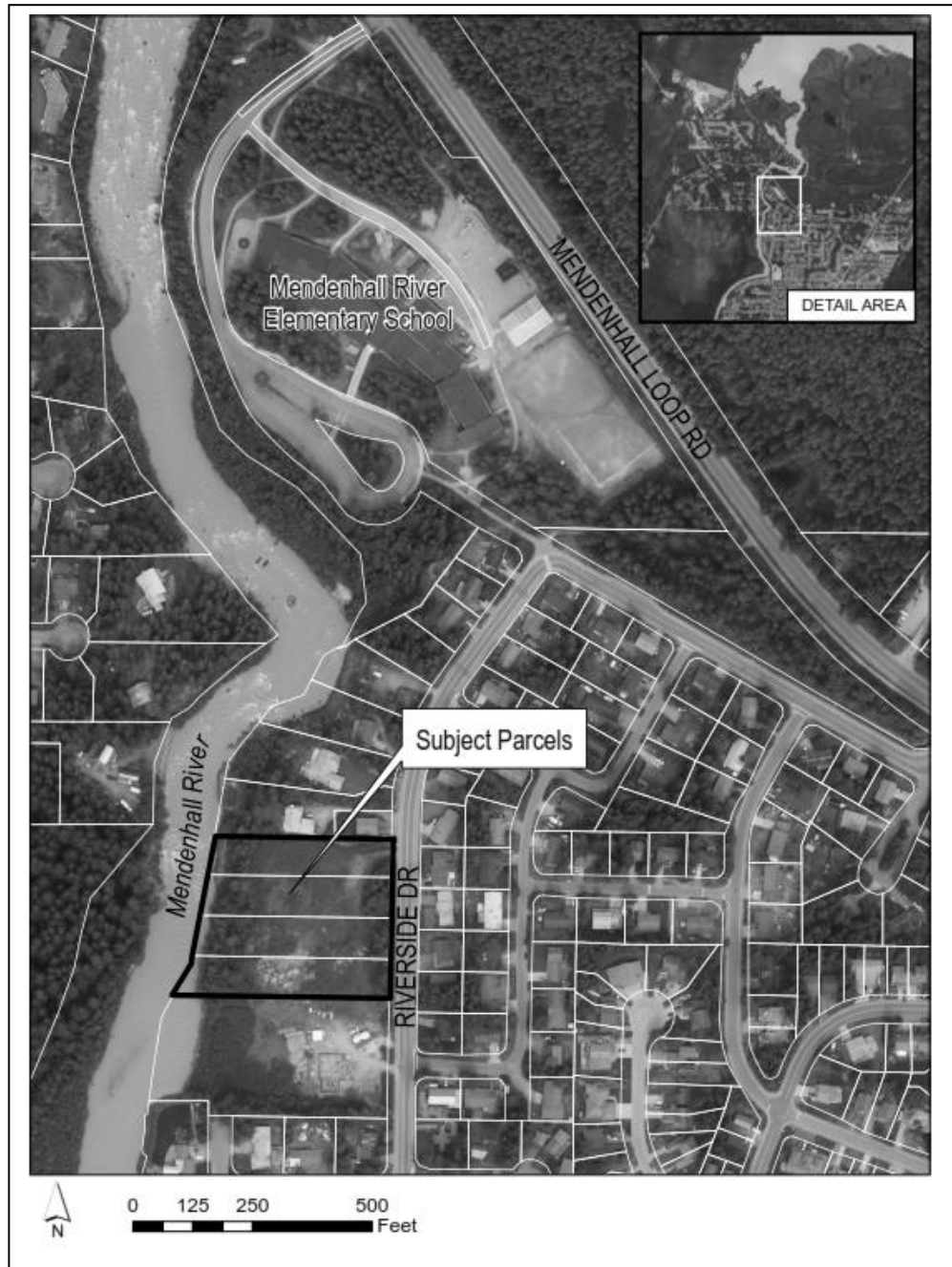
Existing Land Use: Vacant

Surrounding Land Use:

North	- Two-unit Dwelling; D-15; Riverside Dr.
South	- Bethany Baptist Church; D-15; Riverside Dr.
East	- Single Family home; D-15; Riverside Dr.
West	- Mendenhall River; Vacant CBJ land

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Vicinity Map



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ATTACHMENTS

Attachment A - Project Narrative
 Attachment B - Site Plans
 Attachment C - Building Plans
 Attachment D - Buffer Area Locations
 Attachment E - Subdivision Plat
 Attachment F - Bresee St. Condo Pictures
 Attachment G - Public Comment
 Attachment H - Density Bonus Plan
 Attachment I - Public Notice

PROJECT DESCRIPTION

The applicant requests a Conditional Use permit to allow a condominium development along the north end of Riverside Drive in the Mendenhall Valley in the D-15 zoning district. If approved, the applicant can construct 46 units. However, the applicant is also seeking a density bonus to allow a maximum of 51 units, an increase of five units. Further, the applicant will also file a minor subdivision permit to consolidate the four lots into one lot. The project narrative is provided in Attachment A, site plans are provided in Attachment B, and building plans are provided in Attachment C.

BACKGROUND

The project area involves Lots 9, 10, 11, and 12 of Riverview Acres. These are the remaining vacant lots along the west and north end of Riverside Drive. The lots were platted in 1977. The plat is provided in Attachment E. The applicant recently purchased the lots in anticipation of building the subject project.

ANALYSIS

Project Site

As indicated earlier, the site comprises four vacant lots along the east bank of the Mendenhall River. All lots front on Riverside Drive. All lots are relatively flat. There are groupings of trees along the riverbank and street sides, while the middle section consists of grasses and low-lying bushes. There is one existing driveway on the site, located on Lot 9.

The site is located along the Mendenhall River where recent record flooding has occurred. The property was not flooded during those events. The applicant has indicated a desire to armor the bank sometime in the future to lessen any erosion. Furthermore, the mapped 100-year and 500-year flood risk areas are mostly contained within the banks of the river. The floodway

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shown on the subdivision plat is outdated and has been superseded by the current flood map. None of the developed areas will be in the high risk flood zone.

Project Design

The project consists of eight, 3-story condominium buildings. All buildings will look the same and will each contain six units; each unit consisting of two bedrooms, two bathrooms, living and dining rooms, balconies/ porches, and carports. Each unit will have independent exterior access, some accessible via exterior stairs while other units will be at ground level.

The developer recently constructed a similar condominium project at 3235 Bresee Street. The proposed project will look very similar to that project. Pictures of the condominiums at Bresee Street are provided in Attachment F.

Four buildings will be located near and face Riverside Drive, while the other four will be close to and face the Mendenhall River. A surface parking lot will be provided in the middle of the site. This site layout can be seen in the attached site plans (Attachment B). The building's exterior views and floor plans are provided in Attachment C. Except for Building H, all buildings have six dwelling units. Building H will only have four units because the buildings are prebuilt and the maximum allowed dwelling units leaves one building (Building H) containing four units. Because of this, the applicant will provide common rooms in Building H for the condominium association. However, if the applicant's density bonus is approved, the applicant can have 51 units and Building H will consist of six units (the same as the other buildings). If the bonus is denied but the subject Conditional Use permit is approved, the applicant can only have 46 units and Building H will consist of only four units. Staff's review supports the density bonus, which is explained in detail on page 11.

The D-15 zoning district allows up to 15 dwelling units per acre. The surrounding D-15 zoned area is developed primarily with single family houses and duplexes. The D-15 district permits multifamily dwellings, which the project is considered. As stated earlier, the project area consists of four parcels with a combined size of 3.04 acres. Therefore, a maximum of 46 units, rounded up from 45.6, is allowed for the project. The applicant is seeking a density bonus to allow a total of 51 units. The density bonus increases the overall density from 15 units/ acre to 16.77 units/ acre.

The yard setbacks of the D-15 district are detailed below. The density bonus will not change the D-15 yard setbacks. Yard setbacks require buildings to be set back from a specific property line. The applicant's site plan (Attachment B) shows all setback lines.

Yard Setbacks

- Front (Riverside Drive ROW line): 20 feet
- Both Sides (North & South): 5 feet

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- Rear: 20 feet [This is superseded by the 50-foot streamside setback from Mendenhall River (Anadromous Stream)]

The maximum allowed building height in the D-15 zoning district is 35 feet. This allows for a typical three-story building. On a gabled or pitched roof, the height is measured from grade up to the midpoint of the roof line. Therefore, the tip of the gable can be taller than 35 feet (49.25.420). All of the proposed buildings will have a roof midpoint height of 35 feet, and a gable tip height of 38 feet. Therefore, all buildings comply with the maximum allowed height.

The D-15 district requires a minimum of 30% of the property to be maintained as vegetative cover, such as grass, trees, bushes, or other live vegetation. The applicant's submitted vegetative plan (Attachment B) shows a total of 49% of the site to be held as vegetation. Therefore, the project meets this requirement. The applicant's density bonus increases the vegetative cover from 30% (39,726 square feet) to 45% (59,590 square feet). The applicant's plan meets this requirement. Staff recommends as a condition of approval that prior to issuance of a Certificate of Occupancy of the last dwelling unit, the applicant coordinate with CDD staff for a site inspection to verify that the vegetative cover requirement is met. Another recommended condition of approval is to ensure maintenance of the vegetative cover.

The applicant will provide minimal exterior lighting to minimize off-site glare. The only planned exterior lighting at this time is ceiling lights in the carports. The applicant says there will be no lighting in the parking lot, because it would interfere with snow plowing and is not needed. If the applicant does install lighting on the buildings or in the parking lot, it shall be a downward directed light fixture. Staff recommends as a condition of approval that prior to issuance of a building permit, the applicant shall submit a lighting plan illustrating the location and type of exterior lighting proposed for the development. Exterior lighting shall be designed and located to minimize offsite glare.

Traffic

Vehicular

Cars will access the site through a new driveway (see Attachment B). The existing driveway will be abandoned. The new driveway will be located in the middle of the site to provide efficient site circulation to all buildings. Locating the driveway in the middle of the site will cause it to be in line with an existing vegetated retaining wall along the east side of Riverside Drive. Coincidentally, vehicle headlights will be blocked by this wall and minimize headlight nuisance towards the adjacent homes. A photo of this wall is provided in Figure 1. Since this retaining wall and vegetation is located on private property, the homeowner may preserve or enhance it.

The proposal of 46 two-bedroom units has a forecasted vehicle trip volume of 267 average daily trips (ADT). If the density bonus is approved, the applicant's 51 unit count increases the ADT to 296. This was calculated by multiplying the number of units by 5.81 (average daily trips per

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unit). Staff determined the project's ADT by using the 2012 Institute of Transportation Engineers (ITE) Trip Generation Manual 9th Edition Volume 2; Land Use: 230 Residential Condominium/ Townhouse. According to 49.40.300 (a)(3), developments having an ADT between 250 and 500 may require the developer to submit a traffic impact analysis (TIA) to determine the project's impact to existing traffic volume. The CDD director determined that the existing traffic volume of Riverside Drive will not be negatively affected, and the road can adequately capture this additional traffic load.

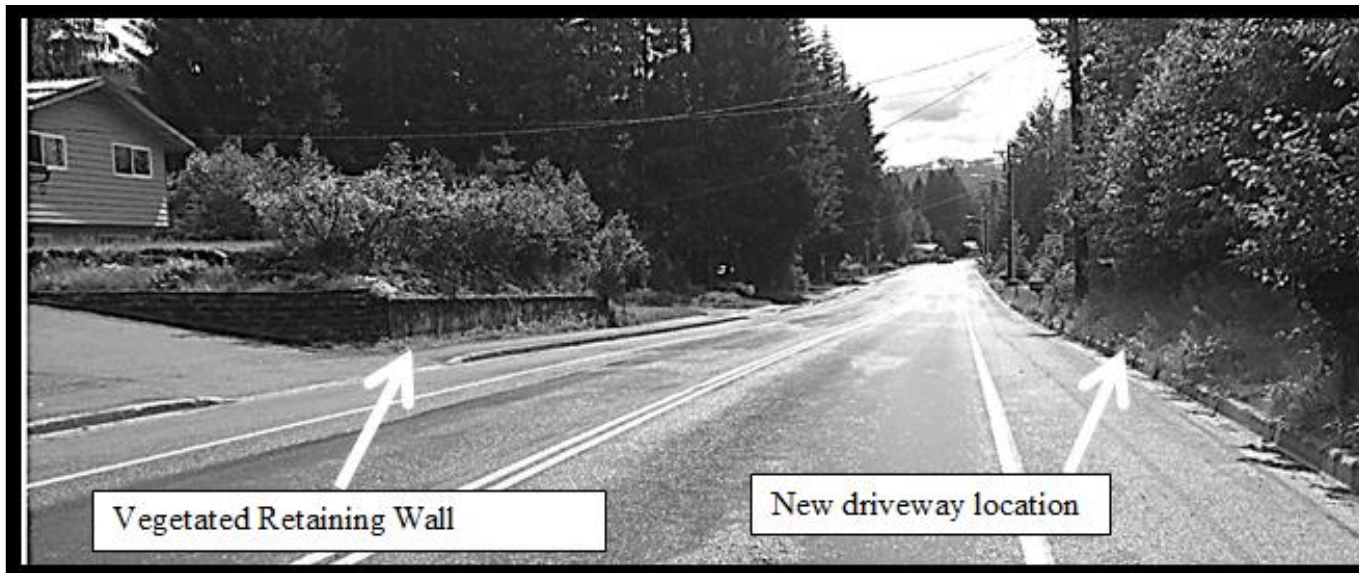


Figure 1. Looking south along Riverside Drive. The project site is to the right. The future driveway will be in line with the vegetated retaining wall left of the street. Picture taken by CDD staff 6/7/16.

Pedestrian

The site is near Mendenhall River Community School, Melvin Park, and other attractions along Riverside Drive. The tenants and guests of the condominium will likely travel to those destinations by foot or bicycle. Ensuring a safe and connected pedestrian network for the development is a goal of the CBJ. To ensure this connection is provided, the applicant will construct a raised pedestrian sidewalk alongside the driveway's entrance within the project site. This sidewalk will then connect to a new sidewalk along the west side of Riverside Drive. The sidewalk will then run southward to the Bethany Baptist Church's driveway and then connect to a new crosswalk at the Pinedale Street and Riverside Drive intersection. The location of the new sidewalk and crosswalk is shown in Figure 2. The new sidewalk and crosswalk is part of the requirement for a density bonus that the applicant is fulfilling. Details of the density bonus are provided on page 11. Pinedale Street is the closet intersection to the project, which is why the applicant chose to install the sidewalk to the south. The crosswalk design will conform to the Alaska Traffic Manual standards. In general, the crosswalk will have two white lines across the whole street and two pedestrian crossings signs, north and south facing. The purpose of the crosswalk is to safely guide pedestrians to an existing sidewalk along the east

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side of Riverside Drive. Staff notes that a sidewalk north from the project site to Mendenhall River Community School is a needed long-term investment and could be funded through the CBJ Capital Improvement Program or other funding sources.

An additional pedestrian feature of the project is a paved connection to the southern site, where the Bethany Baptist Church is located. This will provide easy pedestrian access for any condominium tenants who may attend or work at the church. This, too, is a density bonus feature.



Figure 2. At the intersection of Pinedale St (Right) and Riverside Drive looking north. The Bethany Baptist Church is shown on the left. The solid arrow line represents the new sidewalk location and the dashed line represents the new crosswalk.

Parking and Circulation

As indicated earlier, the parking lot is located in the center of the site, with parking spaces facing the back of the buildings. Each building will have carports, and each unit will have one assigned carport space and one uncovered space. All parking and circulation areas will be paved and striped. The parking requirement for 46 units is 81 spaces and for 51 units is 89 spaces (density bonus). The applicant's plan shows 100 parking spaces. Therefore, the parking requirement is met. See parking calculation, below.

Parking Requirement Calculation

49.40.210 (a) *Table of minimum parking standards. All other Geographic Areas (Not Downtown Juneau or Douglas)*

- Requirement: 1.75 Spaces per two bedrooms

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- Proposal: 46 units (2 bedroom units)
- 1.75 (2-bedroom unit) X 46 (total no. of units)
 = 80.5 round up to **81 required spaces for 46 units**
- 1.75 (2-bedroom unit) X 51 (total no. of units)
 = 89.25 round down to **89 required spaces for 51 units (density bonus)**
- **Project provides 100 spaces**

49.40.210 (b)(3)(A) *Accessible parking spaces.*

- 4 accessible parking spaces for a parking requirement between 75-100 spaces
- Project requires 81 or 89 spaces = **4 accessible spaces required**
- **Project provides 8 accessible spaces**

To reduce glare from the parking lot toward neighbors to the south and north, sight-obscuring buffers at the north and south ends of the parking lot will be installed. This will also lessen the views from adjoining properties of the large parking lot, which can be a negative aesthetic value in a residential neighborhood. The applicant will install either vegetation or a fence as the buffer element. CDD notes that fences tend to provide better blockage of views but are less appealing than vegetation. CDD recommends as a condition of approval that the applicant install a buffer along the north and side ends of the parking lot. The buffer shall be six feet tall, consisting of a sight-obscuring section from 0 to four feet tall and a non-sight-obscuring (porous) section from four to six feet. This design ensures headlight blockage while providing flexibility to encourage tall vegetation or different fence designs. A six-foot tall, sight-obscuring buffer is also permissible, if desired by the applicant. The buffer shall be installed prior to the final inspection of the parking lot or last dwelling unit, whichever comes first. If vegetation is planned during the winter, the applicant may submit a bond for the vegetation and installation to comply with the above condition. This is a typical policy for meeting the vegetative requirement. The bond is released to the applicant once the vegetation is planted.

Snow storage, Drainage, Trash, and Mail

Snow storage and trash containers are planned between the ends of the buildings. Since snow plowing can pick up toxic automobile fluids in parking lots such as oils, coolants, etc., it is critical to prevent snow melting directly into the Mendenhall River. Because the developed areas, including the snow storage areas, are outside of the 50-foot streamside setback, snow melt towards the river will be minimized. Staff recommends as a condition of approval that if snow melt or surface drainage flows toward the river, the project incorporate Best Management Practices (BMP) from the Manual of Stormwater Best Management Practices, produced by the CBJ in partnership with the US Forest & Wildlife Service.

Snow plowing and garbage pick-up typically occur early in the morning and can create headlight glare and nuisance to residences across the street. To minimize this, staff recommends as a condition of approval that a buffer be installed in front of the snow storage or garbage

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container areas. The buffer shall be consistent in design with the parking lot buffer. No buffer is needed if snow storage is located between the back buildings.

Mail boxes for the condominium will be located adjacent to the parking lot, near Riverside Drive.

Surface drainage may be directed in three areas: 1) toward Riverside Drive, 2) toward Mendenhall River, first through a filtration section by using BMPs, and 3) downward drainage with a pervious pavement parking lot element with imported drain rock underneath. Although pervious pavement is rarely used in Juneau, the applicant has found it to be successful in a similar project elsewhere in the Valley. During the winter, water run-off and snow melt from the parking lot will be directed toward the street or the river. Staff recommends as a condition of approval that the applicant use BMP for on-site drainage management, to ensure no toxins are entering any drainage areas.

Noise

With the density bonus resulting in 51 units, the expected project's noise levels will be similar to an apartment/ condominium complex. Most noise generated by the site will be from traffic and general circulation. Noise from deliveries or maintenance such as trash pickup, snow plow, and mail will be typical of apartment/ condominium complexes. As indicated earlier, much of the vehicular noise will be contained within the site because of the centrally-located parking area. The recommended buffers will lessen noise impacts to neighbors. There is no significant difference in noise levels between the 46 and 51 unit proposal because of the recommended conditions of approval.

Public Health or Safety

The health and safety of the public will be preserved with the approval of this project by meeting local building and safety codes during the required building permit process. Each building will provide automatic sprinkler systems for fire suppression. The new sidewalk and crosswalk will safely guide pedestrians across Riverside Drive to an existing sidewalk because the street has low traffic speeds between 20 mph and 25 mph, and the striping and signage will conform to the Alaska Traffic Manual to inform drivers of pedestrians. According to CBJ Engineering, the existing water and sewer lines can accommodate the additional demand from the project.

Habitat

The applicant will preserve habitat by complying with the 50-foot streamside setback along the Mendenhall River. Further, to gain additional density bonus points, the applicant is providing additional land adjacent to the 50-foot setback. This is shown on Attachment H.

To ensure that no construction debris, mud, or other elements during construction enters this

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no-development setback, CDD recommends as a condition of approval that the applicant install a silt fence at the 50-foot setback line prior to issuance of a Building permit for the project. The fence shall remain in place until construction is complete.

There are no other mapped habitats protected by the Land Use Code that could be affected by this project.

Property Value or Neighborhood Harmony

Property value and neighborhood harmony will be preserved with recommended conditions, the applicant's placement of buffers along both ends of the parking lot, locating the driveway to face an existing vegetated retaining wall, designing the project into smaller condominium buildings instead of one large building, and locating the buildings along the street to block headlight glare and traffic noise. Although the majority of the neighborhood consists of single-family homes, it is zoned D-15, and, therefore, can have multiple units on the parcels. All condominium buildings will have the maximum allowed building height (35 feet) as the single-family homes, despite the homes designed as 1- and 2-story buildings.

Public Comment

Staff was contacted by an adjacent property owner with concerns about impacts to the existing sewer line, traffic, aesthetics of the large condominium buildings, balconies facing adjacent homes, public access to the river from the street, drainage, and aesthetics of the parking lot. As addressed earlier, the existing sewer line is expected to accommodate the proposed use. The additional trips can be accommodated by existing street conditions of Riverside Street. The location of the driveway and buffers around the parking lot will minimize headlight glare and visual impacts of the parking lot to adjacent homes.

Staff was also contacted by another homeowner with concerns about access along the Mendenhall River shoreline. Below the Ordinary High Water mark (OHW), the shoreline is owned by the State and, therefore, access by the public is managed by the State. Above the OHW, private property owners control access.

Conformity with Adopted Plans

Comprehensive Plan

The CBJ 2013 Comprehensive Plan provides a 20-year visionary outlook of how the community should grow or be preserved for the future. Neighborhoods are broken into land use designations which guide density and land use for future zoning regulations. The subject lots and neighborhood are located in a Medium Density Residential (MDR) land use designation. In summary, this designation is defined as urban lands for multifamily dwellings with a density of 5-20 units per acre, and commercial uses in scale consistent with a residential neighborhood. The D-15 zoning district allows a maximum density of 15 units per acre, which is the density of the proposal. Therefore, the proposal is consistent with the MDR land use designation and the

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2013 Comprehensive Plan. The density bonus allows 51 units, which results in the site having an overall density of 16.77 dwelling units/ acre. This is consistent with the MDR density range.

The Comprehensive Plan provides policies to encourage the development of more housing. The following policies are germane to the proposal:

Policy 4.8. To balance the protection and preservation of the character and quality of life of existing neighborhoods within the urban service area while providing opportunities for a mixture of new housing types.

Policy 10.1. To facilitate availability of sufficient land with adequate public facilities and services for a range of housing types and densities to enable the public and private sectors to provide affordable housing opportunities for all Juneau residents.

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.

Non-Motorized Transportation Plan

The Juneau Non-Motorized Transportation Plan recommends improvements to pedestrian and bicycle infrastructure to ensure those travelers have a safe and connected means of travel. Along North Riverside Drive, the plan recommends sidewalk improvements. The new sidewalk along the west side of the street and the crosswalk at Pinedale Street will provide safe pedestrian connections to the existing sidewalk along the east side of Riverside Drive. Therefore, the crosswalk and sidewalk along the driveway meet the goal of this plan.

Safe Routes to School Program

Although the Safe Routes to School Program wasn't adopted as a regulatory tool, it does provide recommendations for planning issues around schools such as safe walking conditions for students. The Mendenhall River Community School participated in this program. The school concluded that children walk along Riverside Drive to access the school as well as along areas where no sidewalks exist. The new sidewalk and crosswalk will provide a safer pedestrian connection for the neighborhood.

Lot Consolidation

As stated earlier, the applicant will consolidate all four lots (Lots 9-12) into one to facilitate the project. CDD requires this because the project would otherwise cross multiple property lines. Due to the timing of the project and the value of each lot, the applicant will wait until the subject Conditional Use permit is approved to file the lot consolidation. Staff's preliminary review of consolidating Lots 9-12 results in no change in the allowed use, maximum allowed density, impacts to the neighborhood, or affects to traffic levels. The only change would result in a new legal name and description. Removing the interior property line is only a plat change to the 1977 subdivision plat; it does not require physical changes to the lot. Only the project

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results in physical changes to the lot, and the impacts caused by the proposal have been addressed in the subject memorandum.

Density Bonus

Per 49.60.140, an applicant of a major development may receive a 10% increase to the maximum allowed density when additional, non-required project features are provided. The Planning Commission shall award the bonus if those features are found to be appropriate. The applicant must provide enough bonus features to accrue a minimum of seven bonus points.

The applicant will provide three features to accrue the needed points:

1) **49.60.200 Sensitive Area, Section 1** states: "Bonus points for interests in land which protect additional land within or adjacent to such sensitive areas beyond that which is required in chapter 49.70". This feature is referenced to **Title 04 020.010(a)(1)**.

Title 04 020.010(a)(1) states "Bonus points for the conveyance, dedication or reservation of interests in land which protect additional land within or adjacent to such sensitive areas beyond that which is required in chapter 49.70."

Staff analysis

To meet this criterion, the applicant will preserve the area between the 50-foot streamside setback and the back of the four buildings facing the Mendenhall River. This area is shown as diagonal dashed lines in Attachment H. This area is nearly the width of the site (320' approximately) and varies in depth between 16 feet and 40 feet, for an approximate size of 10,000 square feet. A small jog between Buildings C and B is to accommodate a small pavilion for the condominium association. The pavilion is not proposed at this time and is only a future idea of the applicant. Development would not be permitted in the preserved area. The applicant shall record a no-development easement to ensure this expectation is met. Staff finds the proposed feature meets this criterion. Attachment H and a report stating how the sensitive area will be preserved shall be added to the Homeowner Association (HOA) documents as a condition of approval. Further, the HOA documents shall be submitted to the CDD prior to issuing a Certificate of Occupancy for the first dwelling unit.

04 CBJ 020.010 (b) (1) allows a maximum of 4 points. Staff supports only 2 points due to the relatively small area to be preserved.

Bonus points accrued: 2

2) **49.60.210 Non-vehicular Transportation** states: "A development in the urban service area may be awarded bonus points for pedestrian paths, sidewalks, bike paths, and other pedestrian improvements beyond that required." This feature is referenced to **Title 04**

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025.010 (a).

Title 04 025.010 (a) states “A development in the urban service area may be awarded bonus points for pedestrian paths, sidewalks, bike paths, and other pedestrian improvements beyond that required.” Staff notes that the project is located in the mapped urban service area.

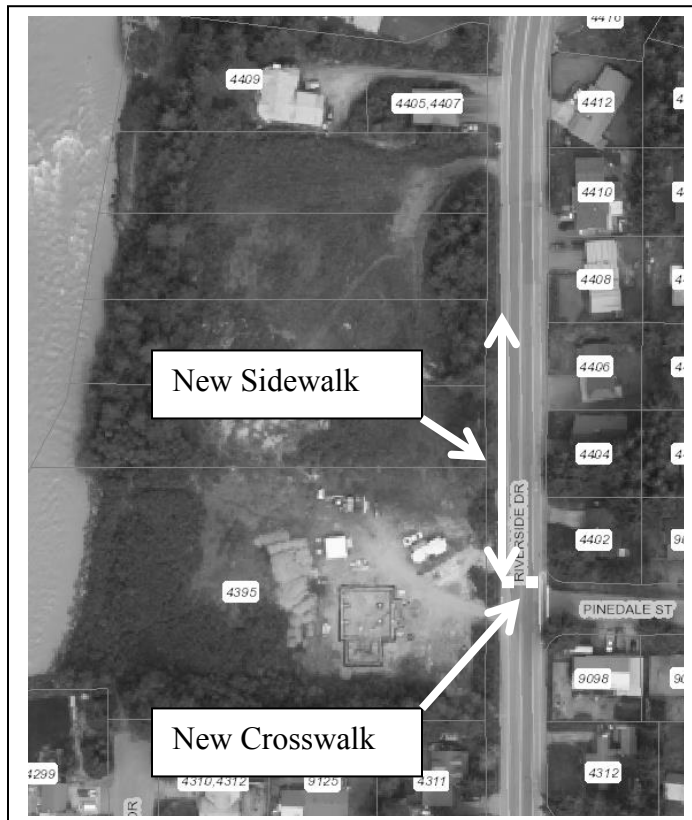


Figure 3. The white, double-headed arrow represents new sidewalk connecting the future condo's driveway to the Bethany Baptist Church driveway, then to a new crosswalk (dashed white line). The aerial photo dates to spring of 2013. The church was under construction at the time of photo.

Staff Analysis

To meet this criterion, the applicant will provide two pedestrian features to earn more points. These two features are shown on Figures 2 and 3.

1) A new pedestrian connection to the adjacent property to the south where the Bethany Baptist Church is located. This will provide quick, easy access for future church patrons or workers. This pathway is shown in Attachment H. The connection shall be a minimum four-foot wide pathway and consist of a durable walking surface material other than soil or dirt. To ensure this criterion is met, Attachment H and a maintenance report of the pathway

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shall be added to the Homeowner Association (HOA) documents. A final site inspection coordinated by the applicant and CDD shall be made to ensure this condition is met.

2) A new sidewalk from the project's driveway southward to the church's driveway connecting to a new crosswalk at Pinedale Street and Riverside Drive. The sidewalk and crosswalk will exist entirely within the City & Borough of Juneau right-of-way. Both elements will be built according to CBJ street standards. This feature will increase pedestrian connectivity and safety in the area.

04 CBJ 025.010 (b) allows a maximum of 5 points. Staff supports the maximum points: 2 points for the connection to the church site and 3 points for the extra-long sidewalk and crosswalk.

Bonus points accrued: 5

3) **49.60.280 Vegetative Cover** states: "Multifamily, industrial and commercial development maintaining more than the minimum required percentage of a site in vegetation may be awarded bonus points." This feature is referenced to **Title 04 045.020 (a)**.

Title 04 045.020 (a) state "Multifamily, commercial, industrial development maintaining more than the minimum required percentage of a site in vegetation may be awarded bonus points." The following subsection (Title 04 045.020 (b)), allows areas including easements, sensitive areas, and open space, retained in natural landscape to be counted toward meeting the additional vegetative requirement. Therefore, the area preserved under density bonus feature #1 is not considered double counting for this density bonus feature.

Staff's Analysis

To meet this criterion, the applicant will maintain 150% of the minimum required vegetative area. This is an increase from 30% (39,726 square feet) to 45% (59,590 square feet). The vegetation may consist of grass, bushes, trees or other live vegetation. This area is shown on Attachment H. If any part of this area is to be disturbed during construction, a re-vegetation plan shall be submitted to CDD prior to issuance of a building permit. Furthermore, a vegetation bond covering the expense of replanting vegetation shall also be submitted to CDD. To ensure this criterion is met, Attachment H and a maintenance report of the vegetated areas shall be added to the Homeowner Association (HOA) documents. The entire HOA document shall be provided to the CDD prior to issuance of a Certificate of Occupancy for the first dwelling unit.

04 CBJ 045.020 (b) allows an automatic 2 points. Staff finds this bonus feature is met, and therefore, gains 2 points.

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Bonus points accrued: 2 for preserving 45% of the site for vegetation.

Total Bonus Point Accrual

#1: 49.60.200 Sensitive Area, Section 1:	2 Points
#2: 49.60.200 Sensitive Area, Section 2:	5 Points
#3: 49.60.280 Vegetative Cover:	<u>2 Points</u>
Total	9 Points

The minimum needed to reach the density bonus is 7, and the applicant's features gain a total of 9 points. The 10% density bonus is met. Staff recommends the Planning Commission approve the density bonus. This results in an increase project dwelling count from 46 to 51 units.

FINDINGS

CBJ §49.15.330 (e)(1), Review of Director's Determinations, states that the Planning Commission shall review the Director's report to consider:

1. Whether the application is complete;
2. Whether the proposed use is appropriate according to the Table of Permissible Uses; and,
3. Whether the development as proposed will comply with the other requirements of this chapter.

The Commission shall adopt the Director's determination on the three items above unless it finds, by a preponderance of the evidence, that the Director's determination was in error, and states its reasoning for each finding with particularity.

CBJ 49.15.330 (f), Commission Determinations, states that even if the Commission adopts the Director's determination, it may nonetheless deny or condition the permit if it concludes, based upon its own independent review of the information submitted at the public hearing, that the development will more probably than not:

1. Materially endanger public health or safety;
2. Substantially decrease the value of or be out of harmony with property in the neighboring area; or,
3. Not be in general conformity with the comprehensive plan, thoroughfare plan, or other officially adopted plans.

Per CBJ 49.15.330 (e) & (f), Review of Director's & Commission's Determinations, the Director makes the following findings on the proposed development:

- 1. Is the application for the requested conditional use permit complete?***

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Yes. Staff finds the application contains the information necessary to conduct full review of the proposed operations. The application submitted by the applicant, including the appropriate fees, substantially conforms to the requirements of CBJ Chapter 49.15.

2. Is the proposed use appropriate according to the Table of Permissible Uses?

Yes. The requested permit is appropriate according to the Table of Permissible Uses. The permit is listed at CBJ §49.25.300, Section 1.300 for the D-15 zoning district.

3. Will the proposed development comply with the other requirements of this chapter?

Yes. The proposed development complies with the other requirements of this chapter. Public notice of this project was provided in the June 17th and 27th issues of the Juneau Empire's "Your Municipality" section, and a Notice of Public Hearing was mailed to all property owners within 500 feet of the subject parcel. Moreover, a Public Notice Sign was posted on the subject parcel, visible from the public Right of Way.

4. Will the proposed development materially endanger public health or safety?

No. With staff's recommended conditions, the public's health and safety will be preserved with the approval of the project by constructing buildings, parking areas, and pedestrian features in compliance with local building, engineering codes, and traffic codes.

5. Will the proposed development substantially decrease the value of or be out of harmony with property in the neighboring area?

No. With staff's recommended conditions, property value and neighborhood harmony will be preserved.

6. Will the proposed development be in general conformity with the land use plan, thoroughfare plan, or other officially adopted plans?

Yes. The proposed conforms to the Comprehensive Plan and the Non-Motorized Transportation Plan.

Per CBJ §49.70.900 (b)(3), General Provisions, the Director makes the following Juneau Coastal Management Program consistency determination:

7. Will the proposed development comply with the Juneau Coastal Management Program?

Yes. With staff's recommended conditions, the proposed developed areas will comply with the

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streamside setback of the Mendenhall River and, with staff's recommended condition, minimize harmful vehicle fluids from entering the river.

RECOMMENDATION

It is recommended that the Planning Commission adopt the Director's analysis and findings and grant the requested Conditional Use permit and Density Bonus. The permit would allow the development of 51 units.

The approval is subject to the following conditions:

Applies to project (regardless of Density Bonus approval)

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.
2. Prior to issuance of a building permit, the applicant shall submit to CDD a plan involving how vegetation will be replanted and maintained to ensure the project meets the minimum vegetative area requirement.
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.
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:
 - 1) Sight-obscuring fence or vegetation from grade (0 feet) up to six feet; or
 - 2) Sight-obscuring fence or vegetation from grade (0 feet) up to four feet and non-sight-obscuring (porous) up to six feet in height.
5. Prior to issuance of a building permit, the applicant shall show any exterior lighting, which must be downward-directed to minimize horizontal glare.
6. Prior to final CO, all required parking lot striping shall be in place (or wheel stops) which complies with dimensions as per 49.40 Parking and Traffic.
7. Prior to issuance of CO of last dwelling unit, the parking lot buffers meeting Condition No. 4 shall be in place.

Planning Commission
 File No.: USE2016 0018
 June 17, 2016
 Page 18 of 18

8. 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.
9. 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.

Density Bonus Conditions

10. Prior to issuance of a building permit, the applicant shall submit drawings and construction plans showing how the three density bonus features will be constructed in compliance with CBJ Land Use and Street standards.
11. Prior to issuance of a building permit for Units 49 – 51, the applicant shall submit plans and narrative indicating how all conditions will continue to be met.
12. Prior to final CO of last dwelling unit, the applicant shall coordinate with CDD staff to ensure the three density bonus features as shown on Attachment H are complete. This shall include:
 - a. The applicant to submit to CDD a recorded easement that preserves the land behind the back buildings, matching Attachment H.
 - b. A site inspection performed by CDD, which concludes the presence of an entrance path to the Bethany Baptist church property.
 - c. A site inspection performed by CDD, which concludes the presence of a sidewalk from the project's driveway to the Bethany Baptist church driveway and a crosswalk from the sidewalk at the church connecting to the existing sidewalk at Pinedale Street. Both the sidewalk and crosswalk must comply with CBJ street standards.

ALLOWABLE/CONDITIONAL USE PERMIT APPLICATION

Project Number	Project Name (15 characters)	Case Number <i>CGC 16-018</i>	Date Received <i>5/13/16</i>
----------------	------------------------------	----------------------------------	---------------------------------

TYPE OF ALLOWABLE OR CONDITIONAL USE PERMIT REQUESTED

- ☐ Accessory Apartment*** (AAP) ☐ Driveway in Right-of-Way (ADW)
☒ Use Listed in §49.25.300 (USE)
 (Table of Permissible Uses)

Please list the Table of Permissible Uses Category: _____

***An Accessory Apartment Application will also be required.

DESCRIBE THE PROJECT FOR WHICH AN ALLOWABLE OR CONDITIONAL USE APPROVAL IS NEEDED.

46 unit Condo development on 3+ acres in DIS

IS THIS A MODIFICATION OF AN EXISTING APPROVAL?



☐ YES - Case # _____

CURRENT USE OF LAND OR BUILDING(S): *Vacant*

PROPOSED USE OF LAND OR BUILDING(S): *Condos*

UTILITIES PROPOSED:

WATER: ☒ Public ☐ On Site

SEWER: ☒ Public ☐ On Site

SITE AND BUILDING SPECIFICS:

Total Area of Lot *132,461* square feet Total Area of Existing Structure(s) *0* square feet
 Total Area of Proposed Structure(s) *28,800* square feet

EXTERNAL LIGHTING:

Existing to remain ☒ No ☐ Yes - Provide fixture information, cutoff sheets, and location of lighting fixtures
 Proposed ☒ No ☐ Yes - Provide fixture information, cutoff sheets, and location of lighting fixtures

PROJECT NARRATIVE AND SUBMITTAL CHECKLIST:

- | | |
|---|---|
| ☒ Site Plan | ☒ Existing and proposed parking areas (including dimensions) and proposed traffic circulation |
| ☒ Floor Plan of proposed buildings | ☒ Existing Physical Features of the site (drainage, habitat, hazard areas, etc.) |
| ☒ Elevation view of existing and proposed buildings | |
| ☒ Proposed Vegetative Cover | |

For more information regarding the permitting process and the submittals required for a complete application, please see the reverse side.

If you need any assistance filling out this form, please contact the Permit Center at 586-0770.

ALLOWABLE/CONDITIONAL USE FEES

	Fees	Check No.	Receipt	Date
Application Fees	<i>\$1,000</i>			
Admin. of Guarantee	\$ _____			
Adjustment	\$ _____			
Pub. Not. Sign Fee	<i>\$50.00</i>			
Pub. Not. Sign Deposit	<i>\$100.00</i>			
Total Fee	<i>\$1,150.00</i>	<i>068086</i>	<i>068085</i>	<i>5/13/16</i>

NOTE: MUST BE ACCOMPANIED BY DEVELOPMENT PERMIT APPLICATION FORM Attachment 1

DEVELOPMENT PERMIT APPLICATION

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

PROJECT / APPLICANT	INFORMATION	Project Description <u>46 unit condo development</u>	
	PROPERTY LOCATION		
	Street Address <u>Riverside Drive</u>	City/Zip <u>Juneau Ak 99801</u>	
	Legal Description(s) of Parcel(s) (Subdivision, Survey, Block, Tract, Lot) <u>Riverview Acres Lots 9-12 Riverview Acres Lt 9, 10, 11, 12</u>		
	Assessor's Parcel Number(s) <u>SB 250151007000; SB 2501510060; SB 2501510050; SB 2501510040</u>		
	LANDOWNER/ LESSEE		
	Property Owner's Name <u>Juneau Cordus LLC</u>	Contact Person: <u>Travis</u>	Work Phone: <u>321 3118</u>
	Mailing Address <u>10840 Lilac Drive</u>	Home Phone: <u>321 3118</u>	Fax Number:
	E-mail Address <u>constellation-dev@hotmail.com</u>	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>[Signature]</u> Landowner/Lessee Signature		<u>5/13/16</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>Same</u>		Contact Person:	
Mailing Address		Home Phone:	
E-mail Address		Other Contact Phone Number(s):	
X <u>[Signature]</u> Applicant's Signature		<u>5/13/16</u> Date of Application	

STAFF APPROVALS	OFFICE USE ONLY BELOW THIS LINE			
	☒	Permit Type	**SIGN	Date Received
		Building/Grading Permit		
		City/State Project Review and City Land Action		
		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 <u>ESF</u>

5/30/16 Email from Applicant to CDD Staff

Re: Condos on Riverside Drive.

The anticipated layout will have two rows of four buildings paralleling Riverside Drive. The decks and view windows for four buildings will face Mendenhall River and four buildings will face Riverside Drive. Thus from Riverside Drive the condominiums will appear as four buildings at a similar spacing as to the surrounding residences. Building access, carports and additional parking will be located between the two rows of buildings. This will screen the neighborhood from seeing the parking as well as contain the light from the vehicle headlights. The north and south ends of the parking lot will be screened along the property line to minimize headlights shining in those directions. The screening will likely be either a fence or shrubbery. Centering the driveway between the middle two buildings will align the driveway with a retaining wall and tall shrubbery across Riverside Drive. This will minimize headlights shining into neighboring homes as the vehicles leave the property.

We anticipate building 2 bedroom units which require 1.75 parking spaces / unit. We will provide each unit with one covered carport space with the remaining additional parking located in two rows between the two rows of buildings. With construction of 46 units, there would be 81 required parking spaces. We anticipate providing 100 parking spaces. Two parking spaces for each unit plus 8 ADA van accessible handicap parking spaces.

A raised sidewalk will parallel the driveway. It will likely be located on the north side of the driveway to avoid the utility pole. I anticipate placing the mailboxes along the sidewalk. The mail person could then deliver the mail off of Riverside Drive and the residents could collect their mail from the sidewalk. The mailbox location is subject to approval by the US Postmaster and will need to fall within the USPS limitations.

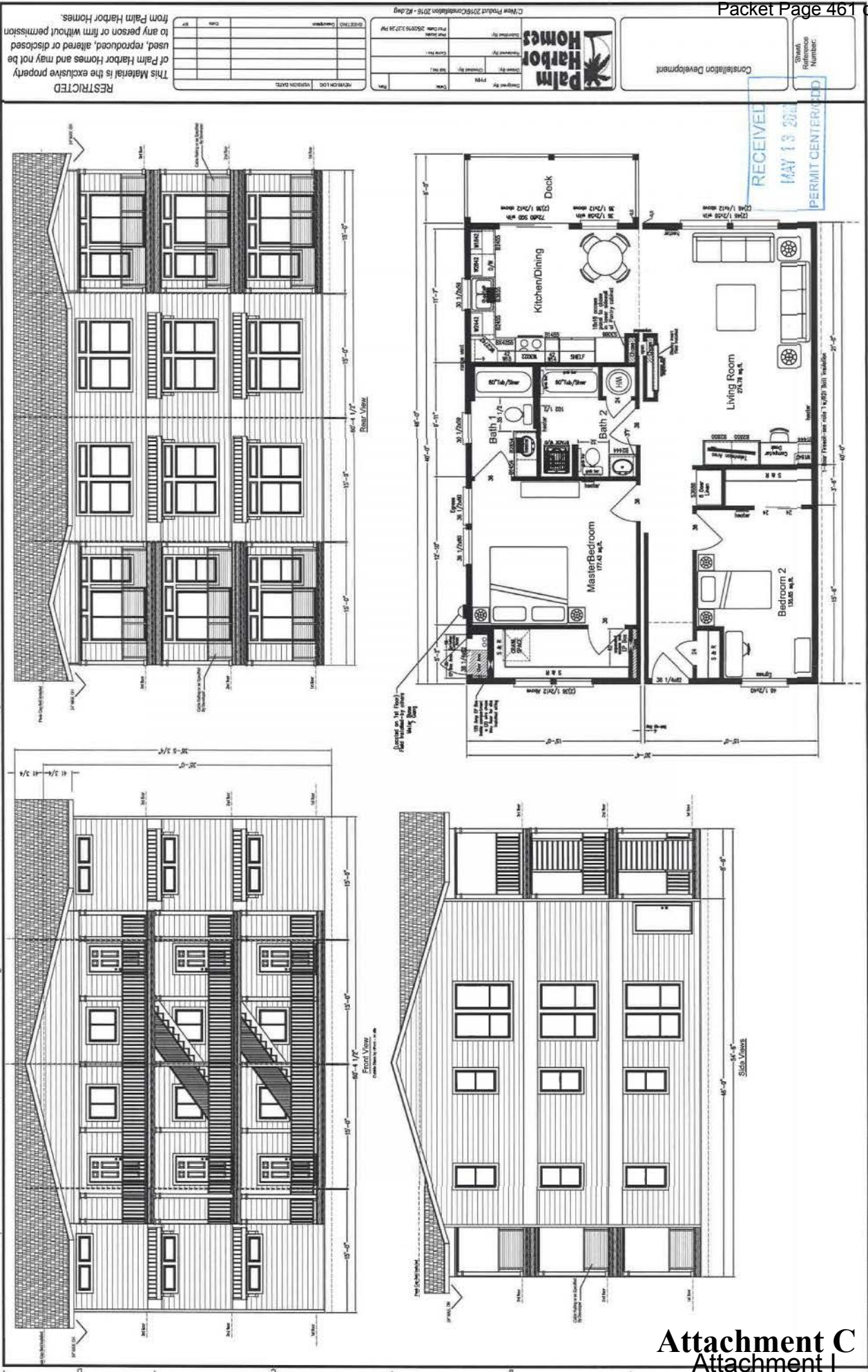
Site lighting is anticipated to be located between to two rows of buildings. Similar to previous projects, each carport space will be lighted with a LED recessed can light below the carport roof. The entries and stair will be lighted with a building mounted fixture on each level. The fixtures will provide sufficient light for the residents while trying to minimize brightening the neighborhood.

Trash collection will be in the form of several dumpsters spaced around the site between buildings to provide easy access for the residents. Trash collection would occur from within the additional parking area between the buildings, away from Riverside Drive.

Snow storage will occur in a number of areas. Ample area will be provided between the buildings and carports to store piled snow. The row of buildings along the river will be located well back of the no development zone. As such, additional area could be used to store the snow by pushing the snow further between the buildings. To minimize the impacts of drainage, provide rainwater infiltration, snow melt infiltration, we anticipate again utilizing pervious concrete pavement. While providing a hard parking and use structure, the pervious pavement accepts and controls runoff instead of creating additional areas of reduced infiltration. The pervious pavement will provide infiltration capacity as opposed to draining the runoff directly towards the Mendenhall River.

Attachment A

Attachment I



Attachment C
Attachment I

Palm Harbor Homes

Project Name: 20180101-2018-01-01
Project Number: 20180101-2018-01-01
Project Date: 20180101-2018-01-01
Project Location: 20180101-2018-01-01
Project Status: 20180101-2018-01-01

Project Description: 20180101-2018-01-01
Project Details: 20180101-2018-01-01
Project Notes: 20180101-2018-01-01

Project Contact: 20180101-2018-01-01
Project Address: 20180101-2018-01-01
Project Phone: 20180101-2018-01-01
Project Email: 20180101-2018-01-01

Project Website: 20180101-2018-01-01
Project Social Media: 20180101-2018-01-01
Project Other: 20180101-2018-01-01

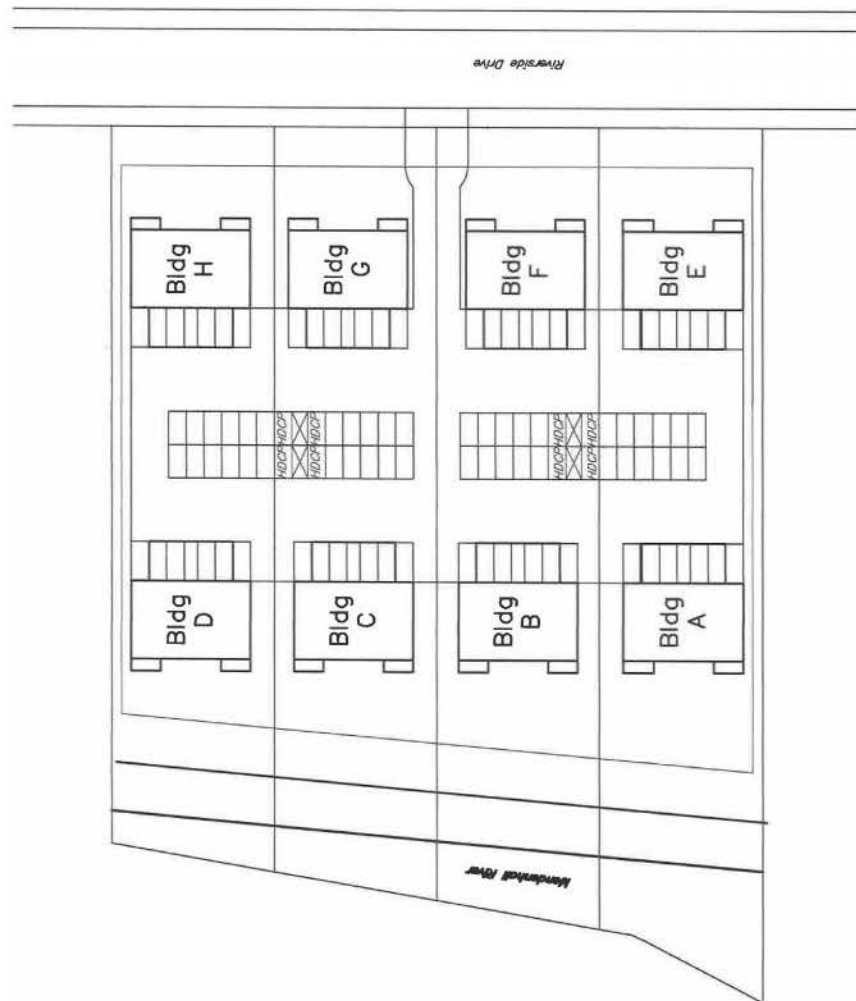
RESTRICTED

This Material is the exclusive property of Palm Harbor Homes and may not be used, reproduced, altered or disclosed to any person or firm without permission from Palm Harbor Homes.

RECEIVED

MAY 13 2018

PERMIT CENTER



RECEIVED
MAY 13 2013
PERMIT CENTER/CDD

NOTES:

- Bldgs A-G - 6 UNIT CONDO BUILDINGS
- Bldg H - 4 UNIT CONDO BUILDING
- PVIOUS CONCRETE PARKING
- POWER, TELEPHONE, CABLE TO BE ENCLOSED IN CONDUITS >2FT DEEP LOCATIONS TO BE AS-BUILT

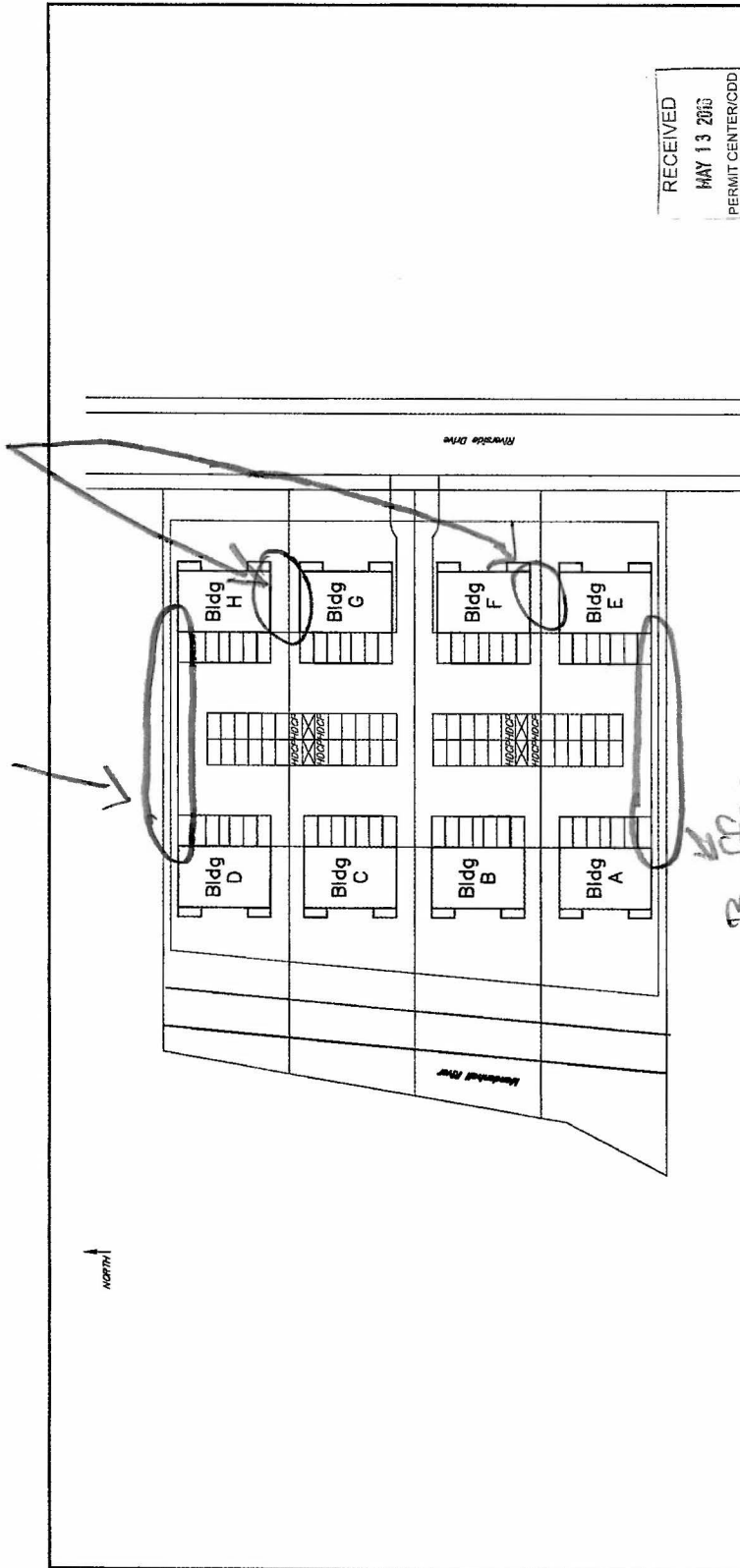
SITE PLAN
1/64" = 1'-0"

Lots 9-12
Riverview Acres Subdiv.
SITE PLAN

CONSTELLATION DEVELOPMENT

Additional
Buffer [If needed]

Buffer



NOTES:

- Bldgs A-G - 6 UNIT CONDO BUILDINGS
- Bldg H - 4 UNIT CONDO BUILDING
- PERVIOUS CONCRETE PARKING
- POWER, TELEPHONE, CABLE TO BE ENCLOSED IN CONDUITS >2FT DEEP LOCATIONS TO BE AS-BUILT

SITE PLAN
1/64" = 1'-0"

Lots 9-12
Riverview Acres Subdiv.
SITE PLAN

CONSTELLATION DEVELOPMENT

Pictures of similar condominium project
Taken by CBJ Staff 6/8/16
Location: 3235 Bresee Street



Left: Front View

Right: Rear View.

Balconies will be
provided on this side
for the Riverside Dr.
project.



To: Juneau Planning Commission

From: Michael & Kay Knapp, 4410 Riverside Drive, Juneau

File No.: USE 2016 0018

Applicant: Juneau Condos LLC

Site: Riverview Acres, Lots 9-12

We present the following concerns regarding the proposed development of the subject property.

FALSE EXPECTATIONS. The CBJ's notion that high density "infilling" of previously undeveloped property will lead to a happy, walkable, "livable" neighborhood is flawed. The picturesque high density developments of "down south" are built on a large scale, and incorporate shops and coffee houses and other attractions within reasonable walking distances from residences to be "livable". The proposed high density development is too far away from any sort of commerce attractions to produce much pedestrian activity. Perhaps you see that with the higher density developments near the Mendenhall Mall, but you will not see that at this location. Most people will drive.

Granted, the proposed development would be near an elementary school, and a bus line. But the benefit of being close to a school is short-lived, especially for a home layout that appears to be designed for a 1-child family?! The 2-bedroom layout would be tight for any family with more than one child. Consider also that the residences will not include garage space and that 2nd bedroom must also serve as utility space. Where does the family store their kid toys? Or bicycles? Or hang a wet rain coat to dry? The logic that this small layout serves families is flawed. This might be the only housing a low income family can afford, but that does not mean it suits their needs. And if you are promoting such developments for low-income benefits, these areas become neighborhoods to move away from, not move to.

Again, this will not lead to the trendy, walkable community you see down south. Most will drive – to the store, to the library, to the swimming pool, to the athletic club...especially so in winter. This location is more suited to the single family home layout. NONE of the residents already living here believe that this proposed development will improve the "livability" of our neighborhood.

If CBJ truly wants to provide long-term living options for families, then require 3 bedroom layouts with a closed garage space. Otherwise this becomes a short-term living arrangement for families with more than one child (most) or a long-term living arrangement for single adults without kids (where the benefits of being near an elementary school are null and void).

ACTION: Reduce the allowable density for this site, require a 3-bedroom layout, and require the addition of closed garage space.

SEWER CAPACITY. The 30+ year old sewer line along Riverside Drive is only 12 inch diameter. The proposed development would add 46 units discharging sewage to this old pipe. Can the existing sewer line accommodate this development? An engineering analysis should be completed to verify that the existing sewer line can accommodate the D-15 zone. I would like to review this analysis.

ACTION: Perform an engineering evaluation of sewer capacity and provide us impacted residents an opportunity to review it.

PAST SEWER-RELATED DAMAGE TO 4410 RIVERSIDE DRIVE. Long-time residents along Riverside Drive have informed us that my home experienced sewer-related damage in the early 1990s. Apparently my home was the only one affected and the CBJ apparently paid for the repairs, anecdotally about \$30,000. At the time of writing this, details on what caused the damage were unavailable. I have inquired with CBJ staff and hope to learn more about the incident and whether the proposed development will exacerbate what might be an existing sewer line deficiency.

ACTION: Review CBJ engineering and/or risk management files to determine (1) why the CBJ felt compelled to pay for repairs, and (2) whether the proposed development introduce more risk to my home and liability to the City.

LIGHT & SOUND IMPACTS. The Developer has proposed to locate his road approach across the street (Riverside Drive) from a retaining wall to mitigate light impacts. Unfortunately for me and others, the headlight impact is not unidirectional. Vehicles departing the development have to make a turn (to the north or to the south), and the light from these cars will “sweep” across the houses nearest the road approach. My house lacks the benefit of a retaining wall to block the impact of headlights.

None of the houses near the Developer’s proposed road approach would be spared the sound of vehicles accelerating away from the development. Making this impact worse is a proposed crosswalk immediately north of the development driveway entrance at Riverside Drive. This proposed crosswalk would contribute to the noise impact, due to motorists stopping for pedestrian traffic and then accelerating to recommence their travel.

Moving the location of the access might improve the situation for me, but would shift the problem to a different homeowner. There is no remedy to this impact. If the proposed development was single family homes, then the impact would be similar to any other location along our street. But at 46 new dwellings, the light and sound impact will be substantial. In addition to reducing our quality of life, it will reduce the market value of our homes.

ACTION: Compensate owners of affected residences for the negative effect on the value of our homes.

PRESCRIPTIVE RIGHT-OF-ACCESS TO THE MENDENHALL RIVER, EMERGENCY SERVICES ACCESS. The Mendenhall River is a navigable waterway, according to the State of Alaska. The ownership of the river bed between the ordinary high water boundaries belongs to the state. The last rapids along the river

occur at the subject properties. At low water, there is a gravel bar on the east bank that is a popular recreational resource for the neighborhood.

Access to the river across this private property has been open and notorious for many years. I believe there are grounds for a prescriptive right-of-access that could be threatened by this development. Further, I believe that formalizing an access easement here is in the best interest of the community, the CBJ, and the state.

I have personally accessed the river here for nearly 13 years. Chris Meier, VP for ATA (which operates a commercial rafting business) recently told me commercial rafting operators have accessed the river at this location decades. Raft operators are frequently seen along the side of the road here during summer operations. Similarly, Juneau's kayakers make "laps" along this rapids section of the river, putting in at the Backloop Bridge and taking out at this point of access. Efforts to inform the kayaking community of this potential loss of access are underway.

There is a log across the road approach at this location to deter motorized vehicle access, but no signs of "no trespassing" have ever been put up. I recently showed this access to Eric Feldt, CBJ Planner. During our site visit, we noted an unattended raft tied up to the river bank, furthering my claim that this access location is of frequent use and importance to river users and recreational commerce operations.

If a rafting client falls out of the raft while navigating in the rapids upstream, this reach of river is the first point where they would likely be "fished out". Therefore, this location should be viewed as important to CBJ emergency services operations.

ACTION: Delay approval for this development until this prescriptive right-of-access claim can be "quieted" through the legal process. Alternatively, require as a condition of conditional use approval that the Developer formally locate and identify a public access easement on the plat.

STORM-WATER MANAGEMENT. The setting for this development is a glacier moraine with high silt content in the underlying soils. As someone who has spent time on these vacant lots, I can tell you that the soils are not very "free-draining". Puddles are numerous. The soils do eventually drain, but the infiltration rate is slow.

The Developer has indicated his intent to use "pervious pavement" as a means of managing stormwater. This is a misguided approach given that the underlying soils are poor-draining and high in silt content. Furthermore, leaf litter and the accumulation of silts in the voids will eventually lead to an impervious surface. There is no effective maintenance option.

ACTION: Require percolation tests validate the infiltration-based stormwater management scheme. Better yet, require onsite detention design.

LOSS OF PRIVACY. Compared to the wooded space that exists now, the proposed development will be a dramatic change in scenery. We will now have twelve or more windows and balconies facing our house.

ACTION: Require visual barriers along Riverside Drive to the extent possible. This could include fencing, tall shrubbery between buildings, or other privacy measures. Also, consider reducing the design to 2 levels only.

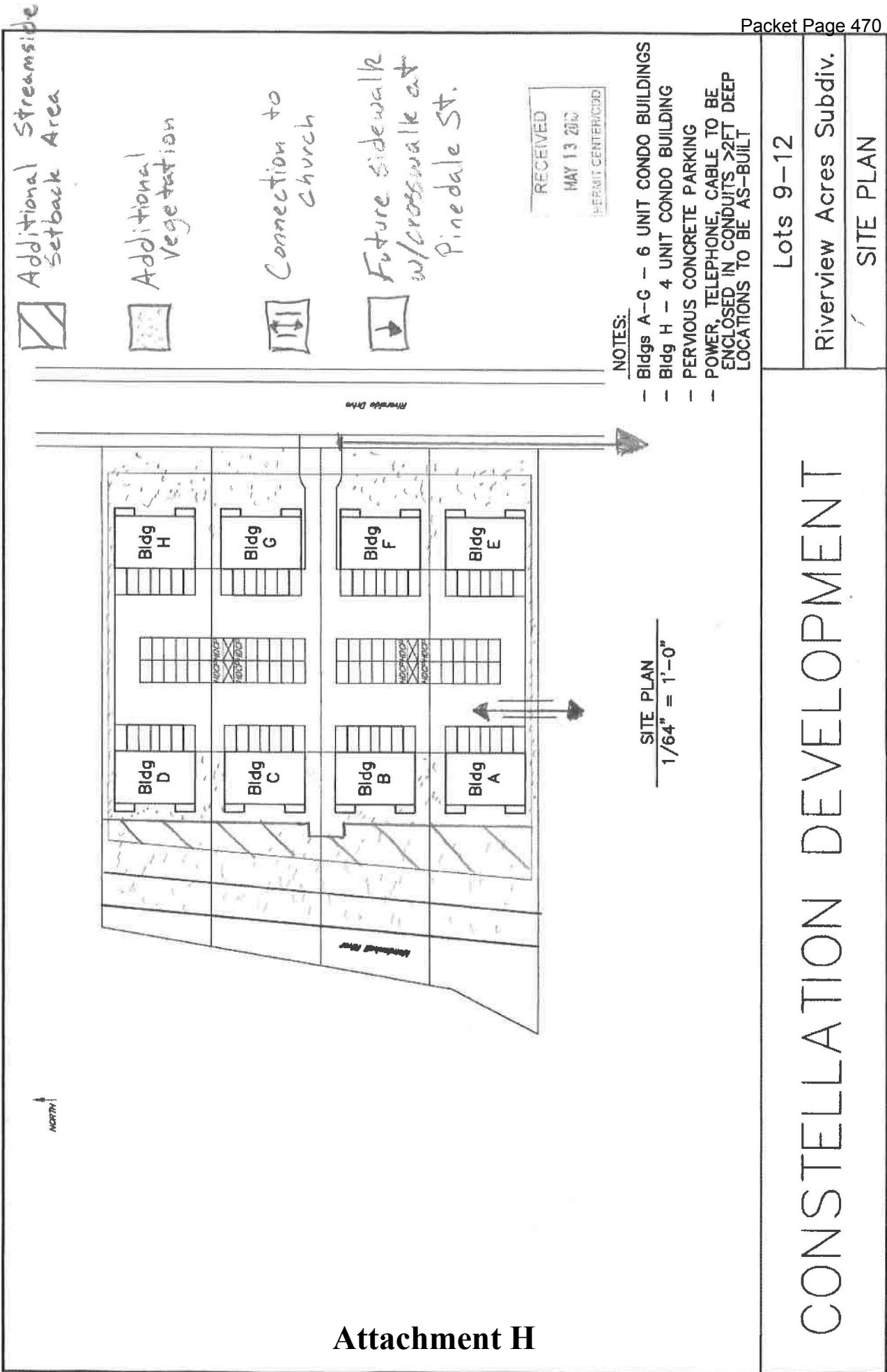
PARKING, INSUFFICIENT. The 2 parking spaces per unit might be more than the minimum required by code, will still be insufficient. There is no on-street parking along Riverside. Periodic overflow parking will occur. Where will people park?

ACTION: Reduce the development density to accommodate the likely demand for overflow parking.

PROPOSED CROSSWALK. Crosswalks should be located where motorists expect to see pedestrians: at road intersections. For much of the year, Juneau's crosswalks are not visible due to snow and paint wear. Therefore, a non-intuitive crosswalk location presents a significant safety risk to pedestrians. Crosswalk can provide pedestrians with a false sense of security and safety.

ACTION: Move the proposed crosswalk location to Pinedale Street, where motorists would expect to find pedestrians crossing the road. This location would also serve the church better.

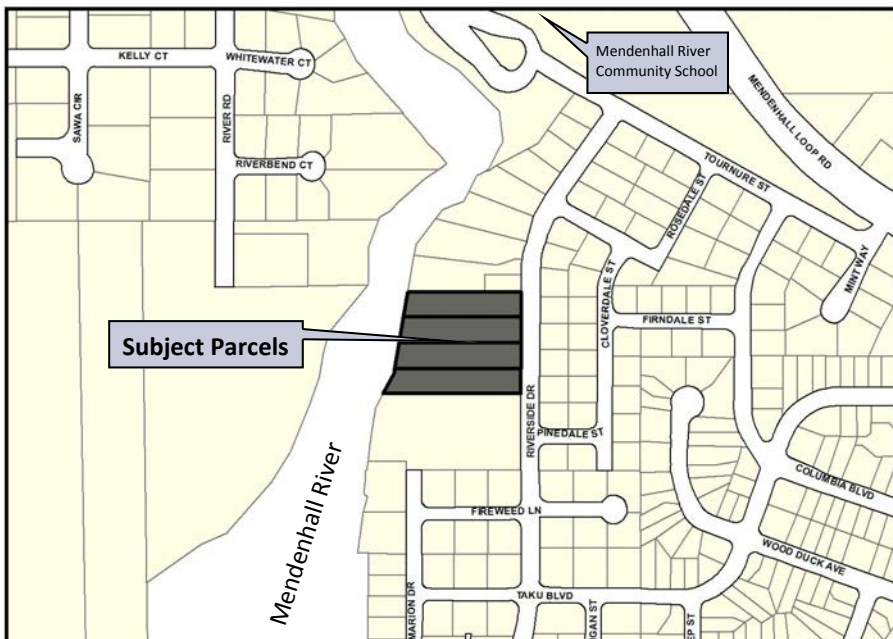
Density Bonus Features



Attachment H



NOTICE OF PUBLIC HEARING



City & Borough of Juneau
Community Development Department
155 S Seward Street • Juneau, Alaska 99801

SHIP TO:



PROPOSAL: A Conditional Use Permit for a multifamily condominium development.

File No:	USE2016 0018	Applicant:	JUNEAU CONDOS LLC
To:	Adjacent Property Owners	Property PCNs:	5-B25-0-151-007-0, 5-B25-0-151-006-0, 5-B25-0-151-005-0, 5-B25-0-151-004-0
Hearing Date:	June 28, 2016	Owner:	Juneau Condos LLC
Hearing Time:	7:00 PM	Size:	3.04 Acres (132,461 square feet)
Place:	Assembly Chambers Municipal Building 155 South Seward Street Juneau, Alaska 99801	Zoned:	D-15
		Site Address:	Lots 9, 10, 11, & 12 Riverview Acres
		Accessed Via:	Riverside Drive

PROPERTY OWNERS PLEASE NOTE:

You are invited to attend this Public Hearing and present oral testimony. The Planning Commission will also consider written testimony. You are encouraged to submit written material to the Community Development Department 14 days prior to the Public Hearing. Materials received by this deadline are included in the information packet given to the Planning Commission a week before the Public Hearing. Written material received after the deadline will be provided to the Planning Commission at the Public Hearing.

If you have questions, please contact Eric Feldt at eric.feldt@juneau.org or 586-0764



Planning Commission Agendas, Staff Reports and Meeting Results can be viewed at <http://www.juneau.org/assembly/novus.php>

Attachment I

Attachment I

Date notice was printed: May 26, 2016

From: Robin Potter
Sent: Thursday, January 11, 2018 3:18 PM
To: Amy Liu
Subject: RE: Request Comments for Riverside Condominiums, MIP20170027

Amy Liu,

I am very familiar with this development as I live off of Riverside about .5 miles south of it. I have no concerns in regard to an additional 3 units within the complex. It is not going to impact surrounding values and if anything, would be a positive addition to have more 3 bedroom units available for rent in the Valley.

Thanks,
Robin

Robin Potter ACAA III

Assessor, Finance Department
City & Borough of Juneau
155 S. Seward Street
Juneau, AK 99801
907.586.0333

http://www.juneau.org/financeftp/assessor_main.php



From: Amy Liu
Sent: Thursday, January 11, 2018 1:04 PM
To: Robin Potter
Subject: Request Comments for Riverside Condominiums, MIP20170027

Robin,

Thanks for your help, and again, I apologize for the last-minute nature of my request. At your convenience but ideally before next Tuesday, please share any comments you have on the attached application.

At 4401 Riverside Drive, the applicant is seeking approval to construct one condominium building containing three, three bedroom units. For context, in 2016, the applicant was approved to build up to 48 units at the same site, though staff recommended that he could build up to 51 units. In 2017, the applicant submitted the attached application to build up to 51 units, hoping to use the previously recommended maximum. Our review includes consideration for how the proposed development would affect property values.

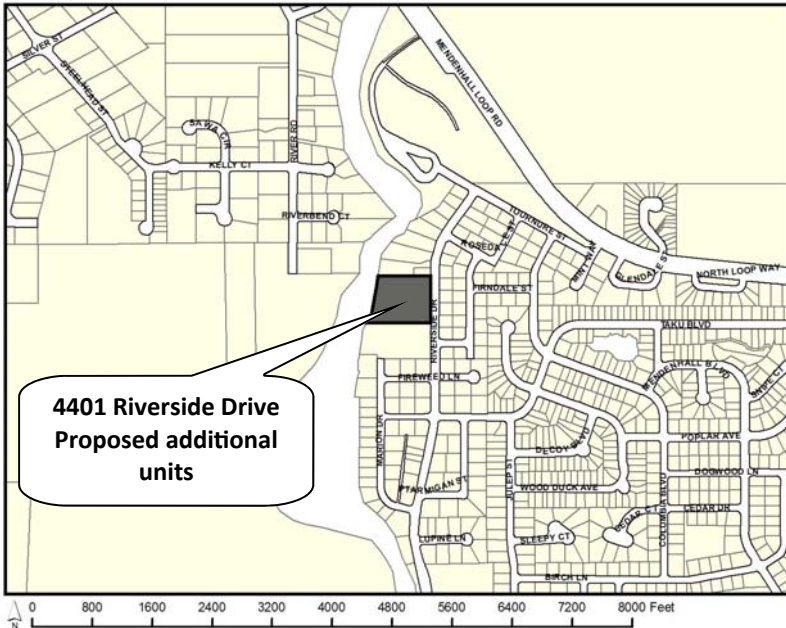
Let me know if I need to clarify anything.

Warm regards,

Amy Liu, Planner
Tel: (907) 586-0764
155 S. Seward St. Juneau, AK 99801

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:

An application has been submitted for consideration and public hearing by the Planning Commission for a **Conditional Use Permit** to amend a previously issued **Conditional Use Permit** to include three additional units located at **4401 Riverside Drive** in a **D-15** zone.

TIMELINE

Follow the case (staff report, hearing results, meeting minutes) at <http://www.juneau.org/assembly/novus.php>

Now through Jan. 2, 2017

Your comments to the Planner, **Amy Liu**, will be included in the staff report.

Jan. 2 through 3 pm, Jan. 23, 2017

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

HEARING DATE & TIME
7:00 pm, Jan. 23, 2017

You may testify at the hearing in City Hall's Assembly Chambers, 155 S. Seward St., Juneau.

Jan. 24, 2017

The results of the hearing will be posted online.

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

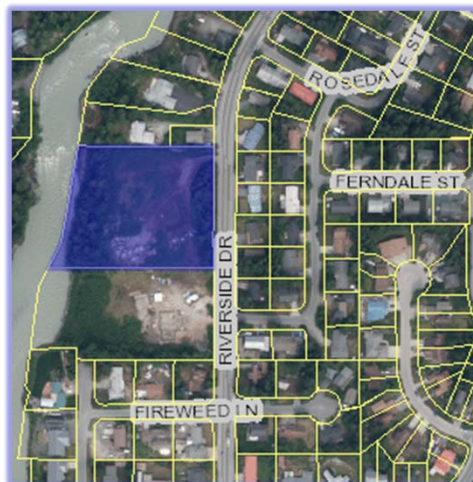
Case No.: USE2017 0027
Parcel No.: 5B2501510000
CBJ Parcel Viewer: <http://epv.juneau.org>
Date notice was printed: December 20, 2017

USE2017-0027 Conditional Use Permit for Three Additional Units at 4401 Riverside Drive

CBJ Planning Commission Presentation
January 23, 2018



Vicinity Map



Site Zoning



D3 & D5

(Pink and purple)
Allows single family,
duplex, accessory apt

D15

(Green)
Same as D3 and D5,
and also allows condos
and apartments



Background

USE20170027 modifies the previously issued USE20160018, which approved development of condominiums at the site with a density bonus of 48 units total.

- The D-15 zoning district allows for 46 dwelling units at this site. The applicant earned the bonus through CBJ Title 49.60.140, which allows for the approval of a 10% density bonus with the provision of certain amenities.
- During the hearing for USE2016-0018, the applicant indicated that he was planning to construct 48 units, which is the number of units the Commission approved with the bonus provisions. However, the staff report evaluated and recommended approval of 51 units.

The applicant is now seeking to add 3 more units for a total of 51 units by using the previously awarded bonus.

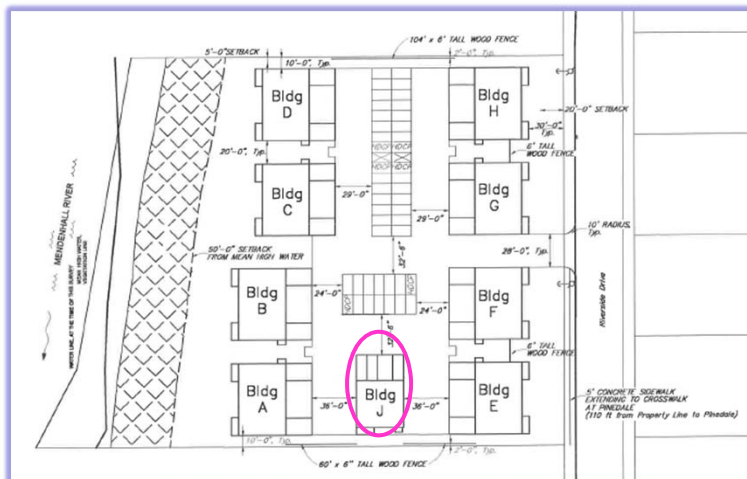


Public Comments

- Traffic
- Parking
- Noise
- Inappropriate use
- Lower property value



Site Plan



Buildings A-F have been constructed
Building J is the proposed structure



Site



Recent progress
Date: 01/10/18



Building Profile



Lighting



Front door and stair lights shielded by wall and roof

Date: 01/10/18



Traffic

296 Average Daily Trips (ADT) from 51 units

- Traffic impact analysis is not required for 250-500 ADT
- When reviewing USE2016-0018, the CDD Director determined that traffic volume of Riverside Drive will not be negatively affected by 51 units, and the road can adequately capture the additional traffic load



Parking

90 spaces are required; 95 spaces will be provided.

4 van accessible spaces are required; 6 spaces will be provided.

- All parking and circulation areas will be paved and striped prior to receiving final certificate of occupancy.
- There will be 51 carport spaces and 44 striped spaces.
- The new building will not interfere with vehicle circulation or dedication of required parking spaces.



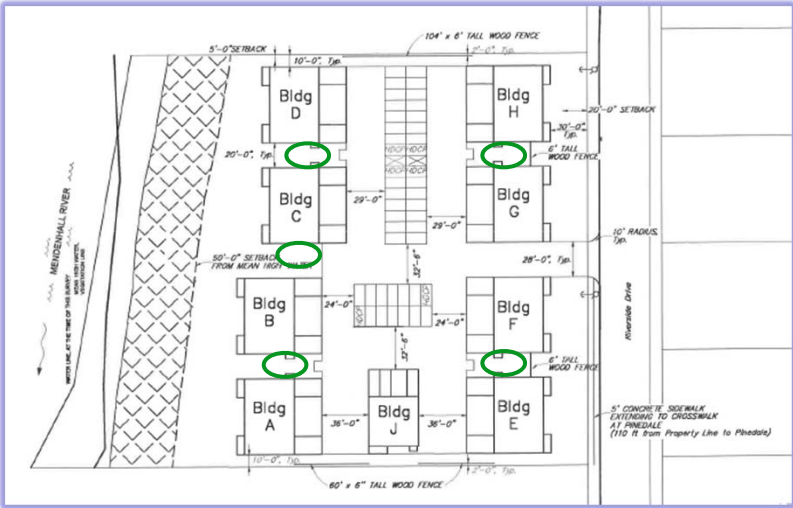
Noise

There will be no significant difference in noise levels between the approved 48 units and proposed 51 units.

- Most noise generated by the site will be from vehicle circulation from residents, trash-pickup, snow plowing, and mail delivery.
- Vehicular noise will be contained within the site because of the fences and the centrally-located parking area.
- The proposed development is not expected to create noise impacts to the neighborhood beyond those expected in D-15 zoning district.

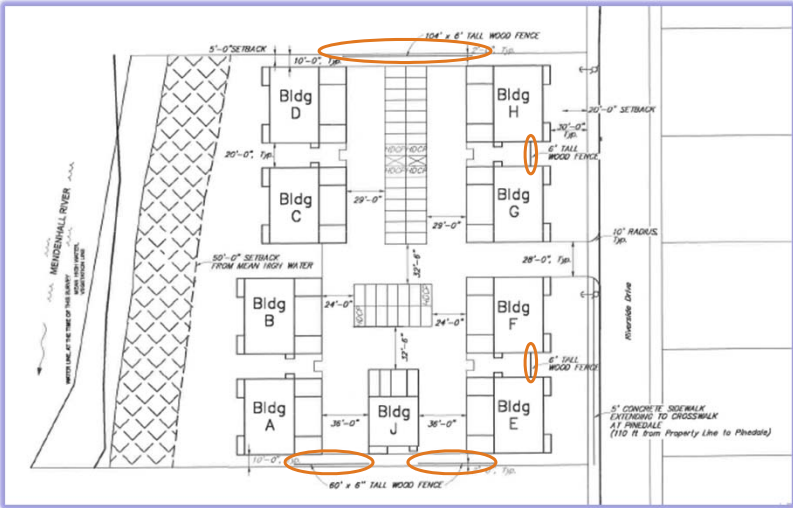


Snow and Waste Storage



CITY/BOROUGH OF JUNEAU
★ ALASKA'S CAPITAL CITY

Site Buffers



CITY/BOROUGH OF JUNEAU
★ ALASKA'S CAPITAL CITY

Public Health and Safety

Structures will meet all zoning requirements for height and setbacks and will meet all applicable building and fire code standards.

- Fire vehicle access to the property will be via Riverside Drive.
- Proposed building will, like the previously approved buildings, provide automatic sprinkler systems for fire suppression.

Sidewalk and crosswalk will safely guide pedestrians across Riverside Drive to an existing sidewalk

- Striping and signage will conform to the Alaska Traffic Manual and inform drivers of the presence of pedestrians.



Conformity with Adopted Plans

51 units is consistent with the Medium Density Residential (MDR) designation in the CBJ 2013 Comprehensive Plan. MDR is defined by multifamily dwellings, 5-20 units per acre. 51 units equates to 16.77 units per acre.

51 units is consistent with the Comprehensive Plan's policies to encourage the development of more housing:

- *Policy 4.8. To balance the protection and preservation of the character and quality of life of existing neighborhoods within the urban service area while providing opportunities for a mixture of new housing types.*
- *Policy 10.1. To facilitate availability of sufficient land with adequate public facilities and services for a range of housing types and densities to enable the public and private sectors to provide affordable housing opportunities for all Juneau residents.*
- *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.*



Conformity with Adopted Plans

Planned sidewalk along the west edge of Riverside Drive and the crosswalk at Pinedale Street meet goals of the Juneau Non-Motorized Transportation Plan

- Plan recommends improvements to pedestrian and bicycle-rider infrastructure in order for those commuters to have a safe and connected means of travel.



Density Bonus

CBJ 49.60.140

- Accrue at least 7 bonus points to earn 10% increase in allowed number of dwelling units
- 10% increase = 51 units total

Applicant proposes 3 bonus criteria

- 1) 49.60.200 Sensitive Area (Title 04 020.010(a)(1))
 - Preserve more land area beyond 50' anadromous stream setback
- 2) 49.60.210 Non-vehicular Transportation (Title 04 025.010 (a))
 - Install additional pedestrian infrastructure
- 3) 49.60.280 Vegetative Cover (Title 04 045.020 (a))
 - Preserve 45% vegetative cover



Criteria 1: Sensitive Area

The diagram is a site plan for a development. It shows ten buildings labeled Bldg A through Bldg J. Bldg A is at the bottom left, Bldg B is above it, Bldg C is to the right of Bldg B, Bldg D is above Bldg C, Bldg J is to the right of Bldg B, Bldg E is below Bldg J, Bldg F is to the right of Bldg J, Bldg G is above Bldg F, Bldg H is to the right of Bldg G, and Bldg I is above Bldg H. A green hatched area is located between the Mendenhall River and the buildings, labeled 'Preserved area, approx. 10,000 sq ft'. The river is on the left side of the plan. A 5'-0" setback is shown from the river to the preserved area. A 10'-0" setback is shown from the preserved area to the buildings. A 104' x 6" tall wood fence is shown along the top boundary. A 60' x 6" tall wood fence is shown along the bottom boundary. Dimensions for setbacks and building footprints are provided throughout the plan.

- Condition has already been met

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Criteria 1: Sensitive Area

A photograph showing the Mendenhall River in the foreground, with a gravelly bank. In the background, there are evergreen trees and a snow-capped mountain. To the right, a multi-story wooden building is visible.

Mendenhall River and structures
Date: 01/10/18

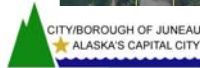
CITY/BOROUGH OF JUNEAU
★ ALASKA'S CAPITAL CITY

Criteria 2: Non-Vehicular Transportation



— Sidewalk
- - - Crosswalk

- Work to meet condition is ongoing and included in USE2017-0027
- USE2016-0018 condition to install private walkway to church should be removed per discussion at hearing



Criteria 2: Non-Vehicular Transportation

- Staff report for USE2016-0018 initially recommended that to earn 2 bonus points, an on-site pedestrian connection between the project site and church property be installed.
- During the hearing, the church pastor expressed that he did not want this pedestrian connection
- The applicant was agreeable to not constructing the pedestrian connection, as it was unnecessary to earning the minimum number of points for the density bonus.
- Staff affirmed that the pedestrian connection was not needed for the density bonus.
- However, the Commission did not amend the recommended conditions regarding the pedestrian connection.

Staff recommends removing this requirement from the development based on the concerns expressed by both the applicant and the adjacent property owner during the hearing for USE2016-0018.



Criteria 2: Non-Vehicular Transportation

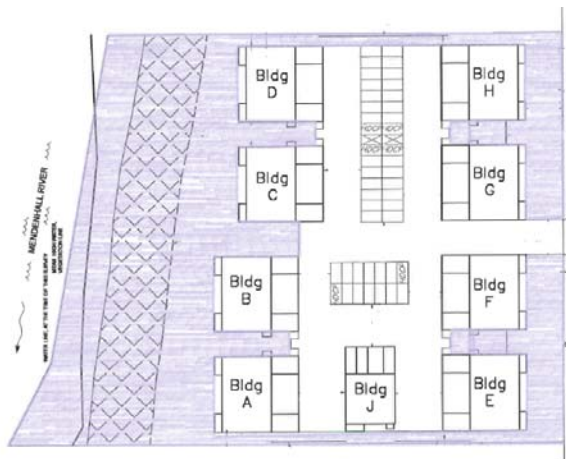


Riverside Dr. and Pinedale St.

Date: 01/10/18



Criteria 3: Vegetative Cover



Vegetative cover

- 59,590 square feet, or 45% of the site
- 45% to meet bonus minimum
- \$12,500 bond with CBJ to guarantee vegetative cover requirements are met



Density Bonus

1) Sensitive Area; preserve more land area beyond 50' anadromous stream setback

- Has preserved 10,000 sq. ft. beyond setback.
- Staff recommends 2 points.

2) Non-vehicular Transportation; Install additional pedestrian/ bike infrastructure than minimum

- Will install sidewalk and crosswalk to Pinedale St.
- Staff recommends 3 points.

3) Vegetative Cover; preserve 45% vegetative cover

- Has bonded with CBJ for 45% vegetative cover
- Staff recommends 2 points.



CITY/BOROUGH OF JUNEAU
ALASKA'S CAPITAL CITY

Density Bonus

Bonus point summary

1) Sensitive Area:	2 Points
2) Non-vehicular Transportation:	3 Points
3) Vegetative Cover:	<u>2 Points</u>
	7 Points

- The minimum number of bonus points for the 10% density bonus is 7. The applicant's current proposal continues to provide the amenities that previously merited 7.
- Staff previously recommended nine bonus points, two of which were for the on-site pedestrian path, which staff is now recommending not be required.
- Staff recommends the Planning Commission approve three additional units for a total of 51 units.



CITY/BOROUGH OF JUNEAU
ALASKA'S CAPITAL CITY

Staff's Findings

The proposed development...

- is appropriate according to the Table of Permissible Uses. The permit is listed at CBJ 49.25.300, Section 1.300 for the D-15 zoning district.
- has earned 7 bonus points for a 10% density bonus per CBJ 49.60.140.
- will not endanger the public health and safety.
- will maintain values and will be in harmony with the neighboring area.
- is in general conformity with the 2013 Comprehensive Plan, particularly Policies 4.1, 4.2, 4.6, 6.2 and 10.3, and the Non-Motorized Transportation Plan.



Staff's 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 following conditions, some of which modify conditions of USE2016-0018:



Conditions

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)



Conditions continued...

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)



Conditions continued...

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)



Conditions continued...

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 1-48)



Conditions continued...

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)



End of Presentation





Planning Commission

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

PLANNING COMMISSION NOTICE OF DECISION

Date: January 25, 2018
Case No.: USE2017 0027

Constellation Development LLC
ATTN: Travis Arndt
10840 Lilac Drive
Juneau, AK 99801

Proposal: A Conditional Use Permit to amend USE2016 0018 to include three (3) additional units

Property Address: 4401 Riverside Drive

Legal Description: Riverside Condos

Parcel Code Number: 5B2501510000

Hearing Date: January 23, 2018

The Planning Commission, at its regular public meeting, adopted the analysis and findings listed in the attached memorandum dated January 16, 2018, and approved three (3) additional units to be constructed according to the project description and project drawings submitted with the application and with the following conditions:

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.
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.
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.

Constellation Development LLC

Case No.: USE2017 0027

January 25, 2018

Page 2 of 3

4. Prior to issuance of a building permit, the applicant shall submit a design for the parking lot buffers. Buffers between buildings A, J, and E shall incorporate returns to meet these buildings. All buffers (and if needed, buffering snow storage/ garbage containers) shall meet 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.

5. Parking lot buffers shall be installed according to approved plans prior to issuance of a certificate of occupancy for the final unit.

6. Prior to issuance of a building permit, the applicant shall show any exterior lighting, which must be downward-directed to minimize horizontal glare.

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.

8. Prior to issuance of CO of last dwelling unit, the parking lot buffers meeting Condition No. 4 shall be in place.

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.

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.

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.

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.

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.

Constellation Development LLC
Case No.: USE2017 0027
January 25, 2018
Page 3 of 3

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.

Attachments: January 16, 2017, memorandum from Amy Liu, Community Development, to the CBJ Planning Commission regarding USE2017 0027.

This Notice of Decision does not authorize construction activity. Prior to starting any project, it is the applicant's responsibility to obtain the required building permits.

This Notice of Decision constitutes a final decision of the CBJ Planning Commission. Appeals must be brought to the CBJ Assembly in accordance with CBJ 01.50.030. Appeals must be filed by 4:30 P.M. on the day twenty days from the date the decision is filed with the City Clerk, pursuant to CBJ 01.50.030 (c). Any action by the applicant in reliance on the decision of the Planning Commission shall be at the risk that the decision may be reversed on appeal (CBJ 49.20.120).

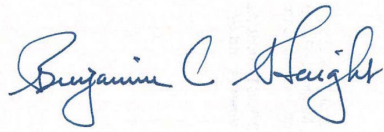
Effective Date: The permit is effective upon approval by the Commission, January 23, 2018.

Expiration Date: The permit will expire 18 months after the effective date, or July 23, 2019, if no Building Permit has been issued and substantial construction progress has not been made in accordance with the plans for which the development permit was authorized. Application for permit extension must be submitted thirty days prior to the expiration date.

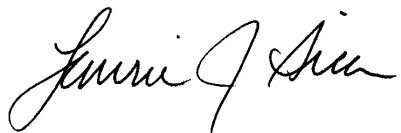
Project Planner:



Amy Liu, Planner
Community Development Department



Benjamin Haight, Chair
Planning Commission



Filed With City Clerk

January 29, 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. Owners and 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: January 16, 2018

TO: The Planning Commission

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

FILE NO.: AME2017 0017

PROPOSAL: 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).

The City and Borough of Juneau 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 of the Comprehensive Plan.

ATTACHMENTS:

Attachment A: Draft Ordinance – Amending CBJ 49.25.430, *Yard Setbacks*

ANALYSIS AND FINDINGS

The current Land Use Code, at CBJ 49.25.430, provides for a number of potential allowances of setback encroachments in certain situations. Architectural features such as roof eaves, that do not add additional living space to the building, are allowed to encroach into the setbacks. Other non-living spaces are allowed to encroach into setbacks as well, such as sheds, children's play structures, and green houses. Decks and patios are allowed to be placed within setbacks with some limitations as well.

Recently, there have been a number of requests to add exterior insulation to homes and offices in order to increase their energy efficiency. Many homes have been built to the maximum yard setbacks and many older homes in areas such as downtown Juneau, Douglas, and the Flats, may be non-conforming and already encroach into setbacks. In these cases, adding exterior insulation would increase the already existing encroachment or would create a setback encroachment, but would not add additional living space and would have little, if any, impact on adjacent properties. Additionally, the energy savings to the property owner, as well as the decrease in the carbon footprint, help the CBJ achieve its sustainability goals.

Planning Commission
File No.: AME2017 0017
January 16, 2018
Page 2 of 3

The proposed ordinance will allow exterior insulation to encroach up to six inches into the setbacks without the need for a variance. Generally, older homes need approximately 4 inches of insulating foam added to the exterior of the home. Siding added to this can increase the encroachment by another inch or so. A six inch allowance is adequate for proper exterior insulation added to the home. If the owner desires more than six inches of an encroachment, the owner would need to apply for a variance. In no instance shall the encroachment be allowed to cross property lines.

On balance, the community benefits from having more energy efficient structures even if the energy efficiency improvement results in a de minimis (minor) setback encroachment. The energy efficiency additions helps improve our aging housing stock, help us achieve our sustainability goals, reduces heating costs, and may reduce greenhouse gas emissions depending on which energy source is used. The minimal setback encroachment is outweighed by the many benefits it creates.

The proposed ordinance, if approved, will allow up to six inches of exterior insulation to encroach into required setbacks without the need for a variance.

COMPLIANCE WITH THE COMPREHENSIVE PLAN

Comprehensive Plan Contents

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

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

From Chapter 6 ENERGY:

POLICY 6.10 TO ENCOURAGE COST EFFECTIVE ENERGY EFFICIENT BUILDING AND REMODELING PRACTICES.

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.

Additionally the Housing Action Plan, adopted with Resolution 2780, identifies the need to maintain and improve Juneau's aging housing stock as one way of meeting our housing needs.

Planning Commission
File No.: AME2017 0017
January 16, 2018
Page 3 of 3

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 and is consistent with the above purposes.

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 forward a recommendation for approval to the Assembly.

Presented by:
Introduced:
Drafted by:

ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 2018-06 PCv1

**An Ordinance Amending the Land Use Code Relating to Setbacks for
Energy Efficiency Improvements.**

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 Section. CBJ 49.25.430 Yard Setbacks is amended to read:

49.25.430 – Yard Setbacks

(4) *Projections into required yards.*

(O) Energy efficiency. Energy efficiency improvements, such as exterior insulation, may project up to six inches into a required yard. Except, an energy efficiency improvement may not be approved under this section if it projects into the right-of-way or across a property line.

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Section 3. Effective Date. This ordinance shall be effective 30 days after its adoption.

Adopted this _____ day of _____, 2018.

Kendell D. Koelsch, Mayor

Attest:

Laurie J. Sica, Municipal Clerk

Invitation to Comment

PLEASE NOTE: The correct date for this hearing is January 23rd **2018**, the previous notice listed the wrong year, therefore you are receiving a second notice.

Planning Commission Hearing Regarding :

Text Amendment to Title 49,
Land Use Code 49.25.430(4)
Setback Exceptions



COMMUNITY DEVELOPMENT

155 S. Seward Street Juneau, Alaska 99801

TO:

The Planning Commission will consider and take comments on a proposed **text amendment to provide for a setback reduction for exterior energy improvements** borough wide.

TIMELINE

Follow the case (staff report, hearing results, meeting minutes) at <http://www.juneau.org/assembly/novus.php>

Now through Jan. 9, 2018

Your comments to the Planner, **Laura Boyce**, will be included in the staff report.

Jan. 9 through 3 pm, Jan. 23 2018

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

HEARING DATE & TIME
7:00 pm, Jan. 23, 2018

You may testify at the hearing in City Hall's Assembly Chambers, 155 S. Seward St., Juneau.

Jan. 24, 2018

The results of the hearing will be posted online.

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

Case No.: AME2017 0017

CBJ Parcel Viewer: <http://epv.juneau.org>

Printed on January 2, 2018—delivered to Neighborhood Assns

Invitation to Comment

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

Planning Commission Hearing Regarding :

Text Amendment to Title 49,
Land Use Code 49.25.430(4)
Setback Exceptions



COMMUNITY DEVELOPMENT

155 S. Seward Street Juneau, Alaska 99801

TO:

The Planning Commission will consider and take comments on a proposed **text amendment to provide for a setback reduction for exterior energy improvements** borough wide.

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Follow the case (staff report, hearing results, meeting minutes) at <http://www.juneau.org/assembly/novus.php>

Now through Jan. 9, 2017

Your comments to the Planner, **Laura Boyce**, will be included in the staff report.

Jan. 9 through 3 pm, Jan. 23

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

HEARING DATE & TIME
7:00 pm, Jan. 23, 2017

You may testify at the hearing in City Hall's Assembly Chambers, 155 S. Seward St., Juneau.

Jan. 24, 2017

The results of the hearing will be posted online.

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

Case No.: AME2017 0017

CBJ Parcel Viewer: <http://epv.juneau.org>

Printed on December 28, 2017—delivered to Neighborhood Assns

AME2017 0017 – Proposed Code Amendment To Add an Additional Setback Encroachment for Energy Efficiency Improvements



Draft Ordinance No. 2018-04 Variances

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Presented by:
Introduced:
Drafted by:

ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA
Serial No. 2018-04 PCV
An Ordinance Amending the Land Use Code Relating to Setbacks for
Energy Efficiency Improvements.

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 Section. CBJ 43.25.430 Yard Setbacks is amended to
read:
43.25.430 – Yard Setbacks

(4) Projections into required yards.

(b) Energy efficiency, energy efficiency improvements, such as exterior insulation,
may project up to six inches into a required yard. Except, an energy efficiency
improvement may not be approved under this section if it projects into the side of
any lot across a property line.

Page 1 of 2
Attachment A Ord. 2018-04 PCV 1.12.18

- Adds another instance to Code when certain improvements may encroach into required yard setbacks
- The Code already allows for many encroachments, such as:
 - Architectural features
 - Unheated arctic entries
 - Bay windows (that don't add additional living space)
 - Roof eaves
 - Decks, Stairs



Current Language

CBJ 49.25.430(4) Projections into required yards.

1. **(O) Energy efficiency.** *Energy efficiency improvements, such as exterior insulation, may project up to six inches into a required yard. Except, an energy efficiency improvement may not be approved under this section if it projects into the right-of-way or across a property line.*
2. **(O) Energy efficiency.** *Energy efficiency improvements, that do not increase interior square footage, such as interior insulation, may project up to six inches into a require yard. Except, an energy efficiency improvement may not be approved under this section if it projects into the right-of-way or across a property line.*



Questions and Discussion





Community Development

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

PLANNING COMMISSION NOTICE OF RECOMMENDATION

Date: January 26, 2018
File No.: AME2017 0017

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

Proposal: Planning Commission Recommendation to the City and Borough Assembly regarding proposed revisions to CBJ Land Use Code 49.25.430 to provide for an additional setback encroachment exception for certain energy efficiency improvements.

Hearing Date: January 23, 2018

The Planning Commission, at its regular public meeting, adopted the analysis and findings listed in the attached memorandum dated January 16, 2018, and recommended that the City and Borough Assembly adopt the proposed revisions to CBJ code 49.25.430 regarding Projections Into Required Yard Setbacks, with the following amendment:

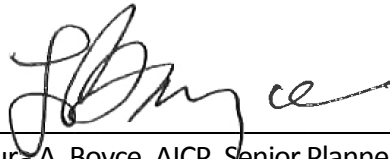
49.25.430(4)(O) Energy efficiency. Energy efficiency improvements that do not increase interior square footage, such as exterior insulation, may project up to eight inches into a required yard. An energy efficiency improvement may not be approved under this section if it projects into the right-of-way or across a property line.

Attachments: January 16, 2018 memorandum from Laura A. Boyce, Community Development, to the CBJ Planning Commission regarding AME2017 0017.

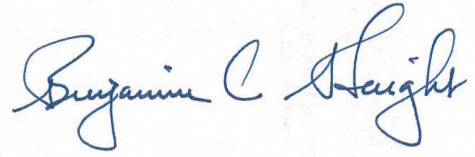
This Notice of Recommendation constitutes a recommendation of the CBJ Planning Commission to the City and Borough Assembly. Decisions to recommend an action are not appealable, even if the recommendation is procedurally required as a prerequisite to some other decision, according to the provisions of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

City and Borough Assembly
File No.: AME2017 0017
January 26, 2018
Page 2 of 2

Project Planner:



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



Benjamin Haight, Chair
Planning Commission



Filed With City Clerk

January 31, 2018

Date

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.

Presented by: The Manager
 Introduced: 02/12/2018
 Drafted by: A. G. Mead

ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 2018-06

An Ordinance Amending the Land Use Code Relating to Setbacks for Energy Efficiency Improvements.

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 Section. CBJ 49.25.430 Yard setbacks, is amended to read:

49.25.430 Yard setbacks.

...

(4) *Projections into required yards.*

...

(O) *Energy efficiency.* Energy efficiency improvements that do not increase interior square footage, such as exterior insulation, may project up to eight inches into a required yard. An energy efficiency improvement may not be approved under this section if it projects into the right-of-way or across a property line.

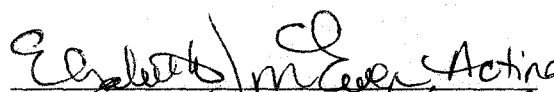
...

Section 3. Effective Date. This ordinance shall be effective 30 days after its adoption.

Adopted this 5th day of March, 2018.


 Kendell D. Koelsch, Mayor

Attest:


 Laurie J. Sica, Municipal Clerk *Clerk*



CITY AND BOROUGH OF JUNEAU
PLANNING COMMISSION
RULES OF ORDER

The following rules and guidelines are hereby adopted by the Planning Commission of the City and Borough of Juneau, in order to:

1. Make the most efficient use of the time of the members, Community Development Department staff, applicants, and the public.
2. Improve communications between the Commission, applicants, and the public-at-large.
3. Balance the efforts of the Commission between responding to applicants and recognizing the planning work necessary to guide the progressive development of the City and Borough of Juneau into the future.

Rule 1. COMMISSION STRUCTURE

The officers of the Planning Commission shall be Chair, Vice-Chair, Clerk, and Vice-Clerk. Officers shall be elected at the first meeting after the annual appointment of new members by a majority vote of the members of the Planning Commission.

Rule 2. MEETINGS

- A. Date and Time of Regular Meetings. The regular meetings of the Planning Commission shall be at 7:00 p.m. on the second and fourth Tuesday of each month.
- B. Place of Meetings. Regular Planning Commission meetings shall be held in the Assembly Chambers at the Municipal Building at 155 South Seward Street, Juneau, Alaska, unless public notice is provided for a different location.
- C. Meetings Public. All meetings of the Planning Commission and any of its committees shall be open to the public except for executive sessions.
- D. Special Meetings and Committee of the Whole Meetings. Special and Committee of the Whole meetings may be called at any time by the Chair, or three members.
- E. Time of Adjournment. Meetings will adjourn promptly by 11:00 p.m. unless extensions are allowed by a majority of the non-recused members present. No

new business will be considered after 10:30 p.m. unless agreed to by a majority of the members present who are not recused to hear the new business.

Rule 3. PUBLIC NOTICE OF MEETINGS

Notice of all meetings of the Commission and its committees shall be supplied to a newspaper of general circulation as well as posted on the City and Borough website and on the Municipal Bulletin Board.

Rule 4. STAFF ATTENDANCE

A Community Development Department staff member will attend all meetings of the Commission and its committees.

Rule 5. ORDER OF BUSINESS

The order of business for Planning Commission meetings shall be:

- I. Roll Call
- II. Request for Agenda Changes and Approval of Agenda
- III. Approval of Minutes
- IV. Public Participation on Non-Agenda Items
- V. Items for Reconsideration
- VI. Consent Agenda
- VII. Unfinished Business
- VIII. Regular Agenda
- IX. Board of Adjustment
- X. Other Business
- XI. Staff Reports
- XII. Committee Reports
- XIII. Liaison Reports
- XIV. Continuation of Public Participation on Non-Agenda Items
- XV. Planning Commission Comments and Questions
- XVI. Executive Session
- XVII. Adjournment

Rule 6. COMMITTEES

A. Appointment and Membership. The Chair of the Commission, with the approval of the Commission, shall (i) appoint members to a standing committee and appoint the committee chair; and (ii) create committees as deemed necessary, appoint members, and appoint the committee chair. Each committee shall consist of at least four Planning Commission members. The Planning Commission

Chair is an ex officio of all committees; the Chair can debate and vote but does not count toward the minimum quorum if absent.

B. Committee Chair. Committee chair or their designated alternate shall have full responsibility for conducting the affairs of their committees and reporting the same to the full Commission. Committee chairs shall act as spokespersons for their committee at public hearings and meetings.

C. Standing Planning Commission Committees

1. **Subdivision Review Committee.** The purpose of this committee is to study and conduct preliminary review of proposed subdivisions.
2. **Title 49 Committee.** The purpose of this committee is to review the land use code and recommend changes to the Commission.
3. **Rules and Procedures.** The purpose of this committee is to review these rules and procedures as necessary.

D. Liaisons to Other Committees

1. **Assembly Lands Committee.** There will be one representative of the Planning Commission on the Assembly Lands committee.
2. **Assembly Public Works and Facilities Committee.** There will be one representative of the Planning Commission on the Assembly Public Works and Facilities Committee.
3. **Wetlands Review Board.** There will be two representatives of the Planning Commission on the Wetlands Review Board.
4. **Juneau Commission on Sustainability.** There will be one representative of the Planning Commission on the Juneau Commission on Sustainability.

Rule 7. PROTOCOL FOR MEETINGS

A. Speaking on the Question. A Commission member or the Director of Community Development may speak more than once to the same question at the same stage of proceedings. In determining the order of speakers, the Chair shall give priority to members who have not spoken on the question. Members shall endeavor to provide the Commission with relevant facts and arguments and shall strive to avoid redundancy.

B. Asking Questions. After obtaining recognition from the Chair, a member may ask direct questions of another member of the Commission, staff, or of a person appearing before the Commission. The questions may not be argumentative.

Planning Commission Rules of Order

January 23, 2018

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C. Decorum. Members shall not question the motives, competency, or integrity of any person except as necessary to decide an appeal or other matter in which such issues are relevant. The Chair shall admonish any member violating this rule, and may, without a vote, declare a recess not to exceed ten minutes.

D. Order of Public Hearings

1. The Chair will open the public hearing and read the title of the matter at hand.
2. Planning staff will present a report and recommendation, and respond to initial Commission questions.
3. The applicant or the applicant's representative will have an opportunity to present information regarding the request and respond to initial Commission questions.
4. Public participation will be opened, and the public will be invited to comment. Commissioners may pose questions to those testifying.
5. Public participation will be closed.
6. The applicant or the applicant's representative will have an opportunity to present additional information regarding the request and respond to Commission questions.
7. The Commission will deliberate and make its decision.

E. Rules for Public Participation During Hearings. Public participation during hearings on permit applications, ordinances, resolutions, and matters other than appeals will be conducted according to the following rules:

1. **Public Participation.** Any person present desiring to be heard upon a matter which is the subject of a specific public hearing shall be given an opportunity to be heard during such public hearing portion of the meeting. In addition, there shall be a time during all regular meetings for members of the public to address the Planning Commission concerning any matter relevant to the Commission's jurisdiction and not on the agenda for specific public hearing at such meeting.
2. **Time Limits of Public Participation.** Unless otherwise specified by the Chair, public presentation is limited to five minutes per speaker. The five-minute limit shall be extended as long as necessary to answer any questions addressed to the speaker by the Commission or staff. The Chair may set a different time limit if it appears necessary to gain maximum participation and conserve time, and may for the same reason disallow all questions from the

Commission to members of the public. The time limit may be changed by a majority of the Commission. The time limit for individual speakers shall be uniform for all speakers, and shall be strictly enforced. Speakers shall not have the right to transfer their unused time to other speakers, but the Chair may grant additional time to a person speaking on behalf of a group present in the chambers.

3. **Submission of Written Material.** Members of the public are encouraged to submit written comments, reports, and exhibits. Written material, especially maps, graphics, photographs, and responses to specific code sections generally aid the Commission in making its decision. However, written material submitted close to the hearing date, especially voluminous written material offered at a public hearing can present fairness problems. The Commission adopts this written material policy to give staff and the applicant a reasonable opportunity to analyze public comments, to give the public a reasonable opportunity to submit written material before and after publication of the staff report, to give the members a reasonable opportunity to review the meeting packets, and to give the Commission the ability to balance the relevance and prejudice of any late written material. Members of the public should assume that the Commission has read all materials submitted in advance of the hearing.
 - a. **Staff Report.** The original staff report should be published by close of business eight days before the hearing (Monday). If justice so requires, the Director may extend the publishing deadline to close of business six days before the hearing (Wednesday).
 - b. **Timely Written Material.** Written material—including public comments, applicant comments, and supplemental staff reports—submitted to the Director's office before noon four days before the hearing (Friday at noon) is considered timely submitted and will be included in a packet for that meeting. Written material submitted less than four days before a meeting is subject to the late submittal policy below. If justice so requires, and with consultation with the Chair, the Director may extend the timely written material deadline to noon the day before the hearing (Monday).
 - c. **Late Written Material.** Maps, graphics, photographs, and no more than two pages of written information are allowed to be submitted at the hearing when a person presents. The Chair may reject the submission of voluminous information (more than two pages of written material). Specifically, if the applicant, staff, or a member of the public who wishes to submit written comment after the timely written material deadline (Friday at noon), that person or a representative for that person must (1)

attend the meeting to orally comment, and (2) provide fifteen copies of the written material.

4. The Chair will set forth the item or subject to be discussed and will rule non-germane comments out of order.
5. All speakers, public, and members of the Commission will be recognized by the chair by surname.
6. Members of the public will precede their remarks by stating their names and, unless otherwise allowed by the Chair, their place of residence. The public will write this information on the sign-in sheet provided.
7. Written comments, with the exception of e-mail transmissions, must be signed. E-mail transmissions must show the author's name. Anonymous written comments will not be accepted.
8. Members of the Commission will not direct questions to each other or to the Chair during public participation except as to the conduct of the hearing.
9. Members of the Commission may direct questions to members of the public presenting to obtain clarification of material presented.
10. The public may direct questions for staff or the applicant to the Chair for consideration. The questions may not be argumentative.
11. When recognized by the Chair, staff may participate in the same manner as the members of the Commission except they cannot vote.
12. Once public participation is closed, it cannot be reopened except by six votes.
13. Telephonic participation by an applicant or member of the public is not permitted. An applicant or member of the public that wishes to participate at a meeting but cannot attend the meeting may submit comments in writing pursuant to these rules or send a representative to present on their behalf.

Rule 8. MOTIONS

A. Seconds. Seconds to motions are not required.

B. Renewal of Defeated Motions. Defeated motions may be renewed only under suspension of the rules.

C. Priority of Privileged Motions. Privileged motions shall have the following priority:

1. Fix time to adjourn
2. Give notice of reconsideration
3. Adjourn
4. Recess
5. Question of privilege of the Commission
6. Question of personal privilege

Rule 9. CLERICAL ERRORS

Clerical errors that do not affect the substance of an ordinance or resolution, such as errors in numbering or errors in spelling may be corrected by the Attorney upon discovery of the error.

Rule 10. VOTE REQUIRED

The affirmative vote of five members of the Commission shall be sufficient to take any action except as otherwise provided by Charter or ordinance and except in the following instances, which require the affirmative vote of at least six members:

- A. Limiting, extending, or closing debates.
- B. Suspension of the rules.
- C. Setting of or postponement of special orders.
- D. Objection to consideration of question.
- E. Motion for immediate vote (previous question).
- F. Rescind.
- G. To take up a motion for reconsideration at the meeting at which the action to be reconsidered was taken.
- H. Reopen public participation.

Charter § 3.16 (e) allows the prevailing vote to be reduced by one vote for every two Commissioners who are present but who do not vote because they have a conflict of interest or have been excused from voting by a vote of all the remaining Commissioners who may vote on the question. However, the prevailing vote may not be reduced to less than one-third of the membership. A quorum of a board shall consist of a majority of the full membership.

Rule 11. PUBLIC PARTICIPATION CONFINED TO THAT AGENDA ITEM

No person except a member or the Director of Community Development may participate in Commission proceedings except as provided in the agenda item for public participation and except that the Attorney, planner assigned to the agenda item, and other CBJ staff may comment on professional or procedural aspects. Public participation shall be permitted on a motion to recess into executive session prior to the vote on such a motion. Public participation shall be permitted on all items on the agenda except public participation shall not be permitted on items before the Commission for information purposes.

Unless specifically authorized at the meeting by a majority of the Commissioners or by the chair, public participation shall not be permitted at the Committee of the Whole meetings, committee meetings, and meetings advertised as work sessions only.

Rule 12. RECONSIDERATION

- A. What May Be Reconsidered. Main motions, amendments to main motions, privileged motions involving substantive questions, and appeals are subject to reconsideration. Procedural motions may not be reconsidered.
- B. Who May Reconsider. Any member, whether or not that member voted on the prevailing side, may give notice of or move for reconsideration.
- C. Effect of Notice. The effect of giving notice of reconsideration is to suspend all action on the subject of the notice until a motion for reconsideration is made and acted upon or until the time within which the motion for reconsideration may be made and acted upon has expired.
- D. Time in Which Notice Must Be Taken Up. A notice of reconsideration expires unless a motion for reconsideration is made and acted upon prior to adjournment of the next regular meeting succeeding the meeting at which the action to be reconsidered occurred.
- E. Successive Reconsideration. There may be only one reconsideration even though the action of the Commission after reconsideration is opposite from the action of the Commission before reconsideration.
- F. Precedence. A motion for reconsideration has precedence over every main motion and may be taken up at any time during the meeting when there is no other motion on the floor.
- G. Effect. A motion for reconsideration completely cancels the previous vote on the question to be reconsidered as though the previous vote had never been taken.

The motion for reconsideration is debatable to the same extent as the underlying motion.

Rule 13. TELEPHONIC PARTICIPATION

- A. A member may participate via telephone in a Planning Commission meeting, or a Planning Commission committee meeting, if the member declares that circumstances prevent physical attendance at the meeting. If the Chair chooses to participate via telephone, the Vice-Chair shall preside.
- B. The member shall notify the Director and the presiding officer, if reasonably practicable, at least four hours in advance of a meeting which the member proposes to attend by telephone.
- C. At the meeting, the Secretary shall establish the telephone connection when the call to order is imminent.
- D. A member participating by telephone shall be counted as present for purposes of quorum, discussion, and voting.
- E. The member participating by telephone shall make every effort to participate in the entire meeting. From time to time during the meeting the presiding officer shall confirm the connection.
- F. The member participating by telephone may ask to be recognized by the presiding officer to the same extent as any other member.
- G. To the extent reasonably practicable, the Director shall provide backup materials to members participating by telephone.
- H. If the telephone connection cannot be made or is made then lost, the meeting shall commence or continue as scheduled and the Secretary shall attempt to establish or restore the connection, provided that if the member participating by telephone is necessary to achieve a quorum, the meeting shall be at ease, recess, or adjourn as necessary until the telephone connection is established or restored.
- I. Meeting times shall be expressed in Alaska Time regardless of the time at the location of any member participating by telephone.
- J. Remarks by members participating by telephone shall be transmitted so as to be audible by all members and the public in attendance at the meeting.

Planning Commission Rules of Order

January 23, 2018

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Rule 14. ADOPTION OF ROBERT'S RULES OF ORDER

The conduct of the meetings of the Planning Commission shall be governed by the Chair of the Commission according to Robert's Rules of Order, 10th Edition.

REPEAL AND EFFECTIVE DATE

The existing Planning Commission Rules of Order are repealed, and these Rules of Order shall be effective upon filing with the City Clerk.

Benjamin Haight, Chair
Planning Commission

Filed with City Clerk

Date

Meeting Agenda of the City and Borough of Juneau
Title 49 Committee of the Planning Commission

Wednesday, December 20, 2017, 12 pm
Community Development Department, Large Conference Room

Commissioners Present:

Dan Miller, Kirsten Shelton, Paul Voelckers, Carl Greene, Nathaniel Dye, Ben Haight

Members Absent:

Dan Hickok

Staff Present:

Laura Boyce (CDD), Jill Maclean (CDD), Beth McKibben (CDD), Amy Liu (CDD), Robert Palmer (Law), Marjorie Hamburger (CDD)

I) Call to Order

Meeting called to order at 12:04 pm.

II) Agenda Topic

a) De Minimus Variances

Ms. Boyce clarified that a De Minimus Variance will be renamed to reflect that this is an administrative variance, decided upon by the Director of Community Development. She presented a draft of the revision to code to start the conversation (page 3 of the packet) as well as other handouts as follows:

- How to Calculate the Height of a Building
- Setback Exceptions
- The Table of Dimensional Standards, 49.25.400
- Appeals, Variances and Interpretations, Chapter 49.20
- Site Specific Setback Reductions

Ms. Boyce stated that the code is generous already and allows for encroachments and setbacks and reductions. Currently for the De Minimus Variance there are four (4) criteria to be considered by the Director before granting the variance (page 3, lines 9-17).

Mr. Voelckers asked if it is the intent to get the language cleaned up at this meeting. Ms. Boyce said she wanted commissioners to talk about administrative variances today. At the January 23, 2018, meeting staff can present these changes to variances along with court cases that explain the determining criteria and, if the draft is good enough, ask for a vote of approval on these administrative variances. Mr. Voelckers asked if at that point the Planning Commission will forward the draft to the assembly for consideration. Yes, said Ms. Boyce.

Ms. Boyce said staff would like to change the name to add the word “administrative” so as to be clear what it is. Also, as it stands it states that “projections not to exceed 25 percent of the yard setback” (page 3, line 6) and this figure needs discussion.

Mr. Voelckers asked if these types of variances are done as a pre-approval or post-project, like for someone who has made a boo-boo. For Criteria A, is it “an unreasonable hardship” because something is already in place? Ms.

Boyce said staff hopes this variance can more often be used a pre-approval. Ms. McKibben said currently it is used as a post-project solution. Mr. Palmer said this could be used for both situations.

Mr. Voelckers said he thinks this should be clarified in the language. Discussion ensued about how this has been used in the past for certain circumstances. If the intent is that it applies to both types of situations, it seems useful to have language indicating this, restated Mr. Voelckers.

Mr. Miller said he feels strongly about the 25% determination on post-project variances, if a mistake has been made. But asking for relief of a full 25% of the yard setback requirement ahead of time seems problematic to him.

Mr. Dye suggested that it might make more sense to be stated as 25% or 3 feet, whichever is less. This might mean applications for this variance are requested less often?

What is the intent for adding 3 feet, asked Mr. Voelckers? What is our biggest setback in code, he asked? Ms. Boyce said 25 feet.

Mr. Palmer said the uniqueness of the unreasonable hardship criteria helps both pre- and post-project. For a post-project there is a financial hardship. Pre-project there may be different hardships.

Mr. Greene asked if granting the variance is by the Director and is denied, does it go to the Planning Commission? Mr. Palmer said this is interesting, and he does not know of a recent appeal of a De Minimus Variance. He does not think this could happen legally. Any time a director does something, the public has the right to appeal. But for an administrative variance, there are fewer elements to consider than for a regular variance. So there would be no motivation to apply for a regular variance based on those fewer elements.

Ms. McKibben said the current process is the applicant needs to get their application for a variance signed off by neighbors. The De Minimus option is different. Either an applicant meets or does not meet the criteria, regardless of neighbor sentiment.

Mr. Voelckers said he believes there is a broad presumption in the community that for any director determination there is a right to an appeal. Mr. Palmer said he thinks it should be stated in this language that it is different for a De Minimus Variance.

Mr. Dye returned to the topic of the 25% figure; he said it makes him uneasy. Interpreting the variance as applicable both pre- and post-project, it seems easy to go ahead and build something knowing that you can obtain a variance of this sort. Mr. Dye wants to avoid abuse of this option.

Mr. Voelckers said he likes the addition of a maximum of 3 feet because 25% of a larger setback could be much larger, maybe even 18 inches or 2 feet to make requesting this variance more as a response to a small boo-boo, not about taking advantage of something while in the planning stages.

Mr. Miller suggested looking at exceptions already in code before determining the right number or percentage.

Mr. Voelckers asked why the department has allowed some exceptions outright while others have kicked in with this variance. Ms. McKibben said it is more applicant-friendly to have exceptions allowed over the counter. De Minimus was first created to address mistakes.

Ms. Boyce and Ms. McKibben listed some situations, such as slope of a property, unheated arctic entries, adding exterior insulation, which have been allowed a setback exception and not gone through this administrative process.

Ms. Boyce pointed out the handout about encroachments. Generally this applies to things that are not living space, like a deck or a shed. Living space with setback reductions is generally when variances are requested.

Mr. Voelckers said the usual cases are “problem children”- a steep or substandard lot, for example.

Mr. Voelckers said he likes Mr. Dye’s suggestion about adding the geometric upper limit to the exception so as to not create a mechanism to game the system. We don’t want to create an unintended consequence, he said. Mr. Miller said he brought it up because of the potential for people building on smaller and smaller a lot which increases the possibility of a mistake. He is okay with the idea of 25% not to exceed 3 feet. Mr. Dye pointed out that he just grabbed that number randomly and asked Mr. Miller what he thinks would be reasonable, from his perspective as a builder. Mr. Miller said he thinks 3 feet is either enough or too much. Mr. Voelckers said he thinks 2 feet is better, because it is hard to justify a 3 foot mistake. Mr. Dye suggested the committee to consider the low side, not the high side.

Mr. Greene asked if the size criteria should be the same for pre- and post-requests. Mr. Voelckers said there could be a situation with a neighbor who has a fence too close to the lot line and this might indicate a need to exempt an overhanging eave to accommodate.

Ms. Maclean said for the most part we require setbacks to be confirmed for building permits and a surveyor needs to sign off. Most surveyors will not jeopardize their career for manipulations to the code like this, she said. Inspectors go out to the site as well.

Mr. Voelckers suggested drafting the number at 2 or 3 feet for now, to allow the committee to move on and address other areas of the code.

Ms. McKibben said that Criteria C (page 3, line 14) has to do with sight visibility, which falls under the area of public health and safety. How do you think staff should evaluate an after-the-fact encroachment in such a situation, she asked the commissioners.

Where is the harmonious piece, asked Mr. Greene? We played with that, said Ms. Boyce, and did not include that language because as part of looking at the built environment, if there are already encroachments and unmet setbacks in the neighborhood, we do not want to continue to repeat that pattern. Harmony with the built environment is not necessarily the goal, she said. Mr. Palmer added that if this is used after the fact, would commissioners want the director to base the decision on neighboring properties, when, for example, no one else has a bump out of 2 feet?

Mr. Miller asked about Criteria B. What does this mean? Mr. Voelckers said he thinks this might hamper the ability to respond to a mistake. Ms. Boyce said this could be worded better. Mr. Voelckers asked if it is necessary to keep this item. What are we trying to solve with Criteria B? Mr. Palmer said it could come out. Is there a problem he could foresee, asked Mr. Voelckers? Not that I see at this point, said Mr. Palmer. Mr. Dye said if the wording contained a maximum amount for the variance (3 feet, for example) then B could be deleted, he thinks.

Mr. Dye said that Criteria D might have a relationship to harmony and gives the director some flexibility without stating harmony specifically. The word ‘tailored’ works here, said Mr. Voelckers.

Mr. Voelckers asked on about language on Page 4, Line 24; what does “not caused” mean? The staff report would need to clarify this, he said. Mr. Palmer said now it says “conditions of the property” to address a nonconforming lot situation. Mr. Voelckers said he wanted to remind people that a too narrow interpretation needs to be avoided.

Mr. Miller pointed out number 3 (Page 5, Line 2), and said that if the variance has to meet number 3, no variance will ever be granted. Ms. McKibben said when she looks at this from staff perspective, if in a neighborhood of single family homes there is an extreme slope and a narrow envelope for building, an applicant can be permitted to build in a way that is compatible with the neighbors who do not have the same situations on their properties. Mr. Miller said he argued previously against this. Mr. Voelckers wondered if one reading of #3 could be an unintended overreach as in a height variance. Mr. Miller pointed out that the Soboleff Center on Front and Seward Streets would not have made it past this determination, for example.

Ms. Shelton said perhaps the word “necessary” could be removed and the language just says it would enable or help. Mr. Voelckers asked if the term was about being consistent with the neighbors. If a property owner is surrounded by underutilized properties, then this determination works against fully utilizing a property. Ms. Maclean gave an example of wanting to deny a variance on Meander Way because given the current status of the Mendenhall River, allowing a smaller setback would be a terrible idea, although other properties bordering the river have such a setback and are currently threatened.

Mr. Dye said regarding neighborhood harmony and height, does #5 cover such considerations enough already?

Mr. Miller said he is trying to get rid of #3, thinks it is covered by 5(A) of 49.20.240. He has never been able to find for 5(A). Mr. Voelckers asked staff to struggle with this and come back with some solution. Ms. Boyce said the main concept here is justice. Mr. Voelckers said the words “reasonably tailored” are good words.

Mr. Voelckers asked staff what was the 7th criteria lurking in shadows? Mr. Miller talked about the “CRAP concept”. He recalled Mr. LeVine’s concern – while staff and commissioners are working to fix things in code so as to reduce or eliminate the need for variances, some properties or situations don’t yet fall into the fixed categories. Mr. Miller explained that he and Mr. LeVine joked about this as the Code Review Analysis Process = CRAP. Mr. Miller appreciates the thought that we cannot just dismiss the variance process because people are not receiving justice right now. He advocated for a 7th criteria for property owners who need relief from the code because staff has not yet been able to fix things in code.

Mr. Voelckers said an obvious example is the 50 foot stream buffer. This is a problem that is not fixed yet. Mr. Dye suggested including a bulleted list of these unfixed things that could be struck once new code is approved by the Assembly. Mr. Palmer said this could be put in on Page 1, Line 16/17. This could include things like canopies, signs, eagles, etc. that have not been address or are not yet finalized.

Mr. Greene said would this mean we would be prematurely hearing a case that may be addressed later on? Mr. Voelckers said until we’ve done the other fixes, we would be crazy not to consider a variance. Mr. Dye said we would have to put this in for the meantime. Mr. Greene said if, for example, we grant the variance for eagle setbacks and the new eagle ordinance gets denied by the Assembly, then what happens? Ms. Maclean said the person who got the variance would still go through with their project, that particular variance would still stand, but no longer would eagles be a cause for a variance if denied by Assembly.

Are there other categories not addressed yet, asked Mr. Voelckers? We didn’t talk about page 7 or 8, he said.

Mr. Hickok said some of the points discussed, like 5(A), struck a note that it was an “or” statement. He agreed that this particular statement was one commissioners could never say yes to. By eliminating it, he said he thinks this is solved. It seems this addresses all the concerns the commission had.

Mr. Voelckers restated that this variance addresses pre- and post-activity.

Ms. Boyce brought up the issue of public notice. At present, De Minimus Variance requests do not need the big red sign posted on the property but code says this is required for a regular variance. Requiring a posted sign means an additional upfront fee of \$150 with a return of \$100 if the sign is returned, so there is more cost for an applicant. Mr. Dye asked why signs are not used for administrative variances. Can a neighbor appeal this variance, he asked? Yes, within 20 days, said Mr. Palmer. Ms. McKibben asked if Mr. Palmer and Ms. Boyce had thought about this already.

Mr. Dye said he thinks it would be fair if the sign is up for an administrative variance as well.

Ms. McKibben gave an example from the past where neighbors submitted comments against the applicant. What would staff do if neighbors do not like the situation, she asked? For a De Minimus Variance the director is only reviewing established criteria and not taking public comment into account. Mr. Dye said comments could be useful if some information is brought forward that staff might not be able to learn otherwise, for example about a school bus pick up spot that people in the neighborhood know about.

Mr. Voelckers said he likes erring on the side of extra notice.

Mr. Miller said he has personal experience of pouring a foundation that is 6 inches off. It is a huge deal when this happens. That said, he thinks more public notice is probably fine. Before, an applicant had to go to the neighbors and have them sign off. If the circumstance is a small mistake after the fact, when you put the red sign out you allow everyone driving by to be able to comment.

Ms. Boyce said red signs let the public know about a public hearing. She said she does not propose the red signs be up for some decision that the director has the authority to make. There could still be some sort of notice, though. Ms. Maclean said minor subdivisions do not get the red notice sign, for example, but the abutters get noticed, the adjacent properties. Ms. Boyce said she thinks noticing the adjacent neighbors only could be a good idea.

Mr. Dye asked if the variance is appealed, does further notice go out? No, said Mr. Palmer.

III) Next Meeting

Tentative: Wednesday, January 17, 3:15 pm.

VI) Adjournment

The meeting adjourned at 1:09 pm.