

Agenda

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

December 12, 2017
Assembly Chambers
7:00 PM

- I. ROLL CALL
- II. APPROVAL OF MINUTES
- 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
- VII. CONSENT AGENDA
- VIII. CONSIDERATION OF ORDINANCES AND RESOLUTIONS
- IX. UNFINISHED BUSINESS
- X. REGULAR AGENDA
 - A. AME2017 0013: A Request for a Zone Change from D10 to LC
 - B. AME2016 0002: A test amendment to CBJ code 49.20 regarding variances
- XI. BOARD OF ADJUSTMENT
- XII. OTHER BUSINESS
- XIII. DIRECTOR'S REPORT
 - A. Information Item: Yankee Decision, Supreme Court of the State of Alaska
- XIV. REPORT OF REGULAR AND SPECIAL COMMITTEES
- XV. PLANNING COMMISSION COMMENTS AND QUESTIONS
- XVI. ADJOURNMENT

Additional Materials

Regular Planning Commission Meeting

Assembly Chambers

7:00pm

Meeting Date: December 12, 2017

1. AME2017 0013:

- a. Public Comment from Myrna Gardner, received 12/4/17
- b. Public Comment from Paul Simpson, received 11/29/17
- c. Email Correspondence between Mr. Simpson and Teri Camery, Senior Planner, 11/29/17 and 11/30/17

From: Myrna Gardner
To: [PC_Comments](#)
Subject: Public Comment Case No. AME2017 0013
Date: Monday, December 04, 2017 12:41:29 PM

Teri Camery, Planner
Juneau Planning Commission
City of Juneau

I am writing to voice my concerns regarding the requested zone change from D10 to LC at 3853 Bayview Ave and 11950, 11998 & 12020 Glacier Highway. On page 3 of the report from you, the applicant states they have no plans to do anything. However believe rezoning it would be in its best interest for “potential” maximum use of the land.

However the Comprehensive Land Use Plan states, *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.*

Approving a “Blank” or “No Plan” rezoning violates this objective. How can the Commission say with any certainty that the proposed change would be consistent with the Comprehensive Plan and associated land use maps, when nothing (no proposed use) has been identified. I am all for growth in our community, I just believe we have to be responsible about it. Approving a “no plans” rezoning does not seem prudent or in the best interest of our community.

Thank you,
Myrna Gardner,
Juneau, AK

From: PC_Comments
Sent: Wednesday, November 29, 2017 8:14 AM
To: Teri Camery
Subject: FW: Auke Bay - 4 Parcel Rezone - Comments
Attachments: Jetty Marketing Brochure.pdf

-----Original Message-----

From: Paul Simpson [<mailto:paul.c.simpson@me.com>]
Sent: Tuesday, November 28, 2017 3:40 PM
To: PC_Comments
Subject: Auke Bay - 4 Parcel Rezone - Comments

To whom it may concern:

My group just purchased 11798 glacier highway for several million dollars largely because of its zoning. Allowing this rezone would decrease our ability to properly monetize our lot of 2.43 acres and our future development. Once our value has been realized then I will support the rezone, but Auke Bay is a small submarket and we are planning a major redevelopment and housing complex that should not be undercut by a rezone. We are planning on meeting or exceeding the housing and commercial demand for the area.

See attached brochure for our commercial redevelopment and our plan is to build 62 housing units on our back lot.

Thank you,

Paul Simpson
Alaska Legacy Partners LLC
949-244-2924

Subject: FW: Auke Bay - 4 Parcel Rezone - Comments

-----Original Message-----

From: Paul Simpson [<mailto:paul.c.simpson@me.com>]
Sent: Thursday, November 30, 2017 11:37 AM
To: Teri Camery
Cc: Marjorie Hamburger
Subject: Re: Auke Bay - 4 Parcel Rezone - Comments

Hi Teri,

Thanks for your responses. I'm working with my partner on a response to your former question. Please don't formalize anything in regards to my response yet. I'll get back to you later today or tomorrow with an email with some updated thoughts.

Thanks,

> On Nov 30, 2017, at 10:05 AM, Teri Camery <Teri.Camery@juneau.org> wrote:

>
> Hello again Mr. Simpson,
>
> Would you like the brochure that you attached to go with your comments to the Planning Commission? If so, we need you to send it in a much smaller size. What you sent is 16 MB, and we can open it, but we aren't able to post it electronically as required. It is locked to prohibit editing so we don't have the authority to shrink it.
>
> If we don't hear back from you, we will not be including the brochure.
>
> Thanks very much,
> Teri Camery, Senior Planner
> Community Development Department
>

> -----Original Message-----

> From: Teri Camery
> Sent: Wednesday, November 29, 2017 8:35 AM
> To: 'paul.c.simpson@me.com'
> Subject: RE: Auke Bay - 4 Parcel Rezone - Comments
>
> Hello Mr. Simpson,
> Thank you for your comments on the rezone. I will make sure that the Planning Commission receives them.
> Do you mind explaining a bit more how the rezone would adversely affect your development? That would be helpful to me.
>
> Thanks very much,
> Teri Camery
>
> Teri Camery, Senior Planner
> Community Development Department
> 155 S. Seward
> Juneau, AK 99801
> (907) 586-0755
>



(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

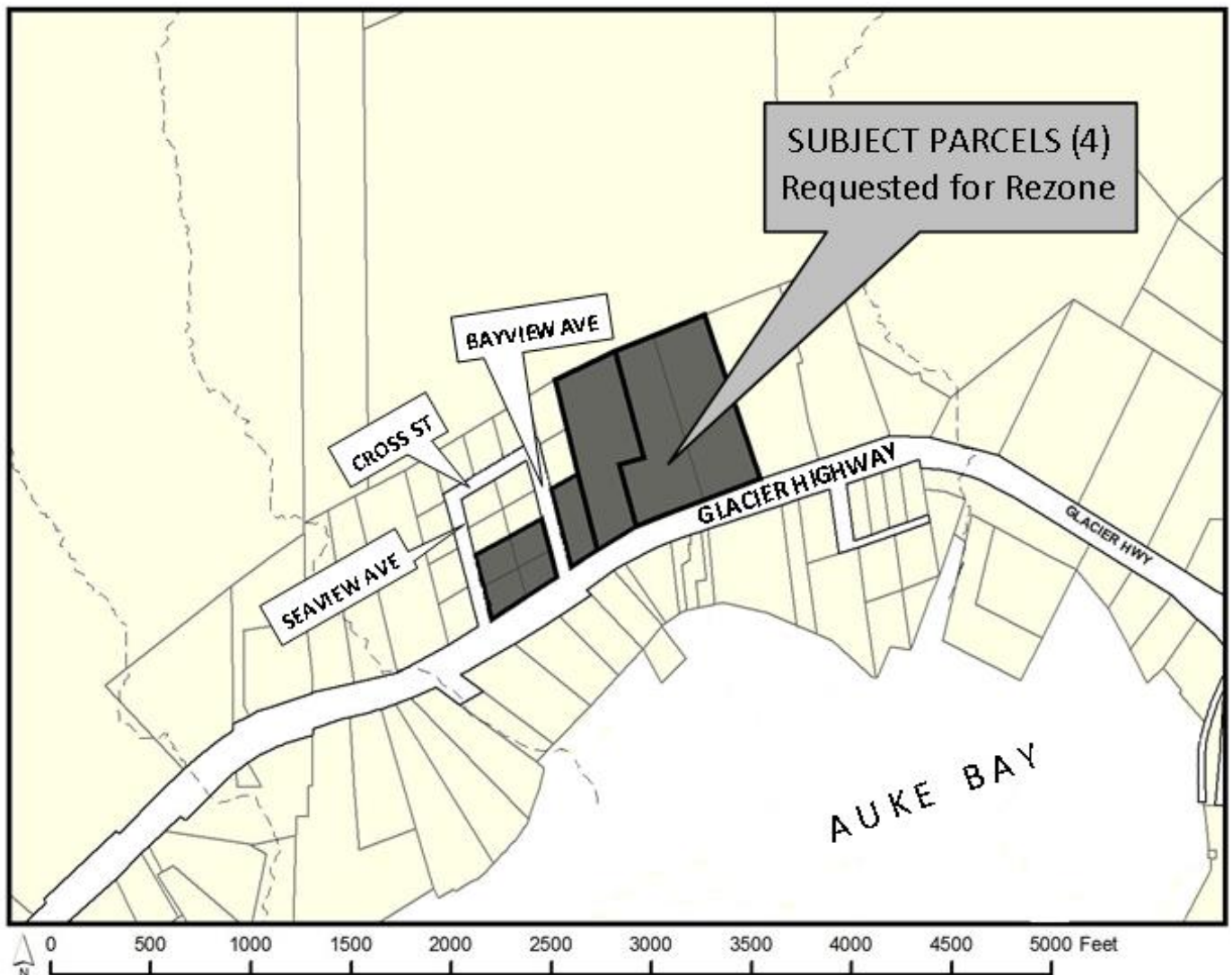
Access: Glacier Highway

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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.*

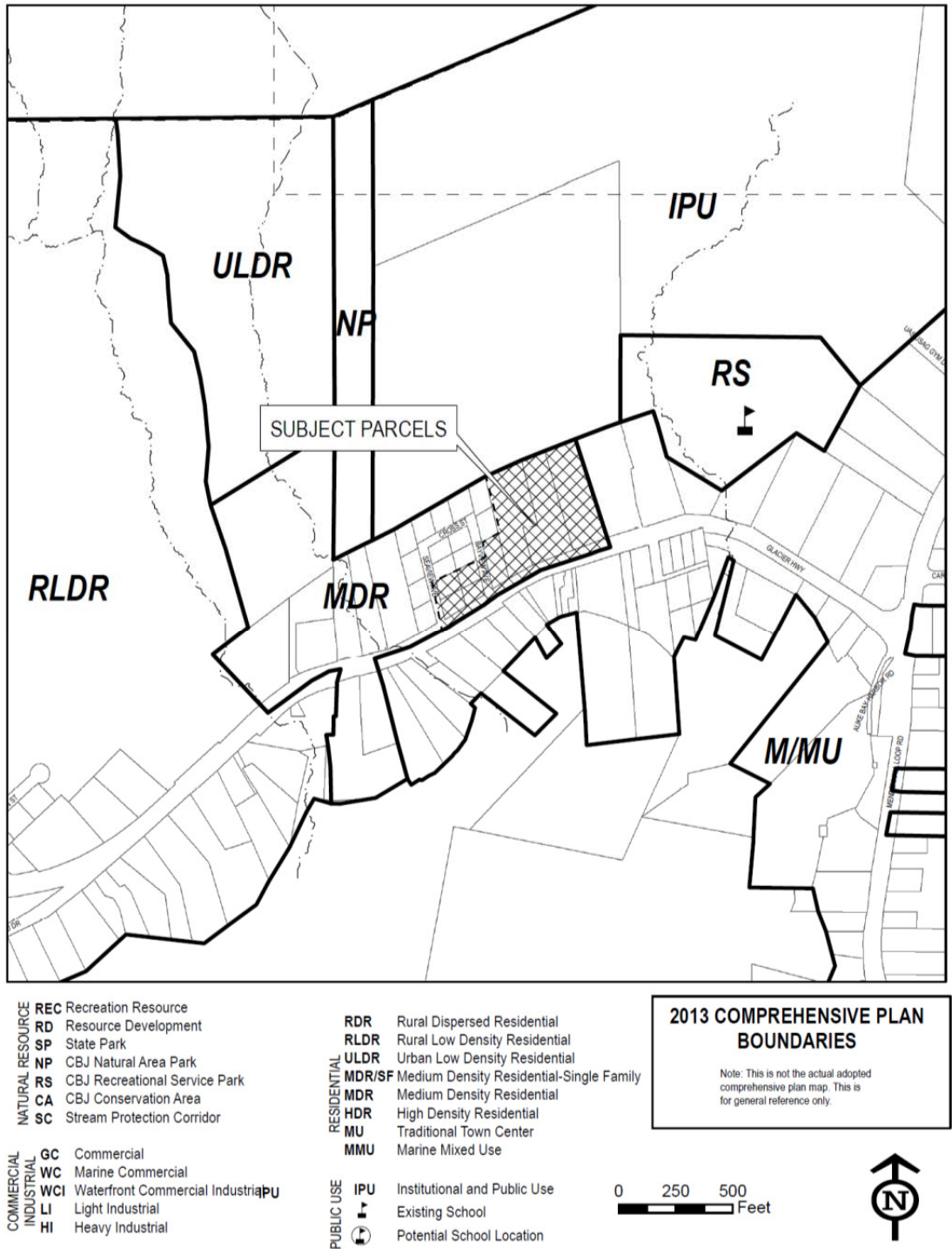
The CBJ Land Use Code provides minimum restrictions for zone change requests. This proposal conforms to these restrictions as follows:

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.

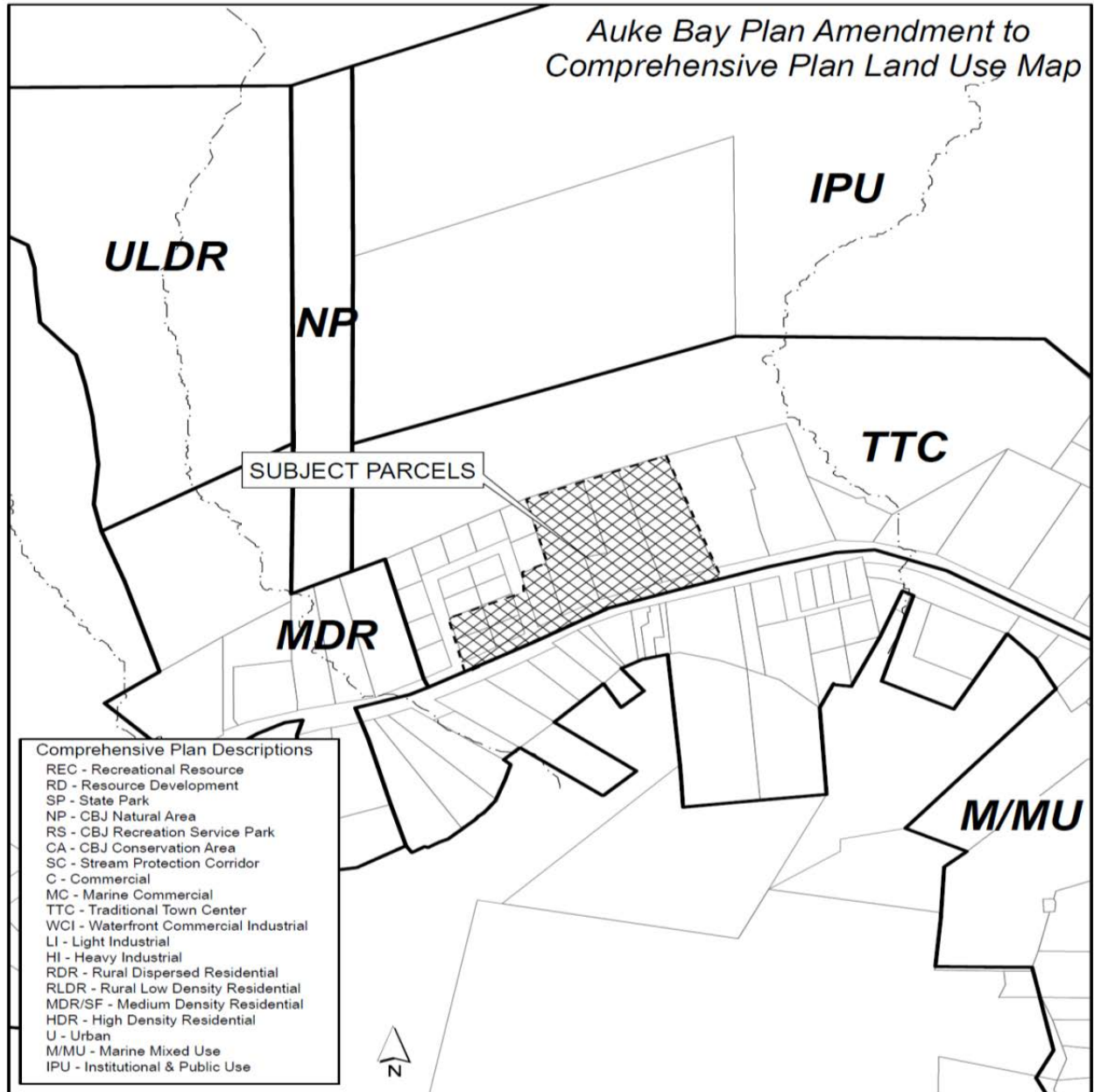
(Continued on the following page.)

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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

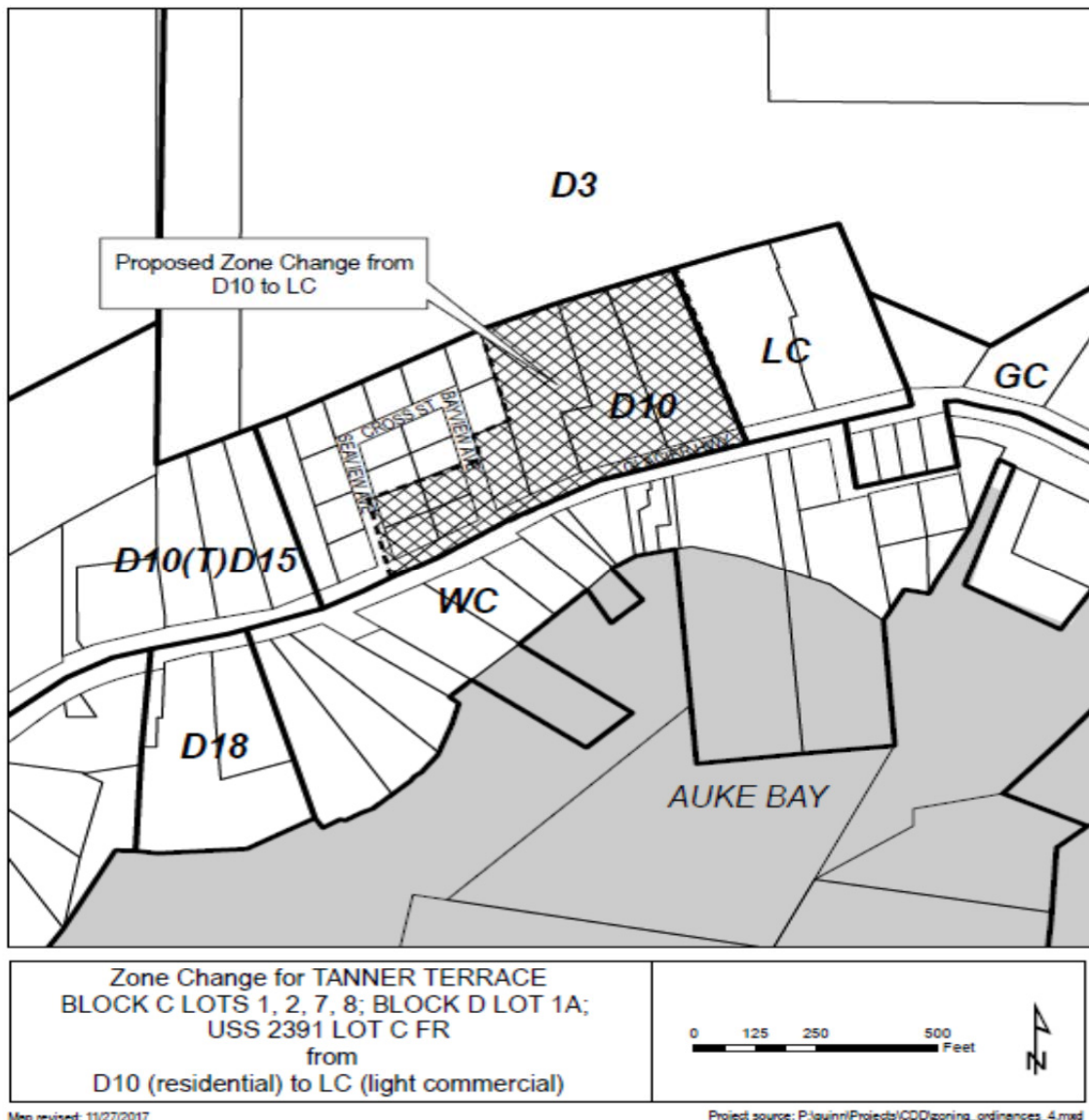
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business growth that creates jobs and provides services which area residents and the community need. This type of small business development and growth also supports quality of life and walkable mixed-use neighborhoods.

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

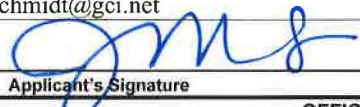
Staff recommends that the Planning Commission concur with the Director's analysis and findings and recommend approval to the Assembly for a rezone request to change 7.06 acres

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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 Building/Grading Permit	***SIGN	Date Received	Application Number(s)
		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)				
Comments:					Permit Intake Initials ANE

NOTE: DEVELOPMENT PERMIT APPLICATION FORMS MUST ACCOMPANY ALL OTHER COMMUNITY DEVELOPMENT DEPARTMENT APPLICATIONS
 I:\FORMS\2010 Applications Revised November 2009

Attachment 1

Applicant has spoken w/ Beth.
 This communication will count

ZONE CHANGE APPLICATION

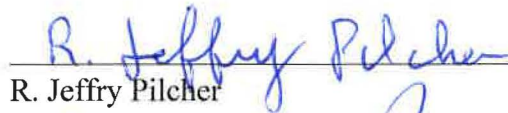
TO BE COMPLETED BY THE APPLICANT

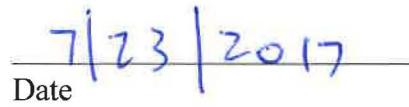
Project Number	Project Name (15 characters)	Case Number AME 20170013	Date Received 07/31/2017		
LEGAL DESCRIPTION(S) AND LIMITS OF PROPERTY TO BE REZONED: <u>See Attached</u>					
IS THIS AN EXPANSION OF AN EXISTING ZONE? ☒ Yes ☐ No					
Total Land Area of Proposed Change <u>7.06</u> acres		Comp Plan 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 Anker 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.	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>	

NOTE: MUST BE ACCOMPANIED BY DEVELOPMENT PERMIT APPLICATION FORM

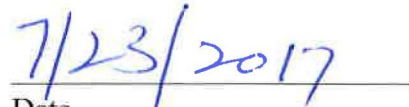
ADDENDUM TO ZONE CHANGE APPLICATION

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.

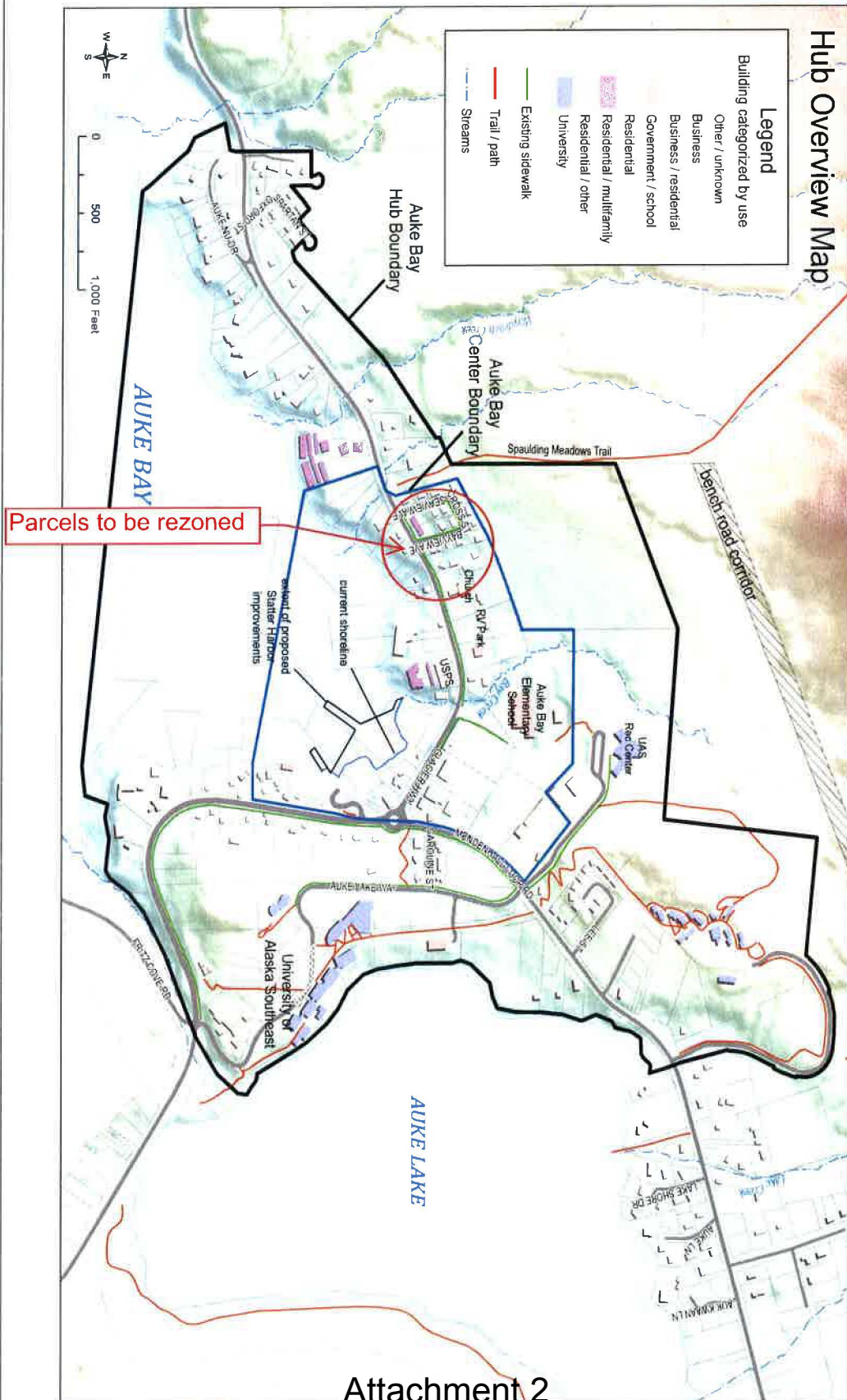

Date

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



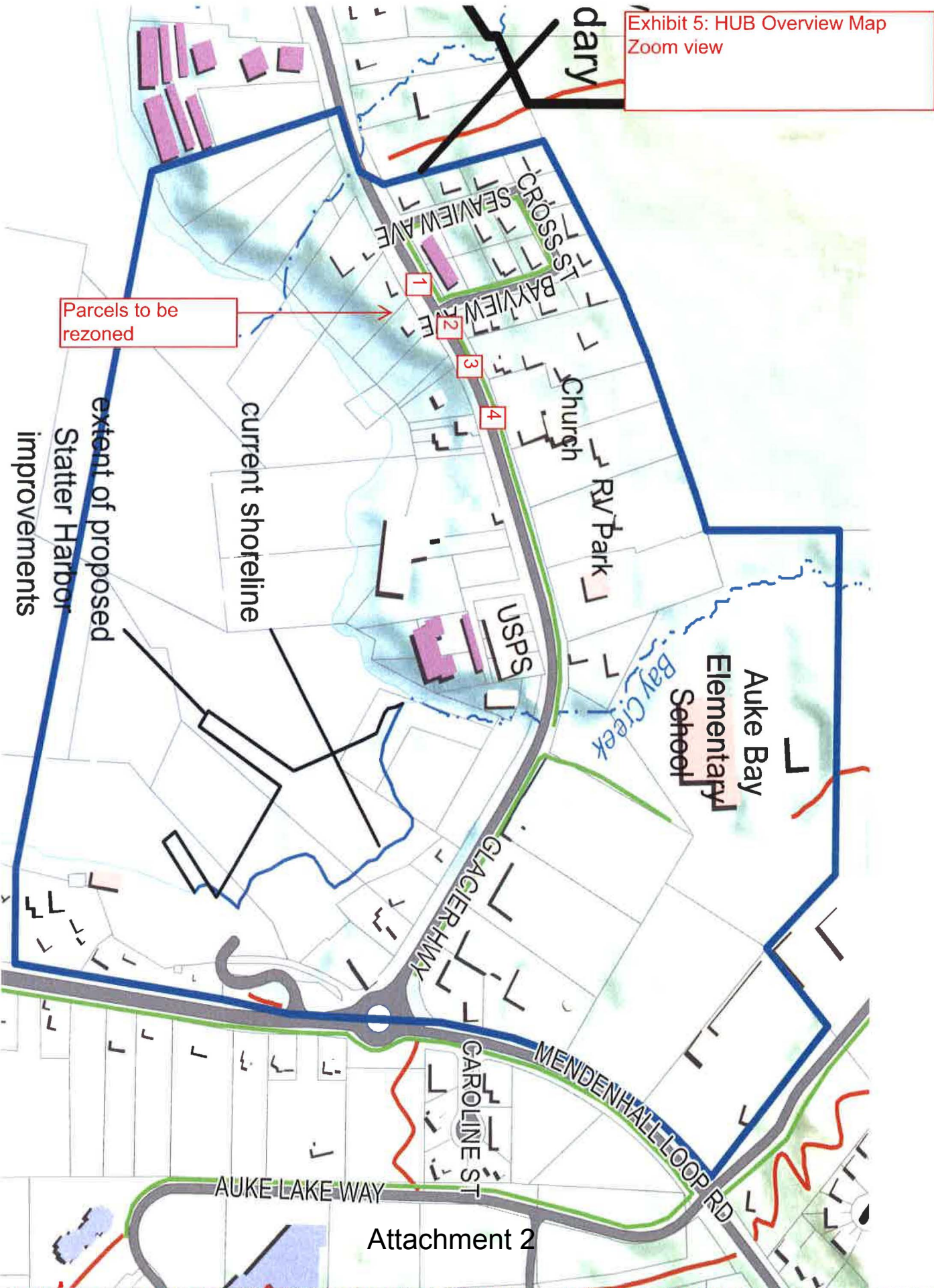


Exhibit 5: HUB Overview Map
Zoom view

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

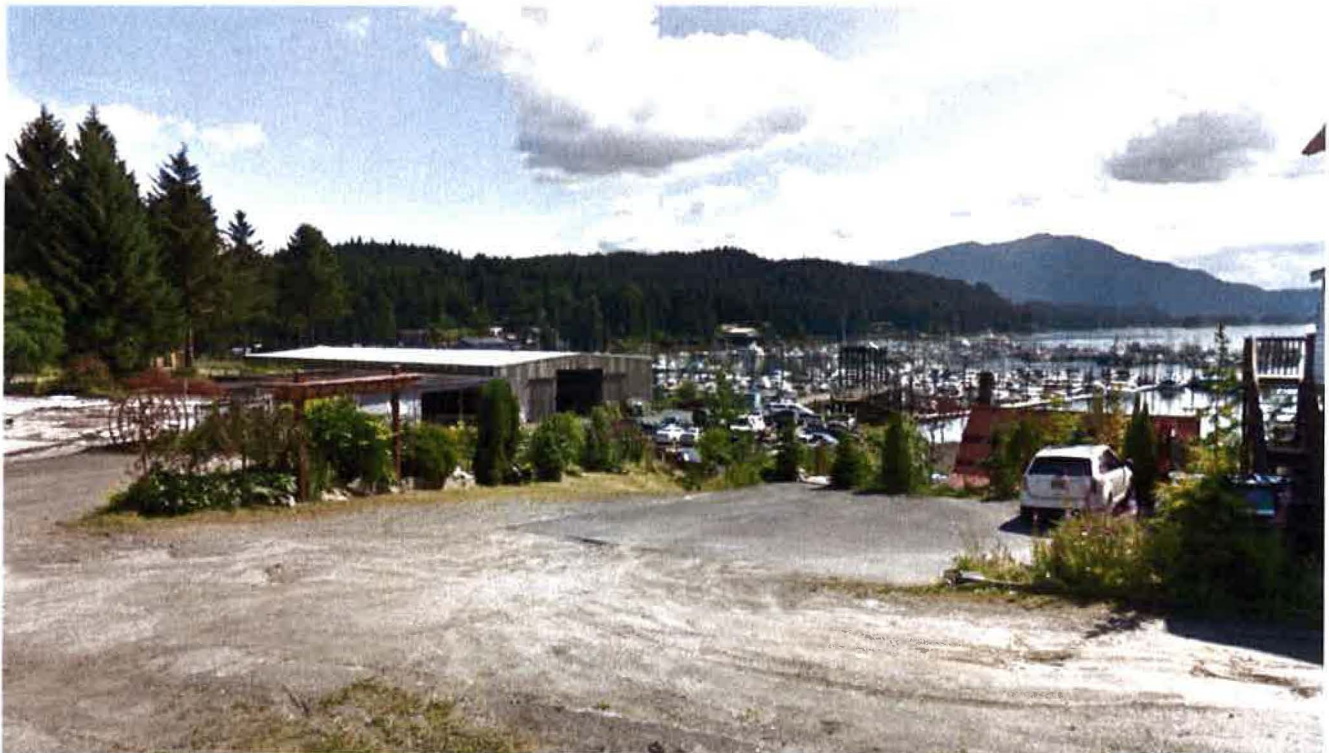


Fig 8: View from Echo Ranch-Auke Bay Church properties

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	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	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
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	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 N	3 N	
6.270	Aerial conveyances and appurtenant facilities	3	3	3	3	3	3	3	3	3	3	3	3	3 N	3 N	3
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 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.

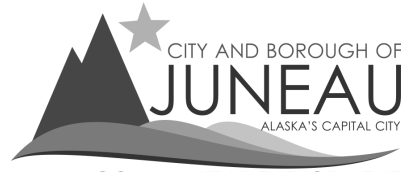
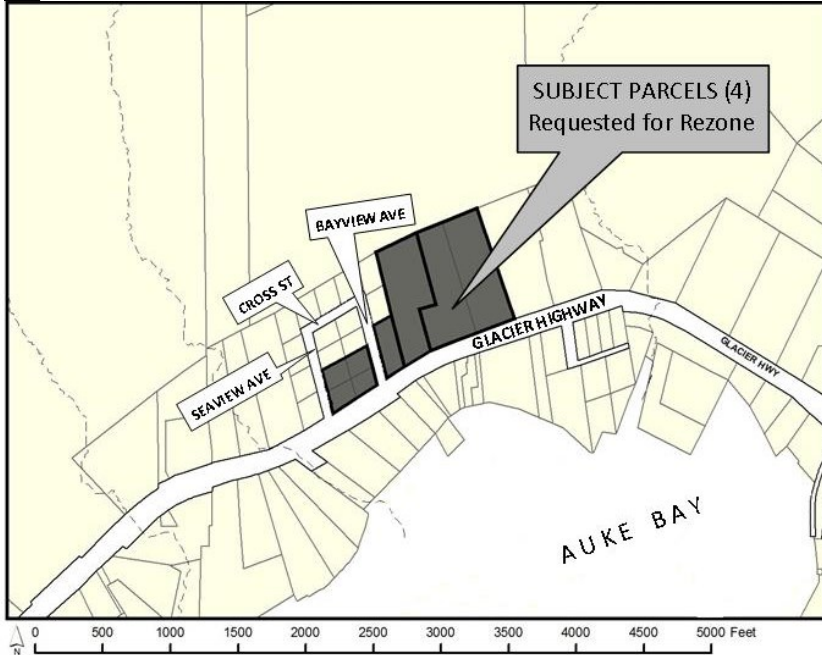
Sincerely,

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>

AME2017 0013

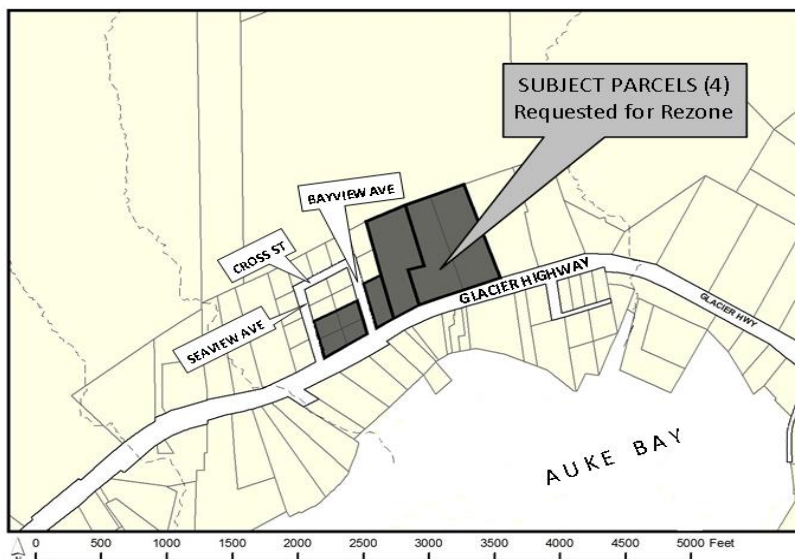
A request for a zone change from D-10
residential to LC, Light Commercial

Planning Commission Meeting
December 12, 2017



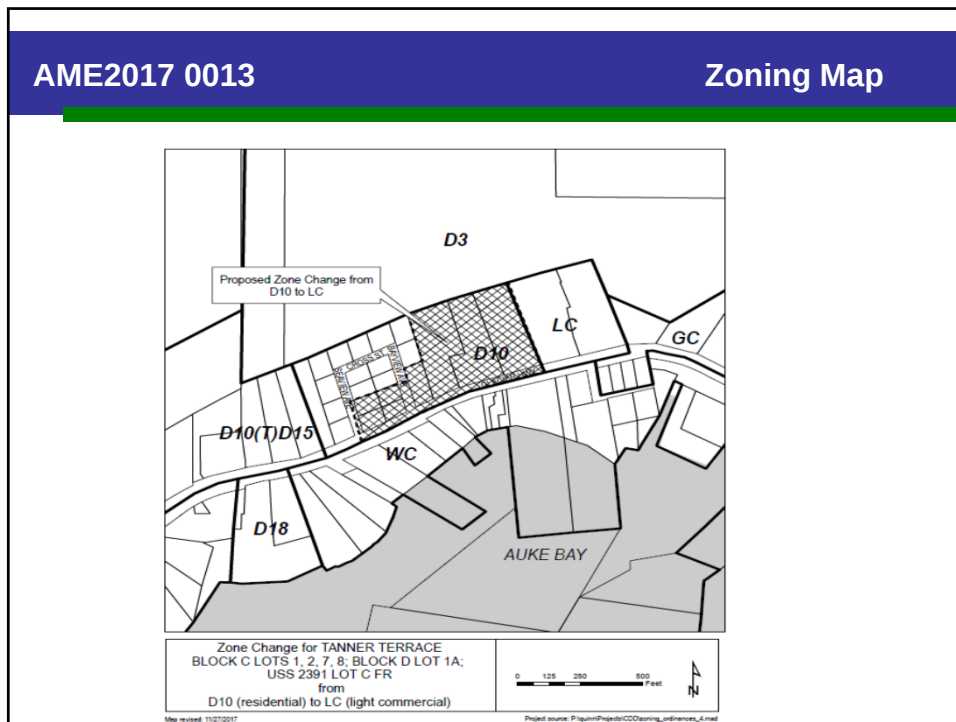
AME2017 0013

Vicinity Map



AME2017 0013		Overview
Site Size:	7.06 Acres	
Zoning:	D-10 Residential	
Comprehensive Plan Future Land Use Designation:	MDR – Medium Density Residential	
Auke Bay Area Plan:	TTC – Traditional Town Center	
Access:	Glacier Highway	

AME2017 0013		Overview
Existing Uses:	Eight-plex; tri-plex; Echo Ranch Bible Camp office; Auke Bay Bible Church	
Utilities:	CBJ Water and Sewer	



AME2017 0013	Rezone Requirements
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CBJ 49.75.120. RESTRICTIONS ON REZONINGS

- *Rezoning must be more than two acres OR an expansion of an existing zone.*
 - *Rezone request is for 7.06 acres and it is an expansion of the adjacent Light Commercial zone*
- *Requests which are substantially the same as a rezoning request rejected within the previous twelve months shall not be considered.*
 - *A similar request has not been made within the previous twelve months*

AME2017 0013

Rezone Requirements

49.75.120 Restrictions on Rezoning, Continued.

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.

AME2017 0013

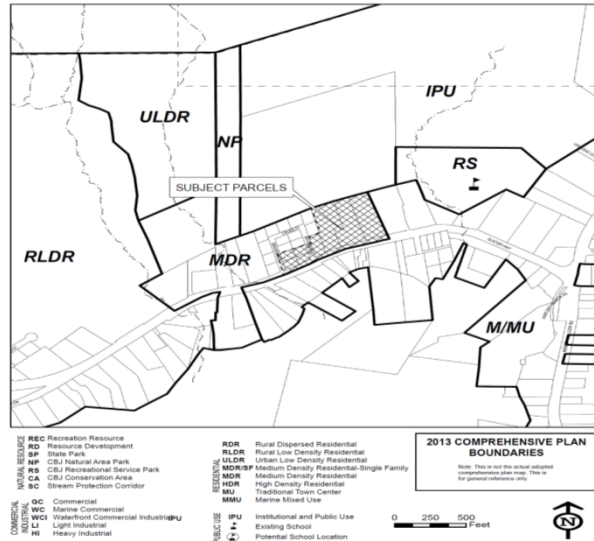
Background
Staff Report on 2-3

- Neighborhood meetings held on September 27 and October 17, 2017
- Past rezoning approvals have established that:
 - 1) Light Commercial zoning substantially conform with the Medium Density Residential Comprehensive Plan designation
 - 2) Mixed Use zoning substantially conforms with the Traditional Town Center Comprehensive Plan designation
 - 3) Mixed Use zoning substantially conforms with the Medium Density Residential Comprehensive Plan designation

Error on p. 9 of the staff report: the reference should have been AME2016 0002, in the discussion of how MU conforms with MDR.

AME2017 0013

Comprehensive Plan Map



AME2017 0013

Comprehensive Plan Land Use Designation Definition

The 2013 Comprehensive Plan designates the area as MDR, Resource Development, described as:

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).

AME2017 0013

**Light Commercial
zoning district definition**

Light Commercial is defined as

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).

AME2017 0013

MU and MU2 zoning definitions

- *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 (CBJ 49.25.220).*

**AME2017 0013 Comprehensive Plan designation
analysis Staff Report p. 9**

- LC allows 30 units/acre, higher than 5-20 units/acre noted in the MDR definition.
- Follows the Comprehensive Plan directive of highest and best use, and is in substantial conformance with the designation regarding density and compatible commercial development
- The Auke Bay Area Plan, an adopted component of the Comprehensive Plan, designates this area as Traditional Town Center, suitable for higher density. Policies call for higher density.
- 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.

**AME2017 0013 Comprehensive Plan Policies
Staff Report p. 10**

- 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 Units, and loft-style housing within new and existing shopping centers.”

**AME2017 0013 Comprehensive Plan Policies
Staff Report p. 11**

Chapter 10, Land Use:

“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.

**AME2017 0013 Comprehensive Plan Policies
Staff Report p. 11**

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.

**AME2017 0013 Comprehensive Plan Policies
Staff Report p. 13**

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

- *Urban areas are represented by...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.....densities of seven units per acre can be found in the Lemon Creek and Switzer Creek areas and in the Auke Bay area.*

**AME2017 0013 Comprehensive Plan Policies
conclusion, Staff Report p. 13**

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. MU2 focuses more on residential development, with 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.

AME2017 0013

Comprehensive Plan Policies
conclusion, Staff Report p. 13

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.

AME2017 0013

Auke Bay Area Plan Map

The map, titled "Auke Bay Plan Amendment to Comprehensive Plan Land Use Map", displays various land use zones in the Auke Bay area. The zones are labeled with abbreviations: ULDR (Urban Low Density Residential), NF (Neighborhood Forest), IPU (Institutional & Public Use), TTC (Traditional Town Center), MDR (Medium Density Residential), and M/MU (Marine Mixed Use). A central area is shaded with a cross-hatch pattern and labeled "SUBJECT PARCELS". A legend in the bottom left corner provides the full names for the abbreviations: REC - Recreational Resource, RD - Resource Development, SP - State Park, NP - CBJ Natural Area, RS - CBJ Recreation Service Park, CA - CBJ Conservation Area, SC - Stream Protection Corridor, C - Commercial, MC - Marine Commercial, TTC - Traditional Town Center, WCI - Watershed Commercial Industrial, LI - Light Industrial, HI - Heavy Industrial, RDR - Rural Dispersed Residential, RLDR - Rural Low Density Residential, MDR - Medium Density Residential, HDR - High Density Residential, U - Urban, M/MU - Marine Mixed Use, and IPU - Institutional & Public Use. A north arrow is located in the bottom right corner of the map area.



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155 S. Seward Street • Juneau, AK 99801

DATE: December 5, 2017

TO: Planning Commission

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

A handwritten signature in black ink, appearing to read "Laura A. Boyce", is positioned to the right of the "TO:" and "FROM:" fields.

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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 155 S. Seward Street • Juneau, AK 99801

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	

49.20.110

PART II: CODE OF ORDINANCES

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

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- (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

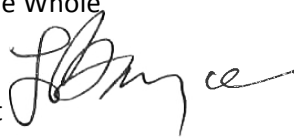
The meeting was adjourned at 6:46 p.m.



(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. 2017-33 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

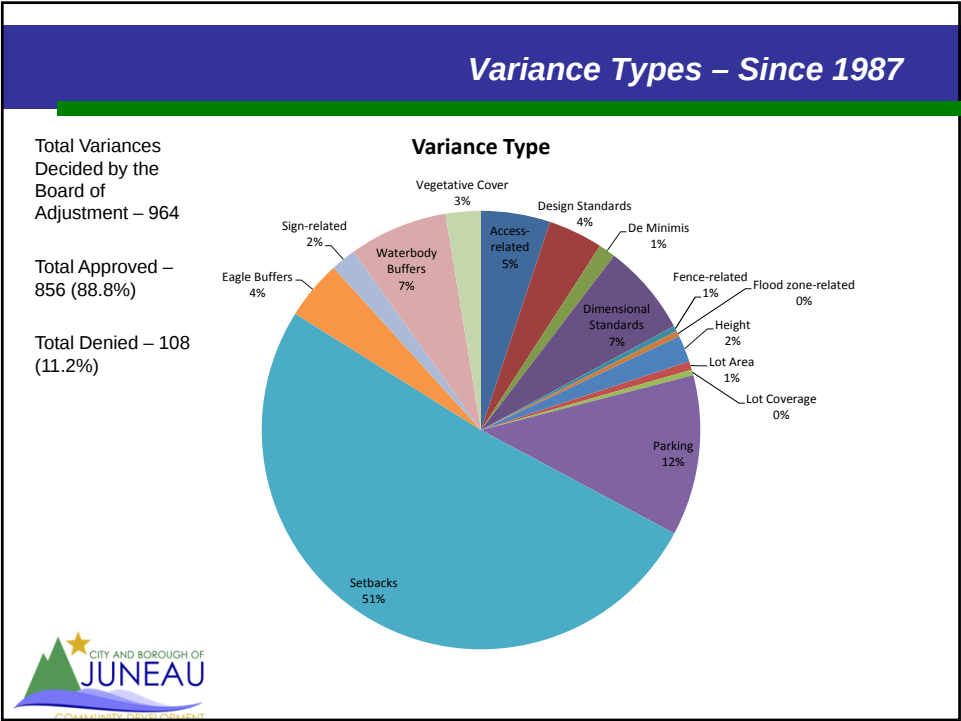
- Amends what is and is not variable
- Removes the threshold requirement (Olmo)
- Amends the variance criteria
- Deletes the De Minimis variance



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





Proposed Variances

- What can be varied:
 - Lot width
 - Lot depth
 - Setbacks
 - Height
- A variance may not result in:
 - An increase in lot coverage
 - An increase in density
 - A reduction in lot size



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.



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)



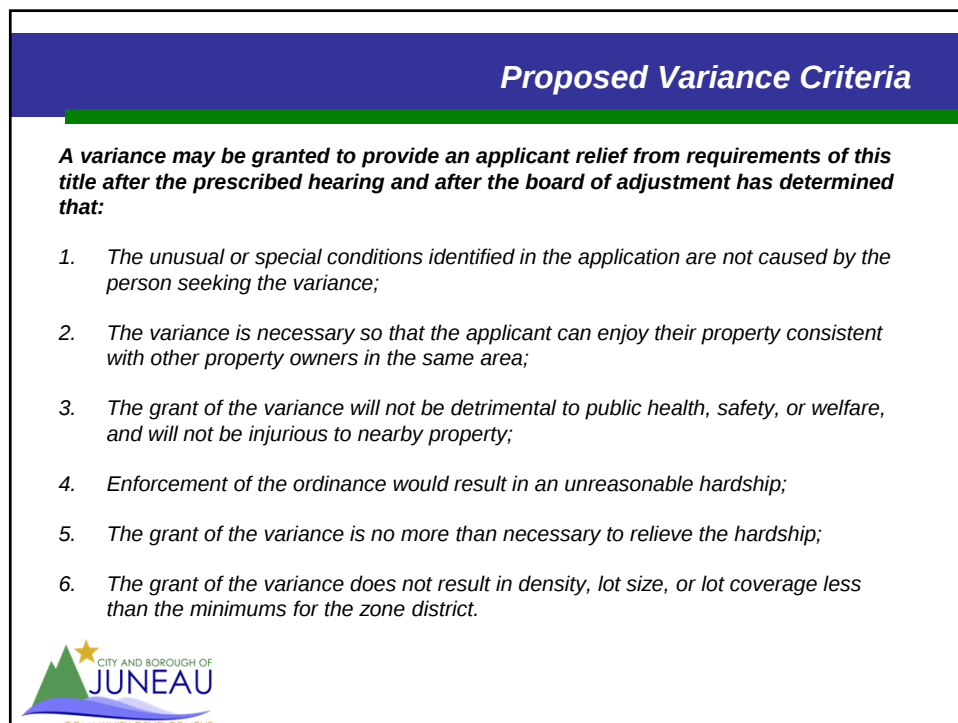
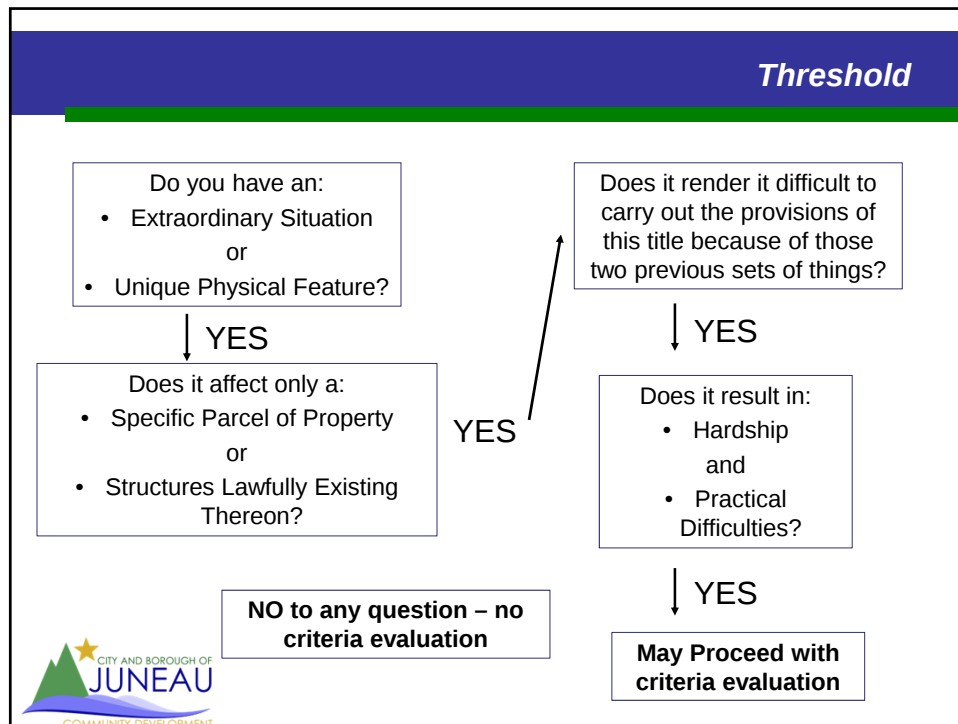
Recent Appeal Decision Regarding Variances

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).





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.



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.



De Minimis Variance

- Director can grant a variance after-the-fact variance if development encroaches no more than 25% into a setback
 - Only 12 approved since 1995
 - 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
- Options:
1. Remove from Code now and replace later
 2. Remove from Code entirely
 3. Keep in Code and replace later



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
 - And more



Questions and Discussion

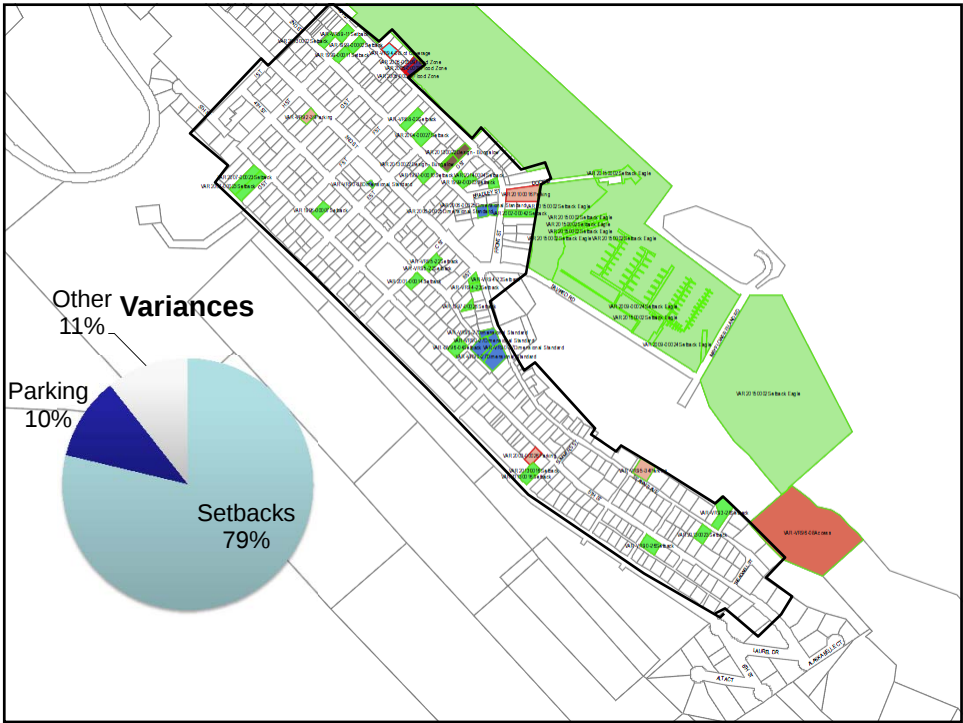
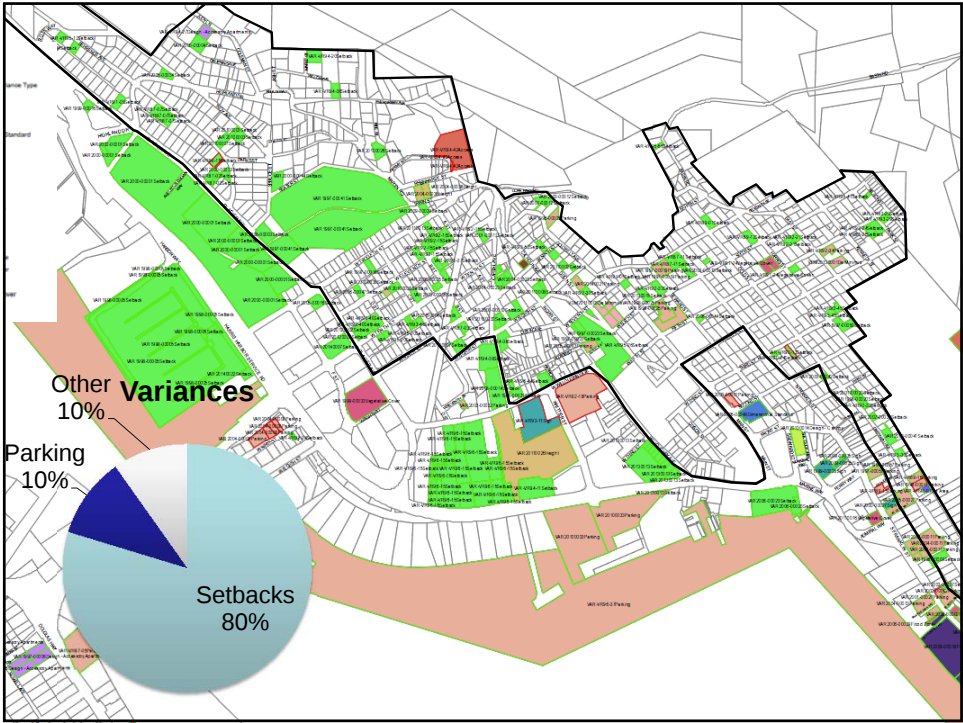


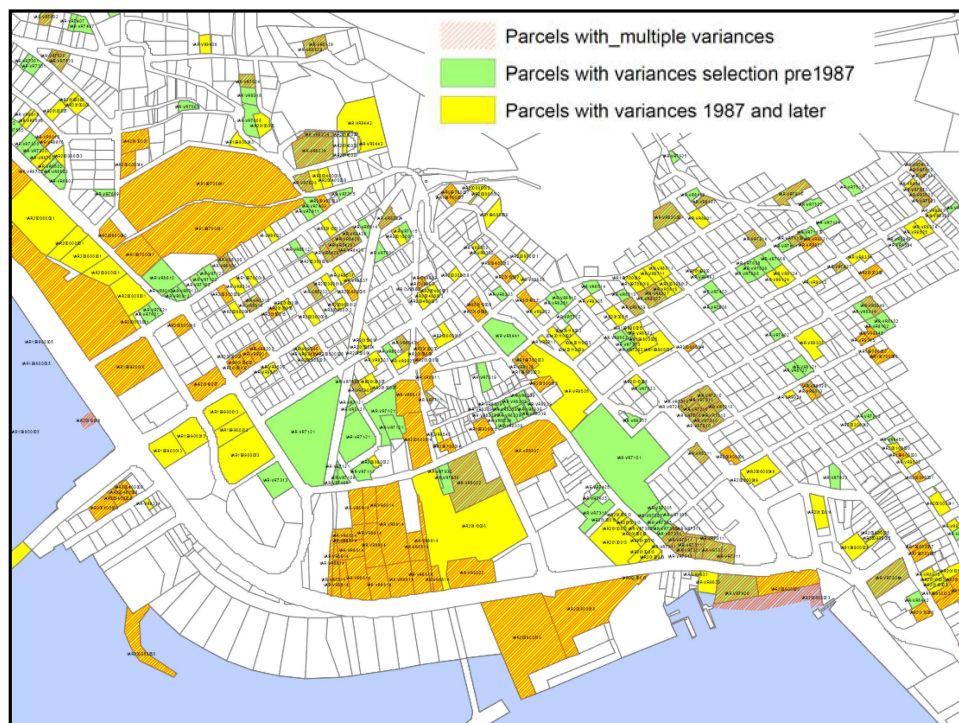
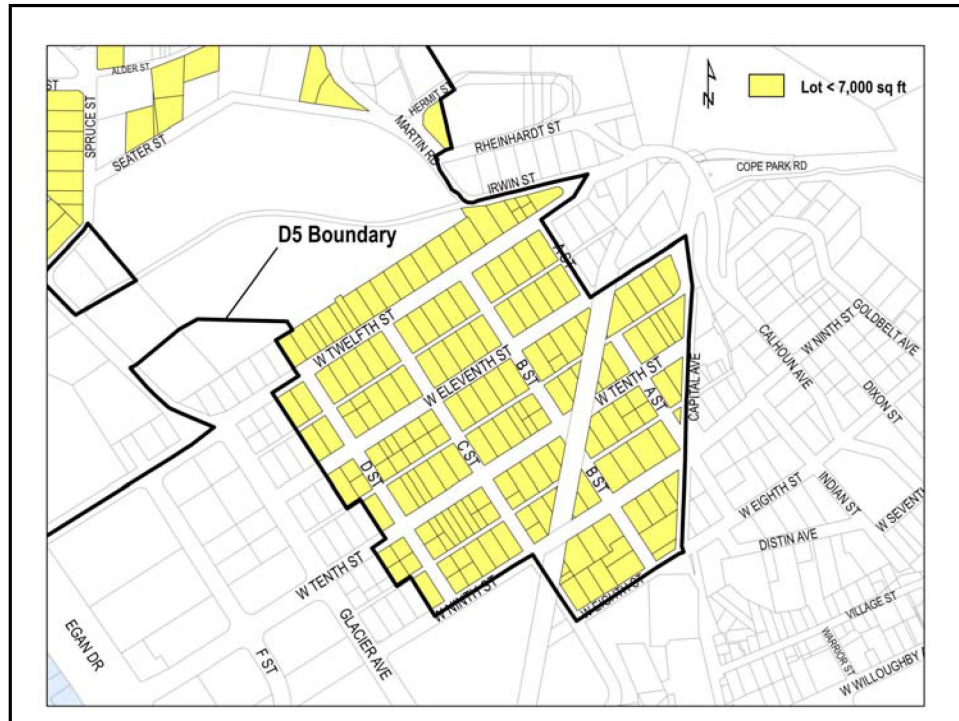
Proposed Variance Criteria

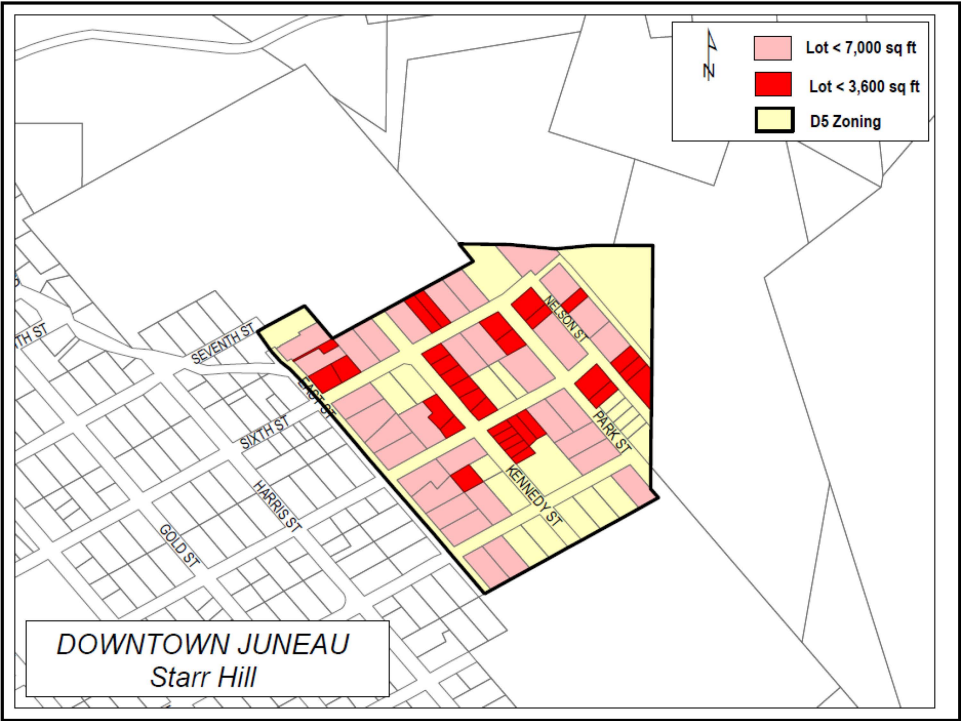
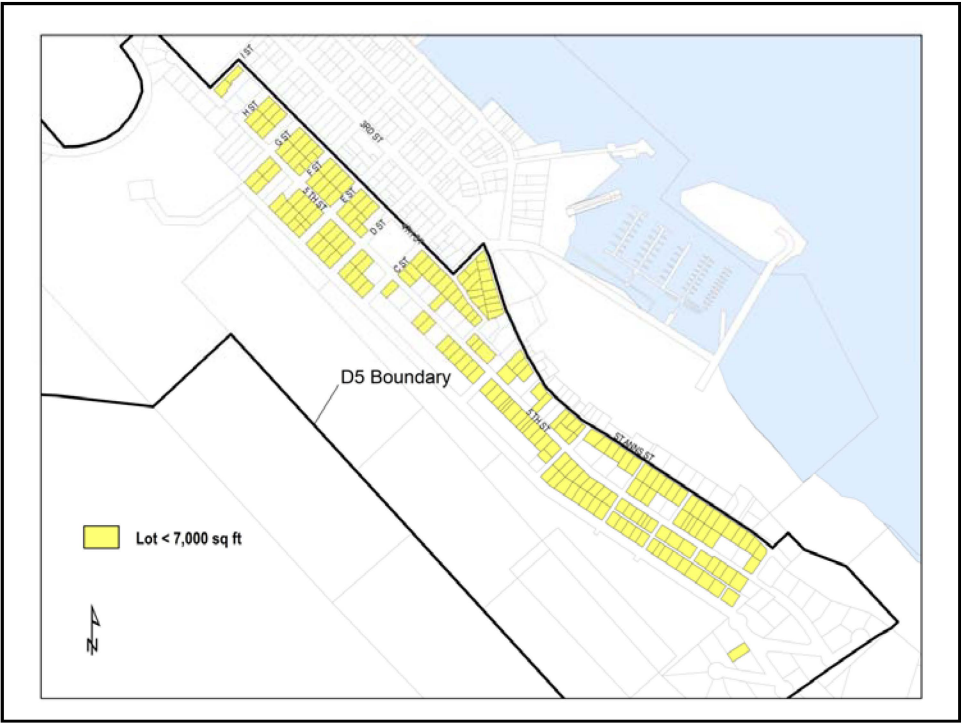
Proposed Variance Criteria:

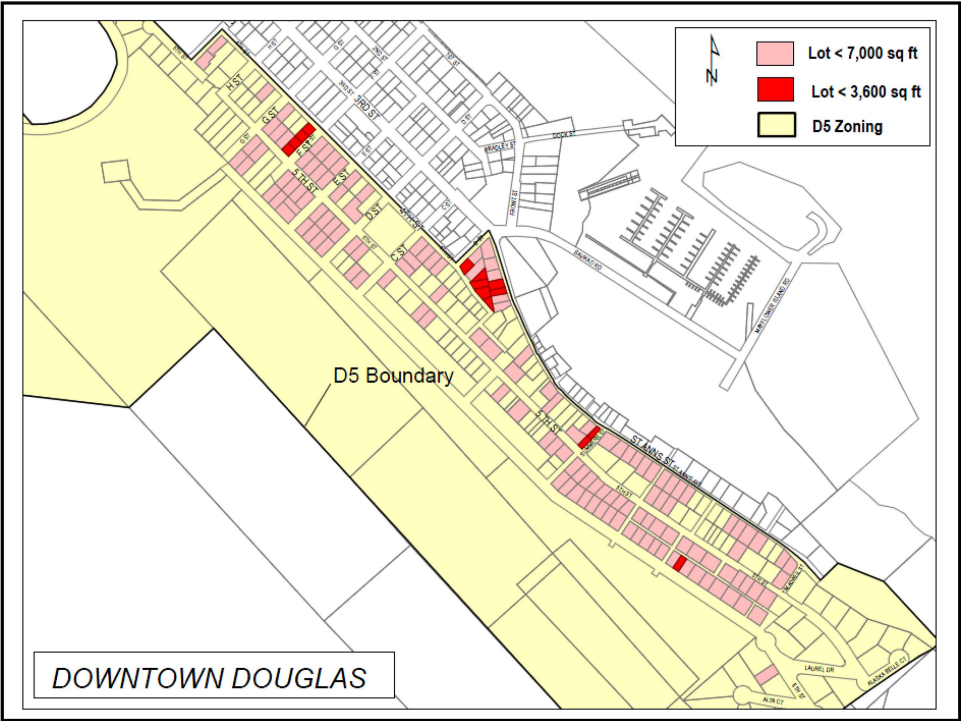
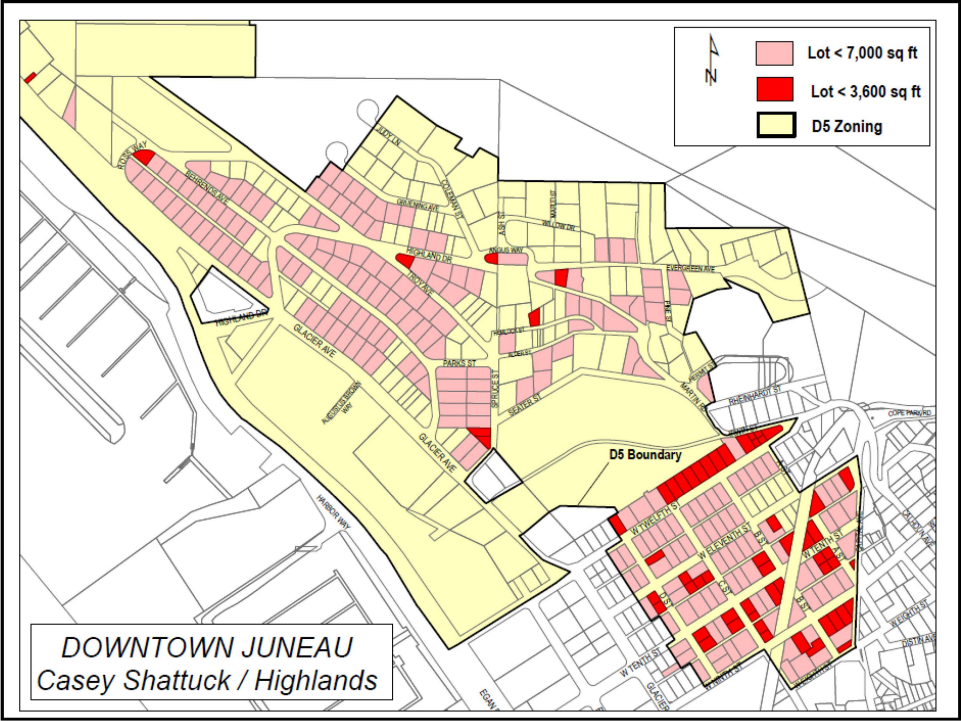
1. *Special conditions and circumstances exist that are peculiar to the land or structures or use involved and are not applicable to other lands and structures in the same district.*
2. *That compliance with the existing standards would unreasonably limit the owner from using the property for a permissible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



Notice: This opinion is subject to correction before publication in the PACIFIC REPORTER. Readers are requested to bring errors to the attention of the Clerk of the Appellate Courts, 303 K Street, Anchorage, Alaska 99501, phone (907) 264-0608, fax (907) 264-0878, email corrections@akcourts.us.

THE SUPREME COURT OF THE STATE OF ALASKA

BILL YANKEE,	)	
	)	Supreme Court No. S-16098
Appellant,	)	
	)	Superior Court No. 1JU-14-00681 CI
v.	)	
	)	<u>OPINION</u>
CITY AND BOROUGH OF	)	
JUNEAU, CHRIS GILBERTO,	)	No. 7206 – October 20, 2017
and ANN GILBERTO,	)	
	)	
Appellees.	)	
	)	

Appeal from the Superior Court of the State of Alaska, First Judicial District, Juneau, Louis J. Menendez, Judge.

Appearances: Robert S. Spitzfaden, Gruening & Spitzfaden, APC, Juneau, for Appellant. Robert H. Palmer, III, Assistant Municipal Attorney, and Amy Gurton Mead, Municipal Attorney, Juneau, for Appellee City and Borough of Juneau. No appearance by Appellees Chris Gilberto and Ann Gilberto.

Before: Stowers, Chief Justice, Winfree, Maassen, Bolger, and Carney, Justices.

MAASSEN, Justice.

I. INTRODUCTION

A landowner contends that his neighbors’ fence violates two restrictive plat notes. The neighboring properties are in two different subdivisions, and the landowner

is therefore not bound by the same restrictive plat notes that he seeks to enforce against his neighbors. The landowner complained about the fence to the Director of Juneau's Community Development Department, but the Director responded that the fence was allowed, citing longstanding policy.

The landowner appealed to the Planning Commission, which affirmed the Director's decision. The landowner next appealed to the Juneau Assembly, which rejected his appeal for lack of standing. The landowner appealed this decision to the superior court, which affirmed the Assembly's reliance on standing as grounds to reject the appeal. The landowner appeals to us.

We conclude that the Director's decision was an appropriate exercise of his enforcement discretion, not ordinarily subject to judicial review. On that alternative ground we affirm the superior court's dismissal of the appeal. We decline to address the standing issue on which the Assembly and the superior court based their decisions.

II. FACTS AND PROCEEDINGS

A. Facts

An undeveloped greenbelt buffer runs between Bill Yankee's property and the back of Chris and Ann Gilbertos'. The two properties are in different subdivisions and therefore subject to different covenants: Yankee's property is in the Nunatak Terrace Subdivision whereas the Gilbertos' is in the Montana Creek Subdivision.

The Gilbertos built a fence along their side of the greenbelt buffer. According to the Gilbertos, they checked with the Community Development Department (CDD) of the City and Borough of Juneau (CBJ) before building the fence and were repeatedly assured that it was allowed. But Yankee — concerned that the fence interfered with the movement of ducks through the greenbelt — asserted that it violated

two plat notes¹ on the recorded plat of the Montana Creek Subdivision applicable to its southern boundary line, where it adjoins Nunatak Terrace and another subdivision. One of the plat notes requires a “30 [foot] ‘no-build’ structure setback”; the other requires “no disturbance to [a] 20 [foot] natural green belt & visual buffer easement.”²

B. Proceedings

Yankee first brought his complaint about the Gilbertos’ fence to the CDD. The Director’s response, in the form of a four-page letter addressed to Yankee, began by stating that its purpose was “to clarify the [CDD] policy regarding fences and to formally notify you of my decision as CDD Director regarding this case.” What followed was a

¹ A plat is a scale drawing — in this case of a subdivision. A note on that plat acts as a restrictive covenant. *See* City and Borough of Juneau Code (CBJ) § 49.15.440(4) (March 2013) (renumbered with slight language changes in CBJ § 49.15.412(b) (June 2017)) (“When such a condition of approval [of a subdivision’s final plat] entails a restriction upon the use of all or part of the property being subdivided, a note specifying such restrictions shall be placed on the face of the plat. Such note shall constitute a restrictive covenant in favor of the municipality and the public, and shall run with the land, enforceable against all subsequent owners.”). Many provisions in the 2013 version of the code, in effect when Yankee first complained to the CDD, remain the same in the current code. We note where the versions differ but for simplicity refer to the CBJ in the present tense.

² These plat notes summarize conditions that were explained in more detail by CDD staff during the plat approval process:

The concept plan must be modified to include a greenbelt and visual buffer setback for all lots on the outer perimeter of the concept plan site including Montana Creek Road. The setback shall provide that no building or structure may be located closer than 30 feet to a perimeter lot line and that the outermost 20 feet of the setback area must be left in natural vegetation and topography. The setback area . . . shall be maintained to preserve an effective visual screening along the perimeter using vegetation.

description of the subdivisions' development and an explanation of CBJ's fence policy going back "to at least 1999." The Director explained that the Montana Creek plat notes were primarily intended to "ensure that existing vegetation would be preserved" in the greenbelt buffer area so that neighboring properties would be shielded from the new and denser Montana Creek subdivision; he explained that fences, with some limitations, were actually consistent with those purposes. The Director's decision concluded:

The fence in this particular case was constructed in such a way as to be consistent with the standing CDD policy and appears to be of minimal visual impact since it is wire and less than five feet tall. The wire fence allows for the vegetative buffer to show through unlike other fences that might allow for greater privacy. It appears reasonable that the property owner would want to denote where his property line is and where the neighboring properties begin and to do this [in] a manner that does not impair the neighbor's enjoyment of the greenbelt, since the same right is afforded to the non-Montana Creek subdivision property owner.

Yankee appealed the Director's decision to the CBJ Planning Commission. The Commission rejected his appeal on its merits, finding that the plat notes were ambiguous and that Yankee failed to demonstrate that the fence was prohibited. Yankee next appealed to the CBJ Assembly, which also rejected his appeal, though not on the merits. The Assembly relied instead on a memorandum from the CBJ Law Department concluding that Yankee lacked standing to enforce the plat notes because he did not own property in Montana Creek Subdivision.

Yankee then appealed to the superior court, which affirmed the Assembly's decision that he lacked standing. Yankee appealed to this court.

III. STANDARD OF REVIEW

“When the superior court acts as an intermediate court of appeals in an administrative matter, we independently review the merits of the agency’s decision.”³ Because the scope of appellate jurisdiction “does not ‘implicate special agency expertise or the determination of fundamental policies within the scope of the agency’s statutory function,’ we will substitute our independent judgment for that of the agency.”⁴

Although courts generally refrain from reviewing an executive agency’s exercise of discretionary enforcement authority, we have observed that we may review such an exercise to insure its “conformity with law and that it is not so capricious or arbitrary as to offend due process.”⁵

IV. DISCUSSION

Yankee’s opening brief in this appeal focused on the issue of standing — the sole ground on which the Assembly and the superior court declined to hear the merits of his appeal from the Director’s decision. CBJ, in its appellee’s brief, raised the issue of subject matter jurisdiction; it characterized the Director’s decision as either (1) an attempt to adjudicate a private dispute, for which the CDD lacked jurisdiction; (2) a “policy advice letter” which the CDD had authority to issue but from which there was no right of appellate review; or (3) a discretionary enforcement decision which the CDD had authority to make but from which, again, there was no right of appellate review. In his reply brief Yankee pushed back against the characterization of the Director’s decision

³ *S. Anchorage Concerned Coalition, Inc. v. Municipality of Anchorage Bd. of Adjustment*, 172 P.3d 768, 771 (Alaska 2007) (citing *Williams v. Abood*, 53 P.3d 134, 139 (Alaska 2002)).

⁴ *Id.* (quoting *Alaska Pub. Emps. Ass’n v. State*, 831 P.2d 1245, 1247 (Alaska 1992)).

⁵ *Vick v. Bd. of Elec. Examiners*, 626 P.2d 90, 93 (Alaska 1981) (citing *K & L Distribs., Inc. v. Murkowski*, 486 P.2d 351, 358 (Alaska 1971)).

as an “advisory opinion” (or “advice letter”), contending that although the decision “clarifie[d] the CDD fence policy,” in doing so it resolved Yankee’s complaint “pursuant to the Director’s enforcement authority.”

We agree with CBJ that the dispositive issue is one of reviewability. We hold that the Director’s decision was an appropriate exercise of his enforcement discretion that we should not review. In reaching this holding we do not find it necessary to consider whether the decision was properly appealable within the CBJ administrative hierarchy — from the CDD to the Planning Commission to the Assembly — nor do we decide the standing issue that the superior court found dispositive. We focus only on whether a discretionary enforcement decision, with whatever layers of review the executive has given it, should also be subject to our review.

A. The Director Has Enforcement Authority Over Matters Relevant To Yankee’s Complaint.

The Director’s consideration of the case was apparently prompted first by communications from the Gilbertos, who, after receiving complaints from Yankee, sought reassurances from the CDD that their fence was allowed. The CDD then heard from Yankee himself by telephone. According to a CDD planner’s record of the conversation, Yankee relied on the Montana Creek plat notes to support his position that the fence should “come down ideally” and “[i]f that can’t be done, then he’d like holes cut into the fence so that nesting ducks are able to travel back and forth over the ponds between the two lots.” In the context of the CDD’s authority, as explained below, we view Yankee’s request as one for enforcement: a request that the CDD, by whatever means, require the Gilbertos to remove or significantly alter their fence.⁶

⁶ On appeal Yankee contends that he was seeking a change in CBJ policy and that he recognized that either he or the CDD would have to follow up any policy change with an enforcement action directed specifically against the Gilbertos’ fence. At the
(continued...)

To appropriately categorize the Director's response, we must first review the sorts of decisions the Director is authorized to make. The City and Borough of Juneau Code § 49.10.500 authorizes the Director "to carry out all of the duties as set forth in [title 49] and title 19." We find no relevant authority in title 19 ("Building Regulations") and therefore look to title 49. As relevant here, that title gives the Director authority in three main areas: (1) permitting;⁷ (2) approval of "minor subdivisions" and zoning districts;⁸ and (3) enforcement.⁹ It is evident that the Director's decision on Yankee's complaint was not grounded in his permitting authority. Although CBJ § 49.15.310 grants such authority for individual "minor developments," fences under six feet, like the Gilbertos' five-foot fence, do not require a permit under CDD policy. Nor did Yankee's complaint implicate the Director's approval authority for "minor subdivisions" and zoning districts.¹⁰ We conclude that it was the Director's enforcement authority that allowed him to consider and respond to Yankee's complaint.

⁶(...continued)

time, however, Yankee appeared to be asking the CDD to take immediate action. The one relevant writing of his that is in our record and predates the Director's decision — an email to the Director — states that he is waiting for the "the decision on said fence" but does not understand "your office allowing this fence to remain in place (clearly a violation of subdivision plat) while your staff conducts an open-ended study looking for any criteria to 'authorize' this fence," and that he is "again requesting that this 'setback' be honored, while the above research/study is conducted." This is consistent with the CDD planner's record that "Mr. Yankee wants the fence to come down ideally."

⁷ CBJ § 49.15.310.

⁸ CBJ § 49.10.510.

⁹ CBJ §§ 49.10.600–.660.

¹⁰ *See* CBJ § 49.10.510.

As Yankee asserts, the Director’s enforcement authority extends to potential plat note violations,¹¹ for which the law provides a variety of enforcement tools.¹² The Director thus had the authority to hear and respond to Yankee’s complaint. Indeed, Yankee agrees that the Director’s decision of his complaint was an exercise of enforcement authority, though he disputes the conclusion that it should therefore escape judicial review.¹³ But as discussed in the next section, we disagree. The Director’s decision not to take enforcement action against the Gilbertos’ fence was a discretionary one that is not ordinarily subject to judicial review.

B. We Decline To Review The Director’s Decision.

CBJ argues that the Director’s decision — as an “advice letter” on CDD’s enforcement policy — was not in fact appealable within the CBJ administrative hierarchy. Yankee points to CBJ ordinances that provide for appeals as a matter of right

¹¹ See CBJ § 49.15.440(4) (March 2013) (renumbered with slight language changes in CBJ § 49.15.412(b) (June 2017)) (“Any such restrictive covenant may be enforced against the subdivider or any subsequent owner by the municipality by injunction or other appropriate action, in the same manner as a permit or permit condition, pursuant to CBJ 49.10.600–660 . . .”).

¹² See CBJ § 49.10.600(a) (emergency powers); CBJ § 49.10.620(a) (compliance order); CBJ § 49.10.630 (civil action); CBJ § 49.10.640 (criminal penalties); CBJ § 49.10.650 (inspection warrant).

¹³ To distinguish the Director’s decision from a statement of CBJ policy — an unreviewable “advisory opinion” — Yankee argues, for example, that “[t]he Decision clarifies the CDD fence policy resolving, *pursuant to the Director’s enforcement authority*, the complaint brought by Mr. Yankee”; he also faults CBJ for not citing cases in its appellee’s brief holding that “subject matter jurisdiction [was] lacking when an administrative official with jurisdiction over enforcement *exercised th[at] enforcement authority*.” (Emphasis added.)

to the Commission and then to the Assembly.¹⁴ But whether CBJ could and did authorize various levels of *administrative* review of the Director’s decision is of no consequence to us if the decision is of a type that is not ordinarily subject to further appellate review in the courts.

As explained above, we view the Director’s decision as an exercise of his enforcement authority, that is, a decision not to act on Yankee’s complaint. Generally, courts decline to review executive-branch decisions *not* to prosecute an individual or *not* to enforce a law under particular circumstances. While issues of enforcement discretion arise more often in the criminal context,¹⁵ our cases provide a framework for considering them in the civil context as well. In *Public Defender Agency v. Superior Court, Third Judicial District*, we considered whether the superior court could order the attorney general to prosecute a civil contempt proceeding for a parent’s failure to pay child support.¹⁶ We held it could not.¹⁷ We observed that under the common law the attorney general’s “discretionary control over the legal business of the state, both civil and

¹⁴ See CBJ § 49.20.110(a) (“Review by the commission of a decision of the director[] may be requested by filing a notice of appeal The appeal shall be heard unless it presents only minor or routine issues”); CBJ § 49.20.120 (“Appeal to the assembly is a matter of right.”).

¹⁵ See, e.g., *State v. District Court*, 53 P.3d 629, 631 (Alaska App. 2002) (“Both the Alaska Supreme Court and [the Court of Appeals] have declared that charging decisions are committed to the discretion of the executive branch; so long as these decisions are exercised within constitutional bounds, they are not subject to judicial control or review.”).

¹⁶ 534 P.2d 947, 948 (Alaska 1975).

¹⁷ *Id.* at 950-51.

criminal, includes the initiation, prosecution, and disposition of cases.”¹⁸ We adopted the rule that “[w]hen an act is committed to executive discretion, the exercise of that discretion within constitutional bounds is not subject to the control or review of the courts,” because “[t]o interfere with that discretion would be a violation of the doctrine of separation of powers.”¹⁹ We concluded that the superior court’s order requiring the attorney general to prosecute a particular case of nonsupport “overstepped this line”: “although we have jurisdiction to entertain this case and to find, as we have, the existence of legal authority [for the attorney general to bring the nonsupport action], we do not have power to control the exercise of the [a]ttorney [g]eneral’s discretion as to whether he will take action in any particular cases of contempt for non-support.”²⁰

We addressed a similar issue in *Vick v. Board of Electrical Examiners*, where we considered the scope of appellate authority over a licensing board’s decision — based on the recommendation of an investigative division — not to commence a license revocation proceeding.²¹ We noted that “we will sometimes inquire into the basis of an agency’s decision to assure that it is in conformity with law and that it is not so

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* at 951; *see also Ross v. U.S. Attorney’s Office*, 511 F.2d 524, 525 (9th Cir. 1975) (per curiam) (recognizing the “well-settled principle that mandamus does not lie to compel a United States District Attorney to perform a discretionary act”); *State v. Williams*, 356 P.3d 804, 808 (Alaska App. 2015) (“The decision whether to actively participate in the prosecution of any given case is discretionary on the part of the executive branch.” (citing *Public Defender*, 534 P.2d at 950-51)).

²¹ 626 P.2d 90, 91-92 (Alaska 1981).

capricious or arbitrary as to offend due process,”²² but we also observed that “the extent of judicial review of discretionary determinations of an agency must necessarily vary with the subject matter.”²³ That is, “[w]hen a matter falls within an area traditionally recognized as within an agency’s discretionary power, courts are less inclined to intrude than when the agency has acted in a novel or questionable fashion.”²⁴ We explained:

When an agency functions to protect the public in general, as contrasted with providing a forum for the determination of private disputes, the agency normally exercises its discretion in deciding whether formal proceedings should be commenced. In matters of occupational licensure the decision to initiate proceedings for revocation or suspension is comparable to the function of a public prosecutor in deciding whether to file a complaint. Questions of law and fact, of policy, of practicality, and of the allocation of an agency’s resources all come into play in making such a decision. The weighing of these elements is the very essence of what is meant when one speaks of an agency exercising its discretion.^[25]

Notwithstanding this discussion of the limits on appellate review, we considered under the abuse of discretion standard the appellant’s claims in *Vick* that the licensing board had failed to pursue certain relevant information; we concluded that “the board and the

²² *Id.* at 93 (citing *K & L Distribs., Inc. v. Murkowski*, 486 P.2d 351, 358 (Alaska 1971)).

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.* (footnote omitted).

division did consider the matters put before them and that no abuse of discretion has been demonstrated.”²⁶

A few years later the United States Supreme Court held in *Heckler v. Chaney* that “an agency’s decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency’s absolute discretion.”²⁷ As we did in *Vick*, the Court highlighted the “complicated balancing of a number of factors which are peculiarly within [the agency’s] expertise.”²⁸ The Court also observed “that when an agency refuses to act it generally does not exercise its *coercive* power over an individual’s liberty or property rights, and thus does not infringe upon areas that courts often are called upon to protect”; whereas “when an agency *does* act to enforce, that action itself provides a focus for judicial review, inasmuch as the agency must have exercised its power in some manner.”²⁹ But the *Heckler* Court noted that not every enforcement decision by an executive agency is by definition unreviewable: the legislature could empower courts to review such decisions “either by setting substantive priorities, or by otherwise circumscribing an agency’s power to discriminate among issues or cases it will pursue.”³⁰

²⁶ *Id.*

²⁷ 470 U.S. 821, 831 (1985) (citing cases).

²⁸ *Id.*

²⁹ *Id.* at 832 (emphasis in original).

³⁰ *Id.* at 833; *see also Inmates of Attica Corr. Facility v. Rockefeller*, 477 F.2d 375, 380 (2d Cir. 1973) (“In the absence of statutorily defined standards governing reviewability, or regulatory or statutory policies of prosecution, the problems inherent in the task of supervising prosecutorial decisions do not lend themselves to resolution by the judiciary.”).

As suggested in *Heckler*, we have reviewed agency decisions when the legislature has statutorily narrowed or eliminated the agency's enforcement discretion. In *State, Department of Fish & Game, Sport Fish Division v. Meyer*, we reviewed a case-closing order of the Alaska State Commission for Human Rights, concluding that the agency's compliance with the Human Rights Act did not "involve the exercise of prosecutorial discretion at all."³¹ The Commission's case-closing decisions were reviewable because "the [Human Rights Act] grants no discretion to discontinue the process once the investigator finds substantial evidence of discrimination, unlike the statutes at issue in *Vick* and *Heckler*."³²

³¹ 906 P.2d 1365, 1373-74 (Alaska 1995) (noting the compulsory language of the agency's statutory mandate and observing that "if the Commission wants its staff to have this discretionary authority, it must be obtained from the legislature, not the judiciary"), *superseded by statute*, AS 18.80.112(b), *as stated in Huit v. Ashwater Burns, Inc.*, 372 P.3d 904, 914 n.52 (Alaska 2016).

³² *See id.* at 1373; *see also Toliver v. Alaska State Comm'n for Human Rights*, 279 P.3d 619, 623-24 (Alaska 2012) (highlighting the mandatory language in the Human Rights Act regarding the Commission's investigations). We also review for abuse of discretion Bar Counsel's decision to close a grievance investigation or to not pursue a complaint. *See McGee v. Alaska Bar Ass'n*, 353 P.3d 350, 352, 354 (Alaska 2015) ("Bar Counsel's decision to close McGee's grievance without a formal investigation was not arbitrary or capricious, and we see no breakdown in the grievance process warranting interference with Bar Counsel's decision."); *Anderson v. Alaska Bar Ass'n*, 91 P.3d 271, 272 (Alaska 2004) ("[W]e conclude that Bar Counsel did not abuse his discretion in declining to accept the grievance for investigation."). But attorney discipline cases are much different from ordinary administrative appeals due to our inherent authority to regulate the practice of law; we review attorney discipline cases directly. *See McGee*, 353 P.3d at 351 ("In *Anderson v. Alaska Bar Ass'n* we held that there was no right to appeal grievance-closing decisions to the superior court, but . . . we would directly review such decisions."); *Anderson*, 91 P.3d at 272 ("[G]rievance-closing decisions under Bar Rule 22(a) may, upon timely request of a complainant, be reviewed by this court.").

Our review of these cases convinces us that we should not review the CDD Director's decision in this case. First, unlike the Human Rights Act at issue in *Meyer*,³³ the CBJ grants the CDD and its Director broad discretion in determining whether to take action regarding potential violations of the land use code.³⁴ Thus even if we were convinced that the Director's interpretation of the plat notes was incorrect, we would not be in a position to second-guess his discretionary exercise of enforcement authority;³⁵ whether to take action against the Gilbertos' fence would still depend on "[q]uestions of . . . policy, of practicality, and of the allocation of [the] agency's resources," and "[t]he weighing of these elements is the very essence of what is meant when one speaks of an agency exercising its discretion."³⁶ Furthermore, we recognized in *Vick* that this

³³ 906 P.2d at 1372-74.

³⁴ See CBJ § 49.10.600(a) ("When the department finds . . . that a person is causing . . . a condition or activity which, *in the judgment of the department*, presents an imminent or present danger to the health, safety or welfare of the people . . . , and it appears to be prejudicial . . . to delay action until an opportunity for a hearing can be provided, the department, without prior hearing, *may* order that person by notice to discontinue, abate or alleviate the condition or activity." (emphasis added)); CBJ § 49.10.620(a) ("When, *in the opinion of the department*, a person is violating . . . a provision of this title, . . . the department *may* notify the person of its determination by personal service, or certified mail." (emphasis added)).

³⁵ See *Falls Rd. Cmty. Ass'n v. Baltimore Cty.*, 85 A.3d 185, 201-02 (Md. 2014) (holding that County could not be required to pursue zoning enforcement action, due to its discretionary nature, and analogizing to the discretion "of a State's Attorney who must decide which criminal cases to prosecute").

³⁶ *Meyer*, 906 P.2d at 1373 (quoting *Vick v. Bd. of Elec. Exam'rs*, 626 P.2d 90, 93 (Alaska 1981)); cf. *Newman v. United States*, 382 F.2d 479, 482 (D.C. Cir. 1967) (explaining that "while [prosecutorial] discretion is subject to abuse or misuse just as is judicial discretion, deviations from [a prosecutor's] duty as an agent of the Executive are to be dealt with by his superiors" and "no court has any jurisdiction to inquire into or (continued...)

enforcement discretion is due more judicial deference “[w]hen an agency functions to protect the public in general, as contrasted with providing a forum for the determination of private disputes”;³⁷ such is the case here, as the CDD does not provide an adjudicative forum. And Yankee does not dispute that the Director’s decision was “within an area traditionally recognized as within [the CDD’s] discretionary power,” meaning that we “are less inclined to intrude than when the agency has acted in a novel or questionable fashion.”³⁸

It is also significant that the Director’s decision was not an exercise of coercive power, but rather a decision to continue the status quo; as noted in *Heckler v. Cheney*, the lack of an “action” gives the courts less of “a focus for judicial review, inasmuch as the agency must have exercised its power in some manner.”³⁹ Furthermore, we do not see, nor does Yankee argue, that the Director’s decision was so arbitrary or capricious as to implicate due process concerns.⁴⁰ And importantly, while the appellant in *Vick* lacked another vehicle for relief outside of the administrative appeal process,⁴¹ Yankee has another option — a direct suit against the Gilbertos in superior court, in

³⁶(...continued)
review [a prosecutor’s] decision”); James Vorenberg, *Decent Restraint of Prosecutorial Power*, 94 HARV. L. REV. 1521, 1546 (1981) (“Courts often justify their refusal to review prosecutorial discretion on the ground that separation-of-powers concerns prohibit such review.”).

³⁷ 626 P.2d at 93.

³⁸ *See id.*

³⁹ 470 U.S. 821, 832 (1985).

⁴⁰ *See Vick*, 626 P.2d at 93.

⁴¹ *Id.* at 92 (noting appellant’s concession “that the final decision to revoke or suspend a license lies within the discretion of the [Board of Electrical Examiners]”).

which he can litigate his standing to enforce the Montana Creek plat notes and whether his interpretation of those notes is the correct one.⁴²

We conclude, therefore, that the Director's decision in this case, as a discretionary exercise of his enforcement authority, should not be subject to judicial review.

V. CONCLUSION

We AFFIRM on other grounds the superior court's dismissal of Yankee's appeal.

⁴² CBJ § 49.15.440(4) (March 2013) (renumbered with slight language changes in CBJ § 49.15.415(b) (June 2017)) ("Any such restrictive covenant may be enforced against the subdivider or any subsequent owner . . . by any specifically affected member of the public.").