

Agenda

Committee of the Whole

City and Borough of Juneau

Ben Haight, Chair

June 13, 2017

Assembly Chambers

5:00 PM

I. ROLL CALL

II. REGULAR AGENDA

- A.** AME2016 0002: Variances - Commissioner training and discussion about proposed amendments.
- B.** AME2016 0019: Proposed amendments to buffers around eagle nests
- C.** AME2017 0001: Update on proposed amendments to buffers for anadromous waterbodies.

III. OTHER BUSINESS

IV. REPORT OF REGULAR AND SPECIAL COMMITTEES

V. ADJOURNMENT



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DATE: June 5, 2017

TO: Committee of the Whole of the Planning Commission

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

SUBJECT: AME2016 0002
 Update regarding proposed Title 49 Revisions to Variances

Attachments:

- Attachment A Existing Variance Code Requirements
- Attachment B Olmo, LLC. v. Board of Adjustment Appeal Assembly Decision
- Attachment C Variance Case History Types and Approvals Since 1987

Introduction

Staff recommends changes to Title 49 regarding variances. The intent of a variance is to provide relief from Title 49 Land Use Code requirements in cases of hardship when exact application of the Code requirement would place an unreasonable burden on the property owner. Over time, the variance has become a tool for flexibility instead, offering relief to property owners to relax Code requirements or even waiving requirements outright. Because it is the only tool available to modify Code requirements as they pertain to individual properties, the variance process has been used often and broadly and, in some cases, inappropriately.

Staff has been working with the Title 49 Committee over the past year to propose changes to the Land Use Code (“Code”) to provide clarity regarding variances, as well as to provide more flexibility in Code, since it is evident that this is a community desire. CDD would like feedback from the full Commission regarding proposed changes to variances. The proposed changes to Title 49 regarding variances are as follows:

- Amend the variance criteria to provide clarity and reduce any potential subjectivity,
- Make it clear what is and isn’t variable,
- Rename “de minimis variance” to “administrative variance” to provide clarity,
- Remove design standards as being variable, and
- Make code changes elsewhere in Title 49 to build in flexibility and reduce the need for variances.

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Criteria Changes

Attachment A includes the current Title 49 variance requirements. The purpose of the proposed criteria amendments is to deter the inappropriate use of the variance process where no extraordinary situation exists.

Existing criteria

There are six primary criteria which must be met in order to approve a variance application, with criterion 5 having four sub-criteria. Only one of the sub-criteria must be met in order to meet criterion 5. A discussion of the current criteria is included below.

Criterion 1

The relaxation applied for or a lesser relaxation specified by the board of adjustment would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners;

Criterion 1 analyzes whether the applicant is requesting the minimum variance from the specific regulation that would allow them to develop their property similarly to other properties in the neighborhood and meet code requirements.

Criterion 2

Relief can be granted in such a fashion that the intent of this title will be observed and the public safety and welfare preserved;

Criterion 2 analyzes whether public safety and welfare requirements, which are fundamental to the Land Use Code, will still be met. These concepts are also addressed in CBJ 49.05.100, *Purpose and Intent*.

Criterion 3

The authorization of the variance will not injure nearby property;

This criterion addresses whether the requested variance will cause harm to nearby property.

Criterion 4

The variance does not authorize uses not allowed in the district involved;

This criterion addresses whether the granting of the variance will allow a prohibited use from being allowed in the district. Variances regarding use, density, lot coverage, and those establishing construction standards are not allowed.

Criterion 5

(5) *Compliance with the existing standards would:*

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- (A) *Unreasonably prevent the owner from using the property for a permissible principal use;*
- (B) *Unreasonably prevent the owner from using the property in a manner which is consistent as to scale, amenities, appearance or features, with existing development in the neighborhood of the subject property;*
- (C) *Be unnecessarily burdensome because unique physical features of the property render compliance with the standards unreasonably expensive; or*
- (D) *Because of preexisting nonconforming conditions on the subject parcel, the grant of the variance would not result in a net decrease in overall compliance with the land use code, Title 49, or the building code, Title 19, or both;*

Sub-criterion A analyzes whether compliance would unreasonably prevent the owner from using the property for a permissible principle use. This is one of the more challenging criteria to meet since most lots can accommodate a permissible principle use that complies with the standards and regulations of Title 49 with the appropriate design choices. This concept is important because the city should ensure there is not a taking of property.

Sub-criterion B analyzes whether compliance would prevent the owner from developing their lot in a manner similar to existing development in the neighborhood. This criterion allows new development to take advantage of the preexisting nonconforming conditions of a neighborhood should there be any and also benefit from the conforming development on lots that do not have any hardship. This criterion is similar to the justice and equality concepts found in criterion 1, but from the perspective of the applicant.

Sub-criterion C analyzes any topographic constraints that may make development so expensive that a variance is warranted. This criterion is unique in that it is rare to allow pecuniary hardship as a reason to grant a variance. Alaska Statute Title 29 granting land use regulation powers to local municipalities specifically states that a variance may not be granted solely for pecuniary hardship. It is also difficult to objectively assess what is unreasonably expensive for a property owner.

Sub criterion D analyzes whether the variance would create a net decrease in overall compliance with both the land use code and the building code when taking into account preexisting nonconforming conditions. Therefore, if an owner wanted to reconstruct a dilapidated garage on a nonconforming footprint, there would be a net increase in compliance because Title 19, the building code, standards and regulations would be met while there would be a neutral effect on Title 49, the land use code. This criterion can allow for the continuation of nonconforming conditions.

The overall fundamental concept analyzed in criterion 5 is whether the regulations will result in a taking of the property.

Criterion 6

A grant of the variance would result in more benefits than detriments to the neighborhood.

This criterion is challenging for staff as it asks them to identify benefits and detriments supported by Title 49 that are not simply subjective.

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Olmo, LLC. V. Board of Adjustment Assembly Appeal Decision

The recent Olmo, LLC. appeal resulted in a decision that affects all variances. The Assembly ruled that in a variance, the applicant must first show hardship and practical difficulties resulting from an extraordinary situation or unique physical feature affecting only a specific parcel of property prior to determining if a proposal meets the six criteria for granting a variance. (See Attachment B)

This decision affects CBJ 49.20.250(b), Variances other than de minimis. That section states the following:

Where hardship and practical difficulties result from an extraordinary situation or unique physical feature affecting only a specific parcel of property or structures lawfully existing thereon and render it difficult to carry out the provisions of this title, the board of adjustment may grant a variance in harmony with the general purpose and intent of this title....

Prior to this decision, variance decisions were generally made by evaluating the criteria only. Analysis regarding this “threshold,” as determined by the Olmo decision, was not specifically made. Some variance cases over the years were analyzed with both the criteria and the hardship factor in the threshold, but this was not common practice or consistently done.

In light of this, the Planning Commission may wish to incorporate the threshold into a new criterion. The Title 49 Committee has not addressed this threshold finding as the Olmo decision is recent.

Proposed Changes

Staff met with the Title 49 Committee in 2016 and 2017 to discuss proposed changes to CBJ 49.20.250, *Grounds for variances*. In addition to changes in the criteria to be applied by the Board of Adjustment, the committee wanted a list of what code sections cannot be varied. The committee also wanted staff to propose what changes would be made to make the code more flexible to reduce the need for variances. The grounds for variances and variance criteria below reflect the changes requested by the committee. As stated above, these changes did not reflect the Olmo ruling as it was not yet decided.

Proposed variance grounds and criteria

CBJ 49.20.200 Variances other than administrative. Where hardship and practical difficulties result from an extraordinary situation or unique physical feature affecting only a specific parcel of property or structures lawfully existing thereon and render it difficult to carry out the provisions of this title, the board of adjustment may grant a variance in harmony with the general purpose and intent of this title. A variance may not be granted solely to prevent financial hardship or inconvenience. The granting of a variance shall not allow uses prohibited in the district.

A variance may not vary those standards concerning;

- *use of land or structures*
- *housing density*
- *lot coverage*

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- *PUD standards*
- *cottage housing standards*
- *common wall standards*
- *construction standards as found in CBJ 49.35*
- *accessory apartment standards*
- *vegetative cover*
- *financial responsibility*
- *mobile home park standards*
- *Historic District standards and guidelines*

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

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

Other Changes

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

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

Lacking additional parameters regarding these categories, staff has applied these categories quite broadly since 1987. In fact, previous policy has been that almost any section of Code, other than a construction standard, use, or density, may be varied. The issue with varying design standards – those standards that result in how a project is designed – is that there usually is not a true hardship involved; the applicant usually wants greater flexibility than that allowed by Code. Allowing modifications during the project approval process might be a better way to provide greater flexibility.

Attachment C provides a summary of the types of variances applied for since 1987, as well as the Board of Adjustment decision results by type. Since the Land Use Code was updated in 1987

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with the design and dimensional standard categories for variances, applying it broadly has resulted in the following approval of design standards:

- Parking Requirements -
 - allowing back out parking where it isn't allowed
 - modifying parking space sizes and drive aisle dimensions
 - allowing greater distance of off-site parking
 - reduction in the number of required parking spaces
- Access Requirements –
 - allowing subdivisions not fronting on a publicly maintained right-of-way
 - allowing lot access through private easement
 - allowing subdivision along an unbuilt platted right-of-way
 - reduction to minimum 30 feet of frontage requirement
 - allowing a common driveway rather than an interior access street for subdivisions along an arterial
 - allowing lots less than 36,000 sf (D-1 lot size requirement) when subdivision is proposed along an arterial
 - allowing subdivision for lots that won't have direct access to a publicly maintained right-of-way
- Panhandle Subdivision Requirements –
 - reduction in lot sizes
 - allowing separate driveways instead of a shared common driveway
 - allowing more than two changes in direction
 - allowing a reduction in the panhandle portion width
- Planned Unit Developments –
 - allowing encroachment into required perimeter buffer
- Canopies –
 - allowing increases in canopy height
 - approving a canopy waiver when one is required to be provided
- Mobile Home Parks –
 - reduction in size of minimum required playground area
 - allowing setback reductions
- Cottage Housing –
 - allowing different floor area ratios than code specifies
- Accessory Apartments -
 - allowing an increase in apartment size
- Common wall
 - allowing reduced lot sizes
- Vegetative cover –
 - allowing reductions to the minimum vegetative cover requirements

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As outlined above, the variance has been used quite broadly to provide development flexibility. In many cases, making the case that there is a true hardship to justify many of these Code design standard relaxations or waivers is difficult to do.

No consensus has been reached from the Title 49 Committee whether design standards should remain variable or not. CDD recommends removing design standards as something that can be varied. Instead of using the variance as a flexibility tool, CDD would like to amend the Code to allow for more design flexibility. The following chart outlines proposed changes to Code to provide more flexibility. Since a number of recent development types, such as planned unit developments (PUDs) or mobile home parks, go through the conditional use permit review process for consideration and approval, staff recommends that this process and review also be used for consideration of design modifications as well.

Type	Variable?	Code Amendment
Setbacks	Yes	Add additional exceptions to allow such encroachments as ADA requirements as well as exterior energy efficiency additions
Lot width	Yes	
Lot depth	Yes	
Sign standards	No	
Parking	In some cases	A parking waiver process was also recently adopted into Code
Eagle nest buffer	?	Proposed code change to provide flexibility
Streamside buffer	?	Proposed code change to provide flexibility
PUD standards	No	Can use the existing Conditional Use process to modify design requirements
Cottage Housing standards	No	Can use the existing Conditional Use process to modify design requirements
Panhandles	Yes – lot width, depth, setbacks	Staff is currently working on Code changes to provide more flexibility regarding the panhandle option of lot design

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Bungalow lot/housing standards	No	Cannot be varied – would no longer meet the intent or definition of the bungalow requirements
Common wall standards	No	Cannot be varied – would no longer meet the intent or definition of the common wall requirements
Accessory apartment standards	No	Cannot be varied
Vegetative Cover		Previous amendment to Code removed Mixed Use district from vegetative cover requirements. Future amendment to vegetative cover to provide clarity and potential reductions
Financial responsibility requirements – CBJ 49.55	No	
Public and Private Improvements – CBJ 49.35	No	In limited cases, the Planning Commission may waive certain requirements. The Code also gives discretion to the CBJ Public Works and Engineering Director to waive or modify limited requirements.
Mobile home park requirements	No	Can use the existing Conditional Use process to modify design standards
Historic District design standards and guidelines	No	

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

PART II: CODE OF ORDINANCES

- (4) The variance does not authorize uses not allowed in the district involved;
 - (5) Compliance with the existing standards would:
 - (A) Unreasonably prevent the owner from using the property for a permissible principal use;
 - (B) Unreasonably prevent the owner from using the property in a manner which is consistent as to scale, amenities, appearance or features, with existing development in the neighborhood of the subject property;
 - (C) Be unnecessarily burdensome because unique physical features of the property render compliance with the standards unreasonably expensive; or
 - (D) Because of preexisting nonconforming conditions on the subject parcel, the grant of the variance would not result in a net decrease in overall compliance with the land use code, title 49, or the building code, title 19, or both; and
 - (6) A grant of the variance would result in more benefits than detriments to the neighborhood.
- (Serial No. 87-49, § 2, 1987; Serial No. 95-33, § 6, 1995)

49.20.260 Conditions of approval.

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

(Serial No. 87-49, § 2, 1987)

49.20.270 Expiration and extensions of approval.

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

(Serial No. 87-49, § 2, 1987)

ARTICLE III. INTERPRETATIONS

49.20.300 Authorization to interpret.

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

(Serial No. 87-49, § 2, 1987)

49.20.310 Submittal.

An application for a map or text interpretation shall be submitted to the board of adjustment by filing a copy of the application with the director in the department of community development. The application shall contain information sufficient to enable the board to make the necessary interpretation. The interpretation shall be scheduled for consideration by the commission. Individual mailed notice of boundary line interpretations shall be provided to adjacent property owners.

(Serial No. 87-49, § 2, 1987)

49.20.320 Use not listed.

After public notice and a hearing, the board may permit in any district any use which is not specifically listed in the table of permissible uses but which is determined to be of the same general character as those which are listed as permitted in such district. Once such determination is made, the use will be deemed as listed in the table of permissible uses.

(Serial No. 87-49, § 2, 1987)

BEFORE THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU

OLMO, LLC,

Appellant,

vs.

CBJ BOARD OF ADJUSTMENT,

Appellee.

Appeal of:
Notice of Decision
CDD File No. VAR2015 0030

DECISION ON APPEAL

Appellant Olmo, LLC, filed an appeal of the Planning Commission sitting as the Board of Adjustment's (Board) decision to deny Olmo's application for a variance regarding frontage and access requirements for Olmo's proposed subdivision.

The record was prepared by the Community Development Department based upon the materials considered by the Board and application of CBJ 01.50.110.

The issues on appeal were as set forth in the presiding officer's July 25, 2016, Order re Joint Stipulation of Issues on Appeal and Briefing Schedule.

The parties filed briefs on the merits of the appeal. On December 14, 2016, the Assembly heard oral argument from the parties. The Assembly deliberated in closed session, and directed the Municipal Attorney to prepare a draft decision based on the Assembly's findings. As required by the CBJ Appeals Code, the draft decision was circulated to the parties for comment.

The Assembly, having been fully advised, denies the appeal for the reasons stated below.

I. Burden of Proof and Standard of Review.

Under CBJ Code, variance applications are decided by the Planning Commission sitting

as the Board of Adjustment. (CBJ 49.20.240.) The Board’s decision is appealable to the Assembly, and appeals are heard in accordance with CBJ Chapter 01.50. (CBJ 49.20.120.) The appellant bears the burden of proof. (CBJ 01.50.070(b).)

In this case, the parties stipulated to two issues on appeal:

1. Whether the Board’s interpretation of CBJ 49.20.250 was reasonable. The parties have agreed that the Assembly should apply the reasonable basis standard of review to this question.¹

2. Whether the Board’s decision to deny the variance was supported by substantial evidence. In this context, “substantial evidence” is defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” (CBJ 01.50.010.) The Alaska Supreme Court has held that with respect to decisions made within its “sphere of expertise,” a Planning Commission’s decisions are “entitled to considerable deference.”² In reviewing the Commission’s decisions (or the Commission sitting as the Board of Adjustment as is the case here), a “presumption of validity” must be applied.³ When a fact-finding agency such as the Board chooses between conflicting determinations and there is substantial evidence in the record to support either conclusion, the Board’s findings should be affirmed on appeal.⁴ This direction, in conjunction with the standard of appeal articulated in CBJ 01.50, suggests that the role of the Assembly on appeal is limited. The Assembly does not re-weigh the evidence or second-guess the Board’s findings as long as there is evidence in the record to support those findings.

¹ See, *City of Kenai v. Friend of Recreation Ctr.*, 129 P.3d 452 (Alaska 2006).

² *Lazy Mountain Land Club v. Matanuska-Susitna Borough Bd. of Adjustment & Appeals*, 904 P.2d 373, 386 (Alaska 1995).

³ *South Anchorage Concerned Citizens, Inc. v. Coffey*, 862 P.2d 168, 173 (Alaska 1993).

⁴ *Anderson v. State*, 26 P.3d 1106 (Alaska 2009).

II. Relevant Facts.

CBJ Code requires that lots have direct and practical access to a publicly maintained right-of way. CBJ 49.15.424. As explained in the March 3, 2016, staff report, Olmo filed a variance application in connection with a proposed three-lot subdivision (intended to be further subdivided into six common wall lots.) Although Olmo's parcel abuts North Douglas Highway, it does not have direct access to a right-of-way. The parcel is currently accessed via a shared driveway located within a 20 foot easement that travels over two neighboring lots.⁵ Thus, the only way for the proposed subdivision to meet the requirement for frontage and access called for by CBJ 49.15.424 would be for Olmo to create direct access from each lot to North Douglas Highway or to construct a public street dedicated to serve the subdivision. In support of the variance application, Olmo argued that neither option was practical due to the extreme steepness of the terrain leading to its parcel.

III. The Board's Interpretation of CBJ 49.15.424 Was Reasonable.

Though not specifically identified as an issue on appeal, Olmo argues that the only reason a variance was needed in this case was because of the Board's misinterpretation of CBJ 49.15.424. (Olmo Opening Brief at p. 28.)

CBJ 49.15.424, Access, provides in part:

(b) *Publicly maintained access within a subdivision.* Unless otherwise provided, all lots must either have direct and practical access to, and a minimum of 30 feet of frontage on, the right-of-way, or the minimum lot width for the zoning district or use as provided in CBJ 49.25.400. These requirements for frontage and access can be accomplished by:

⁵ One of the neighboring lots is owned by the only member of Olmo, LLC. The owners of the other parcel objected to Olmo's variance application. As noted in the Board's brief, the driveway used to access Olmo's parcel is located almost entirely on this third lot.

- (1) Dedication of a new right-of-way with construction of the street to public standards. This street must connect to an existing publicly maintained street;
- (2) Use of an existing publicly maintained street;
- (3) Upgrading the roadway within an existing right-of-way to public street standards. This existing right-of-way must be connected to another publically maintained street; or
- (4) A combination of the above.

We find the Board's interpretation of CBJ 49.15.424(b), as articulated in its Opposition Brief, reasonable. (Opposition Brief at pp. 9 – 12.) CBJ 49.15.424(b) is properly read to apply to access *within* a subdivision (as opposed to access *to* a subdivision as provided by 49.15.424(a)). The code explicitly requires lots to have direct and practical access to a public right-of-way and either a minimum of 30 feet of frontage on the right-of-way or the minimum lot width provided for in CBJ 49.25.400, Minimum dimensional standards. We cannot find ambiguity in the ordinance as proposed by Olmo.⁶ We find the Board's interpretation of 49.15.424(b) to require each lot of the subdivision to have direct and practical access to a public right-of-way reasonable in light of the plain language of the text, and, as argued by the Board in its Opposition, the legislative history and the general policy reasons justifying the imposition of frontage requirements.

IV. The Board's Interpretation of CBJ 49.20.250 Was Reasonable.

We find the Board's application of CBJ 49.20.250 reasonable in light of the plain language of the ordinance, and consistent with the Alaska Supreme Court's analysis of the same code section in *City and Borough of Juneau v. Thibodeau*, 595 P.2d 626 (Alaska 1979).

The standards for granting a variance application are set forth in CBJ 49.20.250. First, an

⁶ See *Ward v. State, Dept. of Public Safety*, 288 P.2d 94 (Alaska 2012); *City of Homer v. Gangl*, 650 P.3d 396 (Alaska 1992); *City and Borough of Juneau v. Thibodeau*, 595 P.2d 626 (Alaska 1979).

applicant must show that "hardship and practical difficulties result[ing] from an extraordinary situation or unique physical feature" make it difficult for the owner to comply with the provisions of Title 49. Once the Board determines an applicant has made a sufficient showing that this threshold question has been met, a variance may be granted if the Board determines that:

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

(CBJ 49.20.250(b).)

Significantly, when asked what hardship would result if the variance were not granted, Olmo told the Board that it would be 'unable' to proceed with the subdivision because of "financial hardship" and that "constructing a public street to the lots is not financially feasible, and the street would have to pass through an adjacent lot that the developer does not own." In analyzing the CBJ's variance ordinance, the Alaska Supreme Court in *City & Borough of Juneau*

v. Thibodeau, 595 P.2d 626, 635-636 (Alaska 1979) stated:

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

It is undisputed that Olmo's lot presents a challenging topography, but we find it significant that Olmo has the ability to develop its property without the need to subdivide and thus, without requiring improved access

While it would have been helpful if the Board's finding on this threshold issue had been more clearly articulated, we nevertheless find that the Board's decision is supported by substantial evidence for the reasons explained below.

V. The Board's Decision to Deny the Variance Was Supported by Substantial Evidence.

The Board considered whether the variance should be granted by applying the criteria articulated in CBJ 49.20.250(b). After consideration of the issue at three separate hearings held on March 8, 2106, March 22, 2016, and April 12, 2016, the Board adopted the findings made in the March 3, 2016, staff report that the variance would not meet the standards in CBJ 49.20.250(b)(1), (2), (5) or (6). Olmo argues on appeal that the Assembly should reverse the Board's decision as not supported by substantial evidence.

A. CBJ 49.20.250(b)(1).

The Board determined that granting Olmo a variance to the direct and practical access requirement would be inconsistent with justice to other property owners. In reaching this

conclusion, the Board considered the history behind the approval of Olmo's existing driveway easement in 1982 (both the fact that it was to serve only a single family dwelling and that it was approved with the intention that a public street would be built if future development were to occur), the policy considerations embodied in the comprehensive plan and code behind the requirement for direct and practical access, and the safety concerns that arise when lots do not meet Title 49's access requirements. Based on these considerations, we find the Board's determination with respect to CBJ 49.20.250(b)(1) was supported by substantial evidence.

B. CBJ 49.20.250(b)(2).

The Board determined that neither the intent behind Title 49, nor public safety and welfare, would be preserved if the variance were granted. The Board considered Olmo's proposal – to allow what would eventually be a six lot subdivision use a steep, narrow driveway located in a narrow twenty foot easement – to be too far outside the minimum public health, safety, and welfare standards embodied in Title 49. The Board specifically noted that the narrowest roadway allowed by CBJ Code to serve subdivisions in the urban service area (where Olmo's proposed subdivision is located) is a twenty-two feet wide paved roadway within a sixty foot right-of way, and also considered the International Fire Code's requirement that travel ways be a minimum of twenty feet.

We conclude that the Board's finding on this point was supported by substantial evidence.

C. CBJ 49.20.250(b)(5)(A – D)

1. CBJ 49.20.250(b)(5)(A). The Board determined that denying Olmo's variance application would not unreasonably prevent Olmo from using its property for a permissible use. The Board considered that the only reason why Olmo needed to apply for a

variance was because of Olmo's decision to subdivide. As noted in the Board's opposition and as stated in the staff report, Olmo could have developed its property without subdividing, and therefore without triggering the requirement that the development comply with the access requirements in CBJ 49.15.424. The Board specifically considered that Olmo could have constructed up to fourteen multi-family units, or could have constructed up to three two-unit buildings as was being proposed, without subdividing the property.

We find the Board's conclusion supported by substantial evidence.

2. CBJ 49.20.250(b)(5)(B). Similarly, the Board found that denying the variance would not unreasonably prevent Olmo from using its property in a manner consistent with existing, neighboring development in the neighborhood. Noting the property was zoned D-18 and identified as Medium Density Residential, the Board again relied upon its finding that the property could be developed with up to fourteen multi-family units with a conditional use permit, or up to eight units with nothing more than a building permit, without the need to subdivide.

3. CBJ 49.20.250(b)(5)(C). In concluding that denying the variance would not be unnecessarily burdensome, the Board relied upon staff's assertion that other smaller, similar subdivisions had been required to comply with the access requirements in CBJ 49.15.424. Given that Olmo's request for a variance was not related to an inability to construct a road but rather the financial implication of doing so, and in light of the Supreme Court's holding in the *Thibodeau* case, *supra*, we find the Board's decision on this point supported by substantial evidence.

4. CBJ 49.20.250(b)(5)(D). The Board found that granting the variance would result in an overall net decrease in overall compliance with Title 49 based upon the fact that the requirements in CBJ 49.15.424 would not be met.

D. 49.20.250(b)(6).

With respect to CBJ 49.20.250(b)(6), the Board concluded that granting the variance would not result in more benefits than detriments to the surrounding neighborhood. The Board relied upon staff's finding that the proposed development would "increase the use of the existing substandard access" located in the easement, and that the increased development could "result in detriments to users of North Douglas Highway because the existing access may cause traffic impacts on North Douglas Highway." (Record at p. 27).

We disagree with the Board's finding. While there are significant policy and safety and welfare concerns to support denial of the variance, we cannot find the Board's conclusion regarding traffic impacts to be supported by substantial evidence. Additionally, we agree with Olmo's assertion that the Board failed to consider the benefits of Olmo's proposal. Given the significant need in the community for housing, we cannot find that the Board's decision on this issue was supported by substantial evidence.

VI. Conclusion

In light of the deferential standard of review the Assembly must apply to Board of Adjustment decisions and the applicable burden of proof, we must deny Olmo's appeal. We find the Board's decision to deny Olmo's variance was supported by substantial evidence. We agree with the Board's finding that Olmo can develop its property without subdividing and that granting the variance to allow for the creation of lots with such substandard access would result in a development that fails to meet the minimum health, safety and welfare considerations embodied in the CBJ's Land Use Code. We also agree with the Board's finding that approving the variance in order to allow Olmo more profitable development than presented by the other permissible development opportunities Olmo has available to it is not justified. For these

reasons, the Board of Adjustment's decision is affirmed.

DATED _____, 2017.

ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU,
ALASKA

By: _____
Maria Gladziszewski
Presiding Officer on Appeal

Variance Approval History 1987 - 2015

Total and
By Type

From 1987 through 2015 (2016 data is not included), 964 cases were decided by the Board of Adjustment. Of those:

856 approved – 88.8%

108 denied – 11.2%

Year	Total Cases Decided by BoA	Approved	Approval %	Denied	Denial %
1987	10	10	100.0%	0	0.0%
1988	14	11	78.6%	3	17.6%
1989	15	12	80.0%	3	16.7%
1990	28	19	67.9%	9	25.0%
1991	24	18	75.0%	6	25.0%
1992	41	35	85.4%	6	13.6%
1993	48	40	83.3%	8	14.0%
1994	50	39	78.0%	11	20.0%
1995*	48	41	85.4%	7	11.7%
1996	49	39	79.6%	10	14.9%
1997	43	38	88.4%	5	8.6%
1998	43	33	76.7%	10	17.5%
1999	43	39	90.7%	4	7.5%
2000	44	41	93.2%	3	6.1%
2001	26	26	100.0%	0	0.0%
2002	40	37	92.5%	3	6.0%
2003	37	35	94.6%	2	3.9%
2004	47	44	93.6%	3	5.4%
2005	45	44	97.8%	1	1.5%
2006	43	38	88.4%	5	9.8%
2007	33	33	100.0%	0	0.0%
2008	23	22	95.7%	1	3.1%
2009	31	29	93.5%	2	5.4%
2010	27	24	88.9%	3	7.5%
2011	22	22	100.0%	0	0.0%
2012	27	25	92.6%	2	5.7%
2013	23	23	100.0%	0	0.0%
2014	23	23	100.0%	0	0.0%
2015	17	16	94.1%	1	2.8%

* The variance criteria changed in 1995 making it less difficult to meet the criteria for approval

Variance Approval History 1987 - 2015**Total and
By Type**

The following types of variances have been decided by the BoA since 1987:

Type	Total Decided by BoA	Approved	Approval %	Denied	Denial %
Access-related	49	40	81.6%	9	18.4%
Design Standards*	39	31	79.5%	8	20.5%
De Minimus	12	12	100.0%		0.0%
Density	0		0		0
DOA	0		0		0
Dimensional Standards (lot width, low depth)	65	57	87.7%	8	12.3%
Extensions	0		0		0
Fence-related	4	4	100.0%		0.0%
Flood Zone-related	4	3	75.0%	1	25.0%
Height	19	18	94.7%	1	5.3%
Lot Area	6	5	83.3%	1	16.7%
Lot Coverage	4	3	75.0%	1	25.0%
Other	1		0.0%	1	100.0%
Parking	114	92	80.7%	22	19.3%
Setbacks	492	451	91.7%	41	8.3%
Setback – Eagles	42	42	100.0%		0.0%
Sign-related	18	8	44.4%	10	55.6%
Setback Waterbody	70	66	94.3%	4	5.7%
Use	0		0.0%		0.0%
Vegetative Cover	25	24	96.0%	1	4.0%
TOTAL	964	856	88.8%	108	11.2%

*Design Standards-related variances are to the following standards: Accessory apartments, arterials, bungalows, canopies, common wall, conservation lots, cottage housing, historic district, minimum rectangle, mobile home, panhandle, and PUDs.



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DATE: June 8, 2017

TO: Planning Commission Committee of the Whole

FROM: Teri Camery, Senior Planner
 Community Development Department

SUBJECT: AME2016 0019
 Proposed Revisions to CBJ Code 49.70.310(a)(2 and 3), Eagle Nest buffers

Introduction and Background

Revision of the CBJ Code, Eagle Nest Setbacks, Section 49.70.310(a)(2 and 3), has been on the Assembly and Planning Commission's priority list for several years.

The Planning Commission's Title 49 Committee reviewed the proposed draft eagle nest buffer ordinance at the August 3, 2016 and September 21, 2016 regular meetings. Review included consultation with Mr. Steve Lewis, raptor biologist with the U.S. Fish and Wildlife Service (USFWS). Community Development Department (CDD) staff followed these meetings with extensive consultation with the CBJ Law Department, additional meetings with USFWS, and research on past variance applications.

Revision is needed to improve and simplify departmental implementation of the ordinance, which has been problematic because CDD has always relied heavily on the USFWS to determine the location of nests and also if a nest has actively nesting eagles, a key component of the existing ordinance. In addition, CDD research shows that of 42 eagle nest buffer variances noted in the CBJ database, all 42 were approved. The current ordinance also uses the code definition of development, which has many elements that are irrelevant to impacts to eagle nests and are unnecessarily restrictive.

Revision is needed to provide flexibility in the code, rather than through the variance process, for benign activities. Lastly, discussions with the USFWS indicate that the same uniform degree of protection for eagles throughout the borough, as required in the existing ordinance, is not necessary. USFWS has explained that eagles are highly habituated in urban areas of Juneau, meaning that noise and construction activities do not appear to significantly disrupt their behaviors.

Finally, the USFWS has an optional federal permit, titled 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. In other words, the federal permit is a liability shield. Project Managers for all large-scale developments, especially the Alaska Department of Transportation, have applied for and received this permit, and this permit has often been used as justification for approval of CBJ variances.

AME2016 0019

Proposed Revisions to CBJ Code 49.70.310(a)(2 and 3), Eagle Nest buffers

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Regulation Revision Challenges

The current ordinance regulates eagle disturbances based on the precautionary principle and balancing public policies by imposing less restriction to development when eagle nests are on private property. Since those eagle prohibitions were enacted in 1987, evidence suggests that the CBJ can liberalize the eagle prohibitions because eagle populations in Alaska, especially in urban areas like Juneau, do not appear to be adversely affected by most development.

As noted earlier, CDD staff has had many meetings with the USFWS and with the CBJ Law Department to determine options for revising the ordinance, versus deleting it. Any draft ordinance must have a rational basis for all requirements and be internally consistent. CDD has provided several different versions for consideration; however each version has had unresolvable problems with these two components.

At a basic level, CDD staff has struggled with identifying the location of eagle nests and, as required in current ordinance, determining whether a nest has actively nesting eagles. Thus, CDD has considered simply regulating eagle nests, whether those nests are active or not. This can be justified because empty nests are frequently used again and signify an important part of an eagle's territory. However, CDD does not have the capacity to identify and track eagle nest locations. USFWS filled this important role for CDD for many years, but USFWS staffing was reduced several years ago and USFWS has not been able to consistently provide CDD within this information since then.

In addition, CDD has considered applying regulations only to non-urbanized eagles (outside of the Urban Service Boundary) during the nesting season. However defining the key activities that are most disruptive and require regulation has been difficult.

For example, CDD initially considered prohibiting activity that requires a grading permit. However grading permits are issued for small activities that do not generate noise and disruption—such as altering drainage patterns by digging a ditch with a hand shovel—as well as significant earth moving activities that utilize heavy equipment. Presumably, the heavy equipment activities would cause more impact than hand tools, but CDD has not found evidence to support prohibiting use of heavy equipment, or grading permit development more generally, because of adverse impacts to eagle nests.

The essential question is why is the regulation needed? In other words, what is the rational basis for the regulation/prohibition? Is the issue noise? Is the issue the mere activity or disturbance? Or is it something else? Nothing in federal regulation or available scientific studies has indicated a specific noise threshold causes eagle disturbance. Based on this, CDD has not been able to develop a defensible noise threshold. Similarly, CDD has not been able to develop a defensible activity threshold because the USFWS has not been able to provide us with a specific as to which activities are disruptive and why.

CDD has struggled with these questions and others regarding building activities, and we have not been able to come up with language with an adequate rationale and language without legal inconsistencies.

AME2016 0019

Proposed Revisions to CBJ Code 49.70.310(a)(2 and 3), Eagle Nest buffers

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Ordinance deletion

As noted earlier, the USFWS has a federal permit process to address severely disruptive activities. In addition, bald eagles have never been endangered in the State of Alaska and the population within CBJ appears to be increasing. The USFWS does not maintain a current database of nest sites, and CDD does not have the resources to track nest locations. Even if CDD is able to find a legally-justified option for amending the current ordinance, implementation may still be problematic and incomplete. Thus, because the eagle population around Juneau appears healthy and implementation and enforcement of a revised eagle ordinance would likely be more burdensome than beneficial, deletion of the ordinance may be justified and prudent.

Planning Commission Action

Staff requests direction from the Planning Commission on whether to continue evaluating revision options for the ordinance or to delete the ordinance. If the Commission chooses a revision option, the Commission will, at some point, need to make a determination on whether eagle nest buffers should be eligible for a variance. CDD's understanding is that both revision of the ordinance and deletion of the ordinance would comply with the 2013 Juneau Comprehensive Plan. The Comprehensive Plan explicitly says that the existing eagle ordinance may need to be amended due to changes to federal law (i.e., availability of eagle take permits).

Attachments

Attachment A: Current Ordinance and 2013 Comprehensive Plan policies

Current ordinance and Comprehensive Plan policies for reference

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

- (a) *Development in the following areas is prohibited:*
- (2) *Within 330 feet of an eagle nest on public land;*
 - (3) *Within 50 feet of an eagle nest on private land, provided that there shall be no construction within 330 feet of such nest between March 1 and August 31 if it contains actively nesting eagles;*

The Code definition of development (49.80.120) states:

Development means any of the following:

- (1) *Construction, reconstruction or enlargement of a structure involving more than 120 square feet;*
- (2) *A subdivision;*
- (3) *Conduct of a home occupation;*
- (4) *Change in use of a lot, including any structure thereon;*
- (5) *Installation or emplacement of a mobile or modular home;*
- (6) *Removal of substantial vegetative cover;*
- (7) *Excavation, dredge or fill activity;*
- (8) *Installation of a sign;*
- (9) *For the purposes of [chapter 49.65](#), article I, the work performed in relation to a deposit, subsequent to exploration but prior to extraction of commercial quantities of a mineral commodity, aimed at, but not limited to, preparing the site for mining, defining an ore deposit, conducting pilot plant operations, and construction of roads or ancillary facilities;*
- (10) *Any site work in preparation or anticipation of the above.*

The 2013 CBJ Comprehensive Plan states the following:

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

Standard Operating Procedures

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

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

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

Development Guideline

7.14 - DG1 Private land within the eagle management radius should be left undeveloped or subdivided into large lots, the largest of which should contain the nest tree. Roads should be located as far from the

nest as possible, preferably landward from the nest tree. Low density residential or open space/natural areas uses should be located within the eagle management radius.

Implementing Actions

7.14 - IA1 Amend the Land Use Code to include variance criteria that apply specifically to requests to allow development within the buffer area around a bald eagle nest. Developing these criteria is of crucial importance in order to allow responsible development within 330 feet of eagle nests, especially those nests that post-date adjacent development. It may be appropriate to adopt regulations for development near eagle nests based on the level of tolerance of the subject eagles to human activity.

7.14 - IA2 Work with the United States Fish and Wildlife Service (USFWS) on an as-needed basis to identify eagle nest locations and best practices.

7.14 - IA3 Consider designating as Natural Areas or other low impact land use categories areas where eagles tend to nest in concentrations.

7.14 - IA4 Request that the USFWS evaluate the Bald Eagle in the Urban Service Area in terms of population, behavior and tolerance of human presence and activity. Consider any new suggestions from the USFWS for enhancing the presence and health of eagles in the urban area.

7.14 - IA5 Support the efforts of a local non-profit eagle rehabilitation facility to rescue, heal and return to the wild, injured or vulnerable eagles and to educate the public as to the health and well-being of the species.



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DATE: June 2, 2017

TO: Planning Commission Committee of the Whole

FROM: Teri Camery, Senior Planner
Christine Steadman, Planner II
Community Development Department

SUBJECT: AME2017 0001
Proposed Revisions to CBJ Code 49.70.310 and 49.70.950(f) stream and lakeside buffers

Introduction

The 50-foot no-development and 25-foot no-disturbance buffers from anadromous streams and lakes are listed in two sections of code, 49.70.310 and 49.70.950(f). The ordinance has been a priority for code revision for many reasons. Below is a partial list:

- 1) The setback is listed in two sections, with different requirements in each section.
- 2) The setback in 49.70.310 is tied to the definition of development, which was written separately for general planning issues that are not specific to the stream/lake.
- 3) The setback in 49.70.950(f) measures the setback from the Ordinary High Water Mark, while 49.70.310 measures the setback from the top of the bank.
- 4) 49.70.950(f) lists exception criteria; 49.70.310 does not.
- 5) 49.70.310 lists the 25-foot no-disturbance zone. 49.70.950(f) does not.
- 6) Neither code section identifies when the mouth of a salmon stream ceases to be a stream and becomes tidewater. This is important because CBJ does not have a setback from tidewater.

CDD has recognized that variances have been used for many years as a tool to create flexibility in zoning regulations. However, the variance process is not intended to be used for flexibility but instead as a relief valve when there are unique circumstances or an extraordinary hardship that makes compliance with the regulations extremely difficult. With this in mind, the revised ordinance is intended to provide flexibility for a substantial list of common benign uses, conducted within certain parameters, rather than turning to the variance process when flexibility is needed. Variances are not currently allowed under the stream ordinance. With the proposed revision, the variance process would be an option for all uses except those that are specifically listed as prohibited.

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In the draft ordinance CDD refers to anadromous waterbodies to avoid the repetition of saying both streams and lakes. Any waterbody with anadromous fish, as established by the Alaska Department of Fish and Game, would be subject to the ordinance.

Background

CDD staff presented the initial stream ordinance revision concept to the Planning Commission Title 49 Committee at meetings in September and October 2016. The Committee supported the revision concept and provided general feedback. In February 2017, CDD formed an ad-hoc Stream Buffer Working Group to establish a sound scientific foundation for development of the ordinance. The Working Group was comprised of representatives from the Alaska Department of Fish and Game, the Alaska Department of Environmental Conservation, the U.S. Fish and Wildlife Service, the Juneau Watershed Partnership, and a local landscape architect. Group members continue to advise CDD and provide additional scientific support as needed.

CDD presented the draft ordinance to the Wetlands Review Board at the April 26, 2017 regular meeting. Draft minutes are attached. The Board expressed strong support for the ordinance and had many helpful comments for further revision. The Board will review the ordinance again at the next regular meeting, scheduled for June 15, 2017.

Planning Commission Action

The intent of this memo is to familiarize the Commission with the background and concepts behind the proposed revision, and to solicit the Commission's views on CDD's general approach. The attached ordinance is expected to go through substantially more internal revision before it goes before the Commission for a full public hearing. However the basic framework--the application process, the allowed uses within the buffer, and the Best Management Practices and Landscaping Protocol--will remain the same unless otherwise directed.

Draft Ordinance Overview

Key components of the draft ordinance are summarized below. The ordinance:

- Retains the existing 25-foot no disturbance buffer and 50-foot no-development buffer in the current ordinance.
- Defines specific allowed and prohibited uses, rather than referring to the code definition of development, which is problematic.
- Allows for common uses within both buffer zones that are not harmful, or that may be adapted to be not harmful, with approval of an Anadromous Waterbody Permit issued by the Department. These uses are prohibited under the current ordinance; therefore the revised ordinance provides significant flexibility while still providing habitat protection. Allowed uses must implement Best Management Practices and Riparian Vegetation Standards, defined in code, to minimize impacts and provide habitat protection.
- Addresses many common development needs, including the need to trim or cut trees within the buffer to address public safety or potential property damage.

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- Clarifies how the buffer is measured.
- Allows the Variance process for uses not listed, or uses not expressly prohibited.

Next Steps

CDD will continue with internal revision efforts following the June Planning Commission Committee of the Whole and Wetlands Review Board meetings. CDD will then send the ordinance to CBJ Law for review, and then to the full Planning Commission for a public hearing. Consideration of the ordinance by the Assembly is expected this fall.

Attachments:

Attachment A	Current Ordinance
Attachment B	Draft Revised Ordinance
Attachment C	Comprehensive Plan policies
Attachment D	April 26, 2017 Wetlands Review Board Draft Minutes

Current Stream/Lake Ordinance

49.70.310 Habitat.

(a) Development in the following areas is prohibited:

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

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

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

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

49.70.950(f)

(f) All structures and foundations located adjacent to streams or lakes listed in Table VI-2 of Appendix C of the Juneau Coastal Management Plan, shall have a 50-foot setback from each side of the stream or lake measured from the ordinary high water mark, where feasible and prudent; provided, docks, bridges, culverts and public structures whose purpose is access to or across the stream or lake are not subject to this policy, and provided further, uses which must be in or adjacent to the stream or lake in order to function, such as mining activities, fish culturing, water supply intakes and similar uses, are exempt from the setback requirement. The setback shall be vegetated or revegetated, where feasible and prudent, and such vegetation or revegetation shall be kept or arranged to maximize shade on the stream.

Definitions 49.80.120.

Development means any of the following:

- (1) Construction, reconstruction or enlargement of a structure involving more than 120 square feet;
- (2) A subdivision;
- (3) Conduct of a home occupation;
- (4) Change in use of a lot, including any structure thereon;

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

*6-1-17 Version***49.70.310 - Anadromous Waterbody Protection**

Purpose and intent: The purpose of the Anadromous Waterbody Protection section is to minimize soil erosion, prevent non-point source pollution, provide flood management, and protect and enhance wildlife and fish habitat on streams and lakes that are anadromous.

Permit Application Process**49.70.315 Anadromous waterbody permit required**

- (a) No person may perform or cause to be performed any development work within the 50 foot anadromous waterbody buffer without a valid Anadromous Waterbody Permit issued by the Director of Community Development.

49.70.320 Contents of application

Each person who requires a permit under this article shall file an application with the department. An Anadromous Waterbody Permit shall be obtained before construction or development begins within the 50 foot anadromous waterbody buffer. The application shall be made on forms furnished by the City.

The application shall contain a vegetation removal plan and a revegetation plan. The plan shall indicate how the BMPs found in section shall be met. The plan shall include:

- (1) A graphic and legal description of the property;
- (2) Drainage plan;
- (3) A topographic map showing the existing topography, vegetation, drainage features, structures, significant natural and artificial conditions of the land, the location and size of existing trees and shrubs; and
- (4) [A narrative statement describing the activities and site restoration plan shall be included:](#)
 - (A) Timeline for development activity and restoration
 - (B) The existing species of vegetation and proposed species to be used for revegetation
 - (C) The method by which the activity shall be conducted

(5) When the purpose of vegetative removal is to enhance public safety a statement from an approved law enforcement agency such as the Juneau Police Department shall be submitted with the application.

49.70.325 Director's review procedure

(a) Upon receipt of an application and the required filing fee, the department shall review the submission for completeness. If the department determines that the submission is incomplete, it shall so notify the applicant in writing within ten days of submission. Upon receipt of a complete application and the related filing fee, the department shall submit a copy of the application to the engineering department for a report containing an evaluation of the information in the application and shall include

recommendations relating to the effect the proposed activity will have upon the stream bank and water quality.

(b) Upon determination that the application is complete the department shall review the application and the engineering department recommendations and shall transmit those recommendations along with its own recommendations to the applicant.

(c) Staff shall inspect the site prior to commencement of activity to ensure the site is properly marked and the site matches the plans submitted to with the application.

(d) Staff shall periodically inspect the site prior to vegetative removal or disturbance and upon project completion.

Fee schedule \$400

Buffer Requirements

(a) All anadromous waterbodies listed in the most current Alaska Department of Fish and Game Anadromous Waters Catalog shall have an inner buffer (0-25 feet) adjacent to the waterbody and outer buffer (25-50 feet). The buffer shall be measured by the horizontal distance from the Ordinary High Water Mark, as determined by the Community Development Department. On coastal lots, the transition point from the waterbody buffer to the zero setback of tidewater shall be at the point where Mean High Water and Ordinary High Water meet.

(b) The following uses and types of development are allowed within the 0-25 foot buffer with approval of an Anadromous Waterbody Development Permit, authorized by the Director, provided that those uses cannot be reasonably completed outside the inner buffer, and meet the Riparian Vegetation Standards and Best Management Practices listed in subsection___:

- (1) Bank and buffer restoration
- (2) Spawning and rearing habitat restoration
- (3) Placement of water quality or water quantity monitoring equipment
- (4) Fish weirs
- (5) Placement of surveillance equipment
- (3) Removal of non-native invasive plant species, as listed in an official document specific to the State of Alaska
- (4) Stormwater management to improve water quality and/or water quantity to anadromous waterbodies
- (5) Construction of a fence
- (6) Trail construction or trail maintenance for accessing a crossing or enhancement to the waterbody

- (7) Bridges, utilities and related public infrastructure, including culverts. Vegetation removal must be minimized to the greatest practicable extent while addressing construction, maintenance, and/or safety requirements.
- (8) Removal of individual or select trees or vegetation that are causing or at risk of causing damage to structures, or constitute a threat to public safety due to illegal activities. Removal of vegetation to address a public safety issue shall require a letter of documentation from a CBJ Public Safety Official. Removal of vegetation to address damage to structures shall require a letter of documentation from a licensed arborist.
- (9) Bank stabilization conducted in accordance with the ADF&G Streambank Revegetation and Protection Guide and approved by the Director of Engineering. When specific bank stabilization measures are required, plans prepared by a civil engineer shall be submitted.

(c) In addition to the uses and types of development allowed in section (b), the following uses are allowed within the 25-50 foot buffer with approval of an Anadromous Waterbody Development Permit, authorized by the Director, provided that those uses cannot be reasonably met outside of the buffer, and provided that those uses meet the Riparian Vegetation Standards and Best Management Practices listed in___:

- (1) Removal of branches from trees for view shed enhancement
- (2) Trail construction parallel to a waterbody

(d) The following activities are prohibited in both buffer zones:

- (1) Storage of fuel and other hazardous materials
- (2) Storage of explosives
- (3) Storage of vehicles

(e) Any uses or types of development allowed within the inner or outer buffer zones shall be performed in accordance with the following Best Management Practices:

- (1) Delineate work limits prior to commencing any activities to preserve existing vegetation outside of the work area and minimize impacts to the buffer. To protect large trees near, but outside of, the work area, the boundary for the natural area to be preserved shall be extended to the tree drip line to protect the root zone from damage. The work limits must remain clearly marked until all work is complete. Within the work limits, the disturbed area shall be limited to that required for construction including access. Complete or partial removal of and damage to native vegetation shall be minimized to the greatest extent practicable.
- (2) When existing vegetation must be removed from the buffer, the buffer shall be vegetated or revegetated with native plant species that are present or appropriate for that area within one growing season. The buffer shall be vegetated or revegetated and such vegetation or revegetation shall be kept or arranged to enhance fish habitat.
- (3) Erosion and sediment control Best Management Practices shall be used during construction activities to protect waterbodies sediment deposition and turbidity due to adjacent soil disturbance activities. Selected BMP's must be implemented in accordance with the standards in the Alaska Storm Water Guide (<http://dec.alaska.gov/water/wnpspc/stormwater/docs/AKSWGGuide.pdf>) (DEC, 2011).

- (4) All discharge material shall be free from toxic pollutants in toxic amounts as defined by state law.
- (5) Uses and activities shall implement measures to minimize pollutant discharges into the waterbody and buffer including but not limited to providing for water management, establishing staging, fueling, and maintenance areas outside of the buffer.
- (6) Structures allowed within the buffer must be constructed so as not to impede floodwaters or impede fish passage.
- (7) In addition to all of these measures, new developments must comply with the CBJ Manual of Stormwater Best Management Practices.

(f) Riparian Vegetation Standards

- (1) All uses and types of development within the inner and outer buffer shall include a vegetation plan to maintain or restore the buffer to the following standards:
 - (A) The vegetation plan shall utilize a diversity of native species appropriate for the site conditions found in the Recommended Plan List in Appendix E of the CBJ's Manual of Stormwater Best Management Practices (2010) and/or the Plant Selection List in the Alaska Department of Fish and Game's Stream Revegetation and Protection: A Guide for Alaska (2005). The plan shall also implement any standards from the Landscaping and Lawn/Vegetation Management sections in the CBJ's Manual of Stormwater Best Management Practices (2010), identified by staff as applicable to the permitted development.
 - (B) Uses and activities shall not introduce or redistribute invasive species.

2013 Comprehensive Plan Policies regarding Streams and Lakes

Stream Corridors and Lake Shorelines

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

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

Development Guidelines

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

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

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

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

Implementing Actions

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

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

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

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

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

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

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

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

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

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

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

Implementing Actions

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

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

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

DRAFT MINUTES
WETLANDS REVIEW BOARD
April 26, 2017, 5:15 p.m. City Hall Room 224

Meeting Summary

Roll Call

Board Members Present: Irene Gallion, Amy Sumner, Dan Miller, Lisa Hoferkamp, Percy Frisby, Andrew Campbell

Board Members Absent: Nina Horne, Hal Geiger, Brenda Wright

A quorum was present.

Staff Members Present: Teri Camery, Senior Planner; Chrissy Steadman, Planner II

Public Present: Scott Rinkenberger, Airport Maintenance Supervisor; Tyler Adams, Airport Biologist

Meeting called to order at 5:20 p.m.

II. Minutes approved for the January 19, 2017 Regular Meeting

III. Agenda approved

IV. Public Participation on Non-Agenda Items.
None.

V. Board Comments.

Ms. Gallion requested that board meetings be moved to the valley for the summer. Ms. Camery said she would check into it.

Ms. Sumner noted the annual spring clean-up even this Saturday.

VI. Agenda Items

1) AME2017 0001 Anadromous Waterbody Ordinance Revision

Ms. Camery provided the background on development of the ordinance. She described the intention to provide flexibility in code for uses that have minimal harm if conducted with best management practices and a landscaping protocol. Flexibility may no longer be provided

through the variance process, so benign uses must be allowed for in code within certain parameters. Ms. Camery explained CDD's background research and the meetings with the resource agency representatives in the ad-hoc Stream Ordinance Working Group. She said that the first goal in developing the ordinance is to establish a sound scientific foundation with the scientific advice of the Working Group and the Wetlands Review Board. With this scientific basis, CDD will then take the ordinance forward for extensive internal review other planning staff, review by other departments who may be applicants (such as CBJ Lands, the Juneau Airport, Parks and Rec, and more), then to Planning Commission subcommittees, CBJ Law, and final to the full Planning Commission and CBJ Assembly for full public hearings.

Ms. Camery reviewed the Board memo, highlighting key issues to resolve from the existing ordinance.

Mr. Rinkenberger described the Juneau International Airport's issues with criminal activity along the Jordan Creek stream corridor, the past trimming within the 0-25 foot no disturbance zone, and the urgent need to revise the ordinance to allow for more clearing to improve visibility and reduce crime. Mr. Adams referred to ADFG's report on the area, and described how trimming could be done while preserving habitat values.

Ms. Camery noted that the Jordan Creek issue has been discussed extensively by staff and the Stream Ordinance Working Group, and that the issue has been specifically addressed in the draft ordinance.

Mr. Campbell noted that the airport has violated the stream buffer ordinance many times. He said that the cooperative efforts of the current airport staff are necessary and appreciated.

Ms. Gallion noted the need to protect the legitimate interests of stream protection and prevent aggressive developers from doing damage to streams.

Ms. Sumner asked about the application process for the department's Anadromous Waterbody permit. Ms. Camery explained that the application forms would be developed after the ordinance is approved. She explained that the ordinance has been written to provide flexibility for applicants with the understanding that there are many options for addressing habitat. However she noted the criticism of staff and the department for being subjective or inconsistent, so she is trying to find a balance between the two. Mr. Campbell suggested that the criteria for approval of the permit should be very clear. He noted that latitude can make the applicant feel treated unfairly, or make staff feel treated unfairly. Mr. Miller suggested expanding information on the permitting process in the purpose and intent section of the ordinance.

Dr. Hoferkamp asked what "reasonable" means and suggested that this should be defined.

Ms. Gallion suggested two tiers of permit approval regarding vegetation removal that is done for public safety reasons.

Ms. Gallion asked about stormwater management and discharge. Ms. Steadman noted that CDD would clarify this point.

Ms. Camery discussed issues regarding trail development within the 0-25 buffer and 25-50 buffer. Board members discussed wordsmithing options for addressing this issue. Mr. Miller highlighted ordinance language which notes that these allowed uses must be out of the buffer if that is possible. Ms. Sumner noted the need for trail maintenance.

Dr. Hoferkamp suggested prohibition of hazardous materials, rather than “fuel and other contaminants.” She also noted that the ordinance should encourage the use of impervious surfaces.

Board members noted the need for a definitions section.

Mr. Rinkenberger noted that power companies regularly trim within buffers and have done a lot of trimming at the airport. Staff and board members discussed ways that this could be addressed. Mr. Frisby suggested checking with the Regulatory Commission, and noted that they have rules and regulations regarding utility development that may trump city regulations. AEL&P should also be contacted.

Board members noted the need to clarify the difference between parking and storage of vehicles in the prohibited uses section.

Board members noted the need for limbing within the 25-50 buffer to be conducted by an experienced professional. The revision should set a professional standard.

Ms. Sumner explained the background behind development of the Best Management Practices section of code. Mr. Campbell suggested using this section to establish criteria for permit approval.

Mr. Rinkenberger noted the need to clarify whether the limbs or the trunk needed to be within the buffer to be subject to the ordinance. CDD will provide clarification in the ordinance.

Dr. Hoferkamp suggested timelines for vegetation in the Best Management Practices section.

Ms. Steadman noted the need to reference state law regarding toxic pollutants.

Mr. Campbell suggested other public safety measures that the airport might consider for Jordan Creek, such as lighting and/or cameras.

Ms. Gallion asked about the appeal process. Ms. Camery explained that the waterbody development permit would be appealable to Planning Commission as an Appeal of the Director’s Determination.

Ms. Gallion and Dr. Hoferkamp noted the need for enforcement. Ms. Steadman explained the building permit inspection process and how this would improve compliance.

Mr. Campbell asked about the possibility for a larger buffer in undeveloped areas of the borough. Ms. Camery said she would check into this option, looking at low-density areas out the road. This might also be an option for additional city properties.

Board members expressed appreciation for the revised ordinance and the overall approach.

VII. Updates

There were no updates.

VIII. Planning Commission Liaison Update.

Mr. Miller and Mr. Frisby described the tougher approach on variances and the need for extensive code revisions to address this change and provide flexibility within code.

IX. Next meeting:

Regular Meeting. Thursday May 18, 5:15 pm, City Hall room 224.

The meeting was adjourned at approximately 7:10 p.m.