

Agenda

Planning Commission - Special Meeting City and Borough of Juneau

October 15, 2019
Assembly Chambers
7:00 PM

- I. **ROLL CALL**
- II. **APPROVAL OF MINUTES**
 - A. September 17, 2019 Draft Minutes, Regular Planning Commission Meeting
- III. **WRITTEN AGENCY AND PUBLIC COMMENTS POST DEADLINE**
 - A. Additional Materials, October 15, 2019
- IV. **PUBLIC PARTICIPATION ON NON-AGENDA ITEMS**
- V. **PLANNING COMMISSION LIAISON REPORT**
- VI. **RECONSIDERATION OF THE FOLLOWING ITEMS**
- VII. **CONSENT AGENDA**
 - A. USE2019 0019: A Child Care Center in an existing church
 - B. USE2019 0020: A Conditional Use Permit to expand retail development in a severe hazard area
- VIII. **CONSIDERATION OF ORDINANCES AND RESOLUTIONS**
- IX. **UNFINISHED BUSINESS**
- X. **REGULAR AGENDA**
 - A. AME2019 0009: A zoning upgrade for twelve (12) D1(T)D3 transitional zone lots
 - B. AME2019 0010: A rezone of one parcel (8.45 acres) from D5 to D18 near Cordova Street and Pioneer Avenue
 - C. AME2018 0009: A text amendment to revise Title 49 to repeal and replace 49.30-Nonconforming Development - Continued from September 17, 2019
- XI. **BOARD OF ADJUSTMENT**
- XII. **OTHER BUSINESS**
- XIII. **DIRECTOR'S REPORT**
- XIV. **REPORT OF REGULAR AND SPECIAL COMMITTEES**
- XV. **PLANNING COMMISSION COMMENTS AND QUESTIONS**
- XVI. **ADJOURNMENT**

Agenda
Planning Commission
Regular Meeting
CITY AND BOROUGH OF JUNEAU
Ben Haight, Chairman
September 17, 2019

I. ROLL CALL

Ben Haight, Chairman, called the Regular Meeting of the City and Borough of Juneau (CBJ) Planning Commission (PC), held in the Assembly Chambers of the Municipal Building, to order at 7:00 p.m.

Commissioners present: Ben Haight, Chairman; Paul Voelckers, Vice Chairman; Michael LeVine (by phone), Nathaniel Dye, Ken Alper, Dan Hickok, Travis Arndt, Weston Eiler

Commissioners absent: Shannon Crossley

Staff present: Jill Maclean, CDD Director; Beth McKibben, CDD Senior Planner; Alex Pierce, CDD Planning Manager; Jane Mores, Law Department Assistant Municipal Attorney

Assembly members: None

Before continuing with the meeting, new Commissioner Weston Eiler was introduced, sworn in and welcomed to the Commission.

II. REQUEST FOR AGENDA CHANGES AND APPROVAL OF AGENDA – None

III. APPROVAL OF MINUTES

A. August 13, 2019 DRAFT Minutes – Planning Commission Regular Meeting

MOTION: *by Mr. LeVine to approve the August 13, 2019, Planning Commission Regular Meeting minutes noting any staff corrections or commissioner comments.*

The motion passed with no objection.

B. August 30, 2019 DRAFT Minutes – Ad Hoc Nonconforming Committee Meeting

Ad Hoc meeting minutes were acknowledged, but it was noted that approval is not necessary.

C. September 3, 2019 DRAFT Minutes – Ad Hoc Nonconforming Committee Meeting

Ad Hoc meeting minutes were acknowledged, but it was noted that approval is not necessary.

D. September 10, 2019 DRAFT Minutes – Ad Hoc Nonconforming Committee Meeting

Ad Hoc meeting minutes were acknowledged, but it was noted that approval is not necessary.

IV. **PUBLIC PARTICIPATION ON NON-AGENDA ITEMS** – None

V. **ITEMS FOR RECONSIDERATION** - None

VI. **CONSENT AGENDA** - None

VII. **UNFINISHED BUSINESS** - None

VIII. **REGULAR AGENDA**

AME2018 0009: A text amendment to revise Title 49 to repeal and replace 49.30 – Nonconforming Development – Continued from August 27, 2019

Applicant: City & Borough of Juneau

Location: Borough-wide

Staff Recommendation

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

Ms. McKibben presented the highlights of the results of the three Ad Hoc Committee meetings that were held since the August 27 regular Planning Commission meeting.

Specific topics from the August 27th meeting that were discussed at the Ad Hoc Committee meetings included ¹⁾ nonconforming residential uses in industrial waterfront industrial zoning districts and ²⁾ takings. She clarified that residential uses are not permissible in industrial and waterfront industrial zoning districts with the exception of caretaker units when they are an accessory to the primary use. Title 49 distinguishes between residential uses in industrial zoning and residential/commercial zoning districts and property owners in these districts are able to redevelop the property for other, permissible, uses with the proper permits. There is no concern with takings.

The ad hoc committee addressed a variety of general nonconforming situations for refinement and clarification. The revised ordinance clarifies:

1. a “certificate of nonconforming status” is not required before any work can take place; only work that affects or is affected by the nonconforming situation
2. the Building Official makes the official determination of extent and cause of damage or destruction
3. when a situation fails to be certified or cannot be certified it is noncompliant and subject to enforcement
4. there are two statuses of abandonment, one of which can be overcome
5. how the Director determines abandonment
6. process for rebutting the Director’s abandonment determination is refined.

The revised ordinance clarifies what is considered an acceptable modification of nonconforming uses and reconstruction of nonconforming residential uses in industrial and waterfront industrial districts.

The definition of nonconforming residential density is revised to differentiate better residential density from use. The ad hoc committee discussed adding a subscript to the Table of Permissible Uses. Staff, however, recommends adding a subparagraph 5 to 49.25.300 that states nonconforming uses are subject to chapter 49.30.

Nonconforming structures can be modified, enlarged, or altered so long as it does not aggravate the nonconformity. A reference has been added to 49.25.430(4). All nonconforming structures can be modified in compliance with existing code.

Figure 1. has been revised to better illustrate modifications that would be allowed and what would be considered aggravating the nonconformity.

Nonconforming parking is expanded to address allowing nonconforming backout parking to continue if the governmental entity controlling the right of way access finds it does not endanger the public health, safety and welfare. This section now includes the number of off-street parking spaces as well as back out parking and clarifies what happens when a nonconforming parking situation becomes more conforming.

The revised ordinance provides a distinction between the Nonconforming Status Review and the Certification. The review is the process undergone by the Director and the Certification is the piece of paper authorizing the situation.

The Nonconforming Situation Review process is revised and now includes a required review procedure by the Director which includes soliciting input from other agencies.

Definitions of “nonconforming residential density” and “nonconforming parking” have been refined and expanded. If the Commission decides it is necessary, a new definition of “nonconforming rights” will be added. Ms. McKibben explained that it is up to the Commission to decide if a definition is needed, and if so, which they prefer of two options included in the presentation.

Fees are set at \$400 for a Nonconforming Situation Review and \$150 for Certification of Nonconforming Situations. The \$150 Certification fee is waived when in conjunction with a permit.

Additional amendments to Title 49 include:

- CBJ 49.25.430(4)(M) – the section now includes the term “lawfully nonconforming”. The word “lawfully” will be deleted.
- CBJ 49.25.430(5) and CBJ 49.25.510(f) – will be amended to refer to 49.30 rather than 49.30.500(b)

Commission Questions for Staff

Regarding the Fees described in the slides, Mr. Voelckers asked how the \$150 fee for certificate of nonconforming status would apply to something like a multi-unit condominium building where each unit is separately owned. Ms. McKibben answered that the condominium homeowner association could apply for certificate of nonconforming status for the entire building and pay a single fee and the certification would cover all of the units rather than forcing the owners each unit to pay individually.

Mr. Voelckers asked about the definitions slide regarding the definition of “Rights”. Specifically, he asked Ms. Mores if it would actually help or hinder to ‘define’ it. Ms. Mores answered that more definition could always be better than none so long as it is a good definition and that it would be a good discussion for the Commission.

Mr. Haight opened for Public Testimony- NONE

Commission Discussion – It was decided to go through the ordinance page by page.

Page 1

Mr. Dye proposed, and Mr. LeVine agreed with, striking the phrase “*and minimize unreasonable impacts to property impacted by zoning changes*” from 49.30.110 stating that this unintentionally implies zoning might negatively impact property.

Page 2

Ms. Maclean noted 49.30.120(a)(2) is missing verbiage and it should read “Nonconforming residential densities in residential zoning districts that allow residential development” as that is actually the title in the ordinance 49.30.240 being referenced.

Page 3

Mr. LeVine noted the missing word “a” between “nonconforming situation” and “nonconforming status” at 49.30.210(f).

Page 4

Mr. LeVine suggested replacing “The nonconforming rights provided for in this chapter are retained...” with “Except as otherwise provided in this chapter, nonconforming rights are retained...” at 49.30.210(j).

There was extensive discussion regarding 49.30.210(l) and (m). Mr. LeVine found them to be confusing and recommended they be combined. Mr. Voelckers disagreed stating they are addressing different conditions. There was discussion regarding whether the mention of ‘enforcement action’ might discourage a resident from coming forward to seek certification. Ms. McKibben spoke up to clarify the terms ‘noncompliant’, ‘nonconforming’ and ‘nonconforming that has been certified’ and added that getting a review and certification does not change whether a situation is noncompliant or nonconforming. Mr. Alper suggested if the remedies for the situations are the same, (result is noncompliance and enforcement) then maybe (l) and (m) can be merged. After discussion and several suggestions to verbiage changes, it was agreed upon to change 49.30.210(l) by striking the words ‘remains’ and ‘enforcement’ and replacing them with ‘is’ and ‘compliance’, respectively.

The final version of 49.30.210(l) will read: “....If a situation does not qualify for, or is denied, nonconforming status certification it *is* noncompliant and subject to applicable *compliance* action.”

Mr. Alper suggested making a similar change to 49.30.210(m) and it was decided the final verbiage of 49.30.210(m) will read: “...The loss or abandonment of a nonconforming situation or of nonconforming situation rights under this chapter means *the situation is subject to applicable compliance action.*”

There were no changes to pages 5 through 8.

Page 9

Mr. Dye noted that everything is labeled in the diagram at Figure 1 except for the dark outline. It was decided to add the label to show this represents the property line.

Page 10

Mr. Voelckers asked for clarification of 49.30.250(d) for the benefit of members who were not part of the ad hoc committee discussion. Ms. McKibben explained 49.25.430(4) applies to projections. 49.30.250(d) clarifies that the exceptions allowed in 49.25.430(4) are allowed when they apply.

Mr. LeVine had a question with 49.30.250(f) stating if he was reading this correctly, it seems that it would be allowing reconstruction of nonconforming residential density but not of a single-family dwelling and asked if that was the intention. Ms. McKibben confirmed that was not the intention and that in the iterations of the ordinance, some of the verbiage may have been dropped. The commissioners and staff discussed verbiage and intent and when they thought there was consensus, Mr. Haight called a short recess to give staff time to type up new verbiage for further discussion and possible approval.

8:12 – 8:30 Recess

At 8:30 the meeting was called back to order and Ms. McKibben presented the new verbiage. After further discussion, the section was rewritten to read as shown below and Staff was given permission to work with Law to make minor changes so long as they are in keeping with the intent of the Commission and the ordinance:

49.30.250(f) *Reconstruction*. A nonconforming structure, or portion of a structure, which the building official has deemed destroyed, shall not be reconstructed except:

- 1) If the primary use is residential, the structure may be reconstructed in the existing footprint, except for encroachment into rights-of-way or adjacent property, providing the structure is in a zoning district that allows residential development.
- 2) The primary use of which is non-residential may be reconstructed in conformity with the provisions of this chapter.

Page 11

Mr. LeVine noted that the purpose statement and title at 49.30.310 seemed no longer necessary and asked if it belonged in this section. Ms. Maclean explained the section and that they actually do belong there. Mr. Levine agreed and retracted his comment.

There were no changes to pages 12 and 13.

Page 14

Mr. Arndt noted at 49.30.321(b)(1) the word 'nonconforming' appears twice in this section and is spelled once with and once without a hyphen and suggested removing the hyphen to be consistent.

Mr. Dye had questions regarding the verbiage of 'nonconforming status review' and 'nonconforming situation review' and asked if one could be changed so as to avoid any confusion between the two. Staff explained that as this is put into practice it will become a commonly understood. Mr. Arndt suggested that if it needed to be clarified, a definition could be added.

There were no changes to pages 15 through 18.

Page 19

Nonconforming Parking – Maclean explained the second line of the definition is missing the phrase “type of” and it should be added back.

Mr. Arndt asked the purpose of the phrase ‘by law’ in this section. Staff explained this is consistent and the phrase ‘by law’ is used throughout the definitions section.

Ms. Mores suggested the verbiage “*Nonconforming parking means off-street parking that was allowed or not prohibited by law when provided or when the use was established but which subsequently due to adoption, revision or amendment of a zoning ordinance now has less than the required number of off-street parking spaces or is of a type, such as backout parking, that is no longer permitted.*”

Members agreed to allow staff the leeway to ‘massage’ the verbiage to make it readable so long as the intent remains clear.

Nonconforming Rights – Staff proposed two definitions for members to select from or to omit both. Members chose the second option.

There were no changes to pages 20 or 21. The page by page review concluded.

In further discussion, Mr. Dye asked for clarification regarding the \$150 fee that is waived when in conjunction with a development permit. Specifically, he asked if people would have to specifically ask for the certificate or if it would be automatically issued when applicable. Ms. Maclean explained the certificate would be automatically issued and applicants would not have to request it separately.

Maclean asked the commission to allow Staff and Law leeway to make minor verbiage corrections in the definitions. This request was granted with no objection.

Mr. Arndt commented that he thought if the Planning Commission makes a change in zoning to an area, then they should be automatically issuing the certificates to the effected property owners who would be made nonconforming by the actions of the Commission. Ms. Maclean said that her concern with that suggestion is that if they miss even one property that has become nonconforming then they are exposed to legal liabilities. Ms. Maclean explained the public outreach that is done to inform property owners of possible zoning changes and added that realtors make their selling clients aware that they need to check with CDD prior to selling to make sure their property will qualify for a mortgage. Ms. Pierce added that the certificate is applicable when a property owner is applying for a development permit or when they are trying to sell or purchase a property. In the situation of a development permit, the fee is waived. When it is part of a property sale, the fee would be included in the closing costs.

Ms. Mores advised that Assembly does not have this on their schedule to go before the Committee of the Whole until Dec 2nd. If the members wanted to see this one more time, there is time for that.

Mr. Voelckers moved approval with minor adjustments as discussed and not bring it before the Commission again.

Mr. Dye objected that while he has assurance that Staff is capable but not comfortable with not seeing it again for review with the approved changes.

Mr. Voelckers withdrew his motion.

Mr. Dye moved to table the Title 49 rewrite to the October 15 meeting

Passed with no objection

IX. BOARD OF ADJUSTMENT – None

X. OTHER BUSINESS – None

XI. STAFF REPORTS

Director's report: Ms. Maclean reported the next meetings will be held October 15 and October 29. The topics will include transition rezones and a large crowd is expected for at least one of those meetings. December meeting dates include a regular meeting currently scheduled for Christmas Eve. Ms. Maclean asked the Commission to consider cancelling that meeting and tentatively scheduling it for the week prior on December 17.

Law report: Ms. Mores reported that a settlement was reached with Mountainside Estates. The Harris appeal decision is being appealed to the Superior Court. Ms. Maclean reminded the commission they should not discuss the cases with each other or others. On October 29, there will be a 5 pm Special meeting to hear the appeal for the Dougherty Case.

XII. COMMITTEE REPORTS

Downtown Blueprint: Mr. Dye will not be able to attend the upcoming meeting and asked if someone could fill his seat. Mr. Eiler volunteered.

Lands Committee: Mr. Voelckers gave an update on the issue regarding District heat crossing the Centennial Hall property.

Title 49 Committee: the next meeting will be held October 2

XIII. LIAISON REPORTS - None

XIV. CONTINUATION OF PUBLIC PARTICIPATION ON NON-AGENDA ITEMS - None

XV. PLANNING COMMISSION COMMENTS AND QUESTIONS - None

XVI. EXECUTIVE SESSION - None

XVII. ADJOURNMENT 9:27pm

DRAFT

Additional Materials

Regular Planning Commission Meeting

Assembly Chambers, 7:00pm
Meeting Date: October 15, 2019

1. AME2019 0010:

- a. Public comment from Brian McTague, received 9/27/19
- b. Public comment from Murray Walsh, received 9/30/19
- c. Public comment from Bob & Dixie Weiss, received 10/2/19
- d. Public comment from Chuck & Kathryn Cohen, received 10/8/19
- e. Public comment from Amanda Compton, received 10/10/19

From: Brian McTague <brian@mctague.com>
Sent: Friday, September 27, 2019 5:21 PM
To: PC_Comments
Cc: Laurel Christian
Subject: Case No. AME2019 0010; Public Comment

EXTERNAL E-MAIL: BE CAUTIOUS WHEN OPENING FILES OR FOLLOWING LINKS

Ms. Christian:

Please forward the following comments on Case No. AME2019 0010 to the Planning Commission before its meeting on October 15, 2019.

1. Re-zoning D5 to D18 will have an awful impact on traffic. The Comprehensive Plan for Juneau (2013) described the Cordova/Douglas Highway intersection as congested and "likely to get worse":

Residential development along the eastern side of Douglas Island in the area between Kowee and Lawson Creeks, called West Juneau, has taxed the capacity of the Cordova Street and Douglas Highway intersection, and has contributed to congestion on the Juneau-Douglas Bridge and the Tenth Street and Egan Drive intersection during the 7 AM to 9 AM week day commute periods. (p. 120).

The Cordova Street and Douglas Highway intersection has been the subject of many studies. These studies have documented the obvious: A problem currently exists during the weekday morning travel period for motorists seeking to turn left onto Douglas Highway from Cordova Street. The traffic problem is likely to get worse as West Juneau is further developed. (p. 194).

In fact, the traffic problem has gotten worse since 2013, when the City made these findings. Permitting higher-density housing on an already congested hillside would be irresponsible.

2. The Anderson Parcel and Tlingit-Haida Parcel, designated as D-5, should remain D-5. Land purposed for single-family homes/duplexes needs to remain purposed for single-family homes/duplexes. Juneau's economic health depends on it. Teachers, police officers, fire personnel, and other hard-working professionals aspire to have homes of their own, not rented apartments. The City has recognized the importance of single-family housing as evidenced by its Pedersen Hill development.

3. West Juneau and Douglas have enough multi-unit dwellings with inferior architecture that diminish the sightlines from Juneau. Adding more hulking buildings, with prominence on the hill, will diminish Juneau's charm irreparably. It's time to take aesthetics into account.

Sincerely,

Brian McTague
2986 Foster Ave.
Juneau, AK 99801



Murray R. Walsh
2974 Foster Ave.
Juneau, AK 99801
907-723-8444
murray@acsalaska.net

September 30, 2019

The CBJ Planning Commission
c/o CBJ Community Development Dept
155 S. Seward St.
Juneau, AK 99801

RE: AME20190010

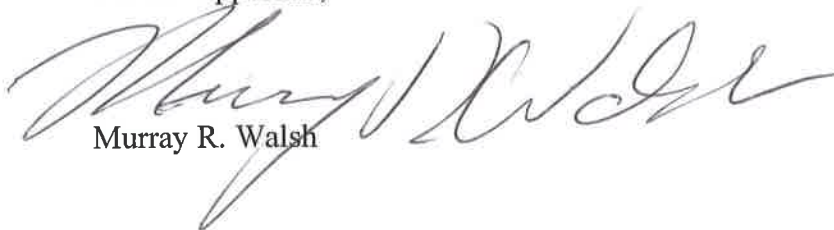
Dear Commission Members:

We have learned that the CDD Director is planning to recommend denial of this application. As a result, our co-applicant, THRHA has withdrawn from the process. We have not seen the staff report explaining this denial recommendation but we anticipate that it is based on public fears of traffic problems.

We have witnessed staff attempts to explain that the traffic issue would have to be dealt with in a subsequent approval process and that is certainly what we would expect before any significant amount of new development is approved. Despite this reassurance, staff is recommending denial. In view of this, we wish to change our request for the Anderson parcel. Specifically, we request that the Anderson parcel, or a significant portion of it, be zoned the same way as the THRHA parcel: D-5(T)D-18.

The only hope for street access to either parcel is an extension of Cordova Street. Making the requested change will enable coordinated development that would justify the expense of the addition. Thank you for your attention and consideration.

For the Applicant,



Murray R. Walsh

RECEIVED
SEP 30 2019
PERMIT CENTER/CDD

From: Robert Weiss <dixiebob@gci.net>
Sent: Wednesday, October 02, 2019 12:26 PM
To: PC_Comments
Subject: West Juneau: Anderson Parcel - 8.45 acres from D5 to D18; Case No.: AME2019 0010

EXTERNAL E-MAIL: BE CAUTIOUS WHEN OPENING FILES OR FOLLOWING LINKS

TO: Laurel Christian, Planner
Planning Commissioners

RE: West Juneau: Anderson Parcel - 8.45 acres from D5 to D18; Case No.: AME2019 0010

Before you consider increasing density, please comment on your plans to alleviate egress from West Juneau onto the Douglas Highway from two-lane Cordova St. Also, please recall one-lane Sitka St. is not a year-round viable daily alternate for all of West Juneau.

We have lived on Nowell Ave., then Foster Ave. for forty-seven years and believe we can speak from experience in attempting to turn left onto Douglas Highway from Cordova St. at all hours and under all traffic and weather conditions. The tight roundabout slingshots Douglas-bound traffic at close to thirty MPH at the Cordova St. intersection. The only drivers going twenty MPH are turning right onto Cordova St. and that might buy a patient driver waiting endlessly to turn left onto Douglas Highway the time to somewhat safely finally make the turn.

Traffic Bumps, please! Slow down those wannabe racers BEFORE they get to Cordova St.

Warmest regards,
Bob & Dixie Weiss

From: Chuck Cohen <kodzoff@alaskan.com>
Sent: Tuesday, October 08, 2019 1:13 PM
To: PC_Comments
Subject: Cordova & Pioneer Zoning Change Request

EXTERNAL E-MAIL: BE CAUTIOUS WHEN OPENING FILES OR FOLLOWING LINKS

We are strongly opposed to this request for this zoning change above our low density residential neighborhood. Reasons include incompatibility with existing neighborhood, overload to existing access road, inadequate drainage in existing neighborhood, no need for high density development in this area generally, better locations on main arterial streets, only one very steep road access, incompatible with comprehensive plan. We have lived in the neighborhood for 30 years. We have lived here for 30 years. If developed at all, this property above our neighborhood should be developed within existing zoning.

Chuck & Kathryn Cohen
3241 Nowell Ave
Juneau, Alaska

PO Box 020670
Juneau, Alaska 99802

from my iPhone

From: Amanda Tatter Kulik Compton <atkcompton@gmail.com>
Sent: Thursday, October 10, 2019 1:51 PM
To: PC_Comments
Cc: Amanda Compton
Subject: comments for Cordova Street rezone

EXTERNAL E-MAIL: BE CAUTIOUS WHEN OPENING FILES OR FOLLOWING LINKS

The comments I'd like to submit regarding the proposed re-zone of the plot above Cordova Street cover what I'm sure has been voiced: the neighborhood cannot sustain the increase in traffic.

This is not just another not-in-my-backyard phenomenon. I live on Cordova Street, the last structure on the north side of the street before it becomes Pioneer. I have a yard and vegetable garden along Cordova, I bike up and down the road to work, I run and engage in many projects outside the house. Since Coogan Construction developed three high density units just above me, I rarely do any activity outside of the house without feeling unsafe and anxious, and disheartened at what was once a neighborhood and is now a highway.

The speed at which the majority of vehicles drive up and down Cordova and Pioneer is twice the speed limit of 20mph. It's treated as a personal highway ramp. This is likely a concern you've heard to exhaustion but this is not the same scenario as neighborhoods like south Douglas or the Flats. Cordova and Pioneer have no stop signs, and only one turn. There are no geographic barriers to reduce speed. People cruise over these roads because they can, because they're long, wide straight roads. And they do this feet from my head as I pick lettuce. Additionally, as the neighborhood hosts two trailheads, one of them which provides access to a popular mountain bike area, as well as to one of the most popular forest service cabins, the amount of pedestrian traffic is quite high. Add to this the a high amount of young children and dogs, and we're just waiting for a death to get things to change - and that's without adding any more housing.

I have one recommendation: don't take my word, or anyone else's. Do some ground work. Station a CBJ planning staff member at each of two locations (the Cordova-Pioneer transition, and the intersection of Cordova and the Douglas Highway) at both rush hours. And then make a decision.

The other concern I have is less quantifiable, but, perhaps, more important. I wake up all through the night now, to loud mufflers and noisy vehicles. I don't want to live there anymore, but I'm frustrated and bitter at being forced to move. People don't generally move to a town or neighborhood based on data points and money alone. It's atmosphere and character, attributes that aren't sustainable with an increase in housing units. And judging by the lack of care put into the application - spelling and grammar errors should require minimal effort to resolve - I have little confidence the proposed development would contain a fraction of the meticulousness required to maintain the semblance of an actual neighborhood.

--
Amanda Compton
907-830-2850



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

DATE: October 4, 2019

TO: Planning Commission

FROM: Amy Liu, Planner
Community Development Department

CASE NO.: USE2019 0019

PROPOSAL: Conditional Use Permit for a State of Alaska licensed Child Care Center in an existing church

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

GENERAL INFORMATION

Applicant: Jensen Yorba Wall, Inc.

Property Owner: Juneau Christian Center

Property Address: 8001 Glacier Highway

Legal Description: USS 1852

Parcel Code Number: 5B1401020010

Site Size: 498,762 square feet

Comprehensive Plan Future Land Use Designation: Medium Density Residential

Zoning: D5 on western side of lot, D15 on eastern side of lot

Utilities: Public water and sewer

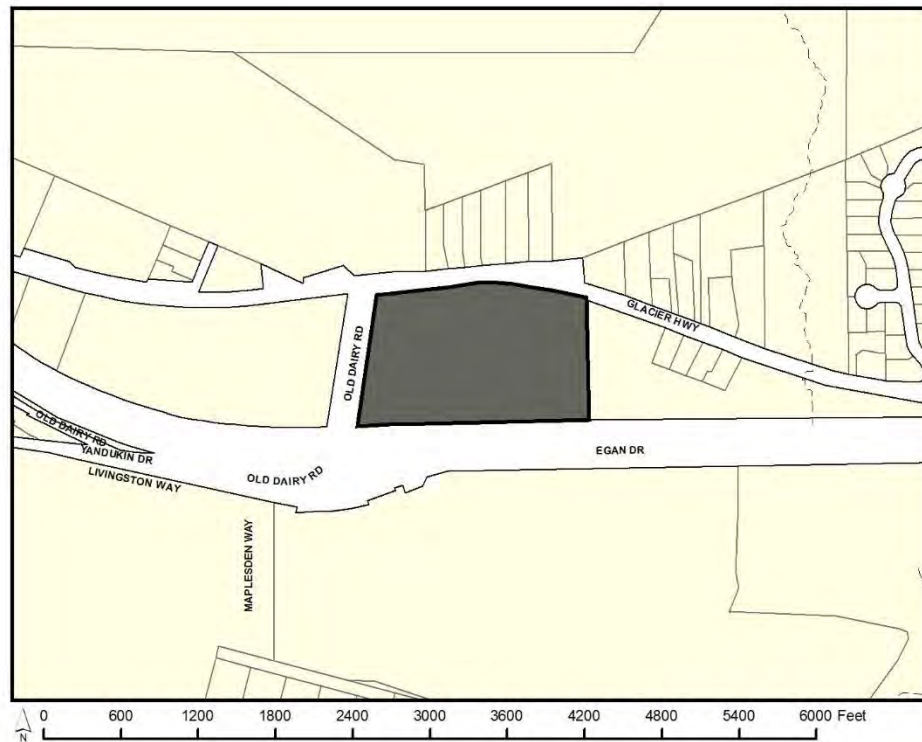
Access: Glacier Highway, Old Dairy Road

Existing Land Use: Church

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Surrounding Land Use:	North	-	Single family residential
	South	-	Egan Drive
	East	-	Single family residential
	West	-	Fred Meyer grocery store

VICINITY MAP



ATTACHMENTS

Attachment A – Application
Attachment B – Updated floor plan and information
Attachment C – Site visit photos

PROJECT DESCRIPTION

The applicant requests a Conditional Use Permit for a State of Alaska licensed Child Care Center in an existing church. According to the CBJ 49.25.300 Table of Permissible Uses, a Child Care Center for 13 or more children under the age of 12 is allowed with a Conditional Use Permit in both the D5 and D15 zoning districts.

BACKGROUND

In 1928, the lot was platted by U.S. Survey 1852. In 1977, Conditional Use Permit CU-03-77 was

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approved for a church and a school. The zoning district at that time was R-40, equivalent to the Rural Reserve zoning district, which allowed a school outright and required Conditional Use Permit for a church.

Govern generated the table below, which includes all Conditional Use Permits associated with the site and their status.

Permit Application	Status	Description
USE2007-00039	Approved	Conditional Use Permit to allow temporary modular buildings used for church and school facilities (related to USE-CU96-48) to remain as permanent structures
USE2003-00036	Approved, construction not completed	Extension of Conditional Use Permit USE2001-00024: A Conditional Use Permit for the construction of a sanctuary addition and supporting facilities to an existing church. The total square footage of the facility will be approximately 74,000 square feet
USE2001-00024	Approved, construction not completed	A Conditional Use Permit for construction of a sanctuary addition and supporting facilities to an existing church. The total square footage of the facility will be approximately 74,000 square feet
USE-CU96-48	Approved	School add classrooms
USE-CU96-24	Withdrawn	School/church
DRP1996-00008	Withdrawn	Two mobile classrooms on permanent foundation
DRP-DR96-32	Withdrawn	School/church
DRP1997-00048	Approved	Design review approval for two modular buildings containing four classrooms to be placed on-site and to have a covered walkway between the modulars and the main building

AGENCY REVIEW

Staff requested review from Alaska Department of Transportation and Public Facilities, Capital City Fire and Rescue, CBJ Assessor's Office, General Engineering and Public Works, and Building Division. Staff received no comments.

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PUBLIC COMMENT

Staff received no public comment at the time of writing this staff report.

ANALYSIS

Project Site – The proposed Child Care Center would use the existing Juneau Christian Church. The Church is a 37,859 square foot, single-story building currently used for Sunday services, youth programs, and offices related to the church. The Child Care Center would occupy 4,362 square feet of space in the northwest corner of the church. This space will undergo remodeling to remove existing storage closets, maintain existing bathrooms, and add more Child Care rooms (Attachment B).

The subject lot is relatively flat. It is accessed from Glacier Highway, and has frontage on Old Dairy Road and Egan Drive. The narrative and site plan show access primarily through Glacier Highway, which abuts the north side of the parking lot partially reserved for the Child Care Center. Parking will be discussed below.

Project Design – Business hours will be from 7:00 AM to 6:00 PM, Monday-Friday. Up to 75 children, zero to six years of age, would be served by at least 20 staff. Staff would include one administrator, one assistant, two child development associates, and at least 16 care providers (Attachment B).

State regulations require one caregiver per child 0-11 months, one caregiver per five children 12-18 months, one caregiver per six children 19-35 months, and one caregiver per 10 children three to six years. State regulations also require a minimum of 35 square feet of internal space per child. Based on the submitted plans, the maximum number of children that could be cared for in the available classroom space is 118. The exact number of staff will be based on the ages of children enrolled. Children will play outside in an existing playground that is securely enclosed with fencing.

There are no plans submitted for signage. A Sign Permit and, if necessary, a Building Permit for the new signage will be required, if there is any new signage.

Traffic – The 2011 ITE Trip generation manual calculates 74.06 average daily trips (ADT) per 1,000 square feet of Child Care Center space used during weekdays. The proposed 4,362 square-foot Child Care Center would generate 323 ADT. According to 49.40.300(a)(3), developments having an ADT between 250 and 500 may require the developer to submit a traffic impact analysis to determine the project's impact to existing traffic volume. When reviewing USE2019 0019, the CDD Director determined that the proposed development will not negatively affect existing traffic volume of Glacier Highway, Old Dairy Road, and Egan Drive, and that these roads are constructed to a standard that can adequately capture the additional traffic load.

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Parking and Circulation – The parking plan shows 155 spaces. Of the shown spaces, 20 parallel parking spaces are not striped and 28 angled spaces on gravel are not marked with wheel stops. CBJ 49.40.230(e) states that parking stalls, driveways, aisles, and emergency access areas and routes shall be clearly marked. As the existing parking is not demarcated, it does not meet the requirements of this code section. Further, three spaces reserved for accessible use do not have aisles required for either accessible or van accessible spaces. Out of 155 spaces, 107 currently meet CBJ standards (Attachment A).

The parking requirement for the Child Care Center is 24 standard spaces. CBJ 49.65.1120(3) states that one off-street parking space is required for each on-shift employee, plus one parking space per 10 children served. There will be a maximum of 16 on-shift employees. Depending on the ages of children enrolled, the maximum number of children may be 75.

The parking requirement for the assembly areas in the church is 125 standard spaces. CBJ 49.40.210, states that off-street parking required for churches and similar enclosed places of assembly is one parking space per four seats in the auditorium. According to the applicant, the maximum occupancy allowed by the International Building Code is 500 people.

The total parking requirement for all uses onsite is 149 parking spaces. Of these spaces, four parking spaces must be accessible, and one parking space must be van accessible. The remaining spaces are standard parking spaces.

There are currently 107 parking spaces that meet CBJ requirements. A standard parking space is 8.5 feet by 17.5 feet. Parking spaces must be clearly marked. Wheel stops and striping are acceptable forms of marking. An accessible parking space is 13 feet by 17 feet with an access aisle that is 5 feet by 17 feet. A van accessible parking space is 13 feet by 17 feet with an access aisle that is 8 feet by 17 feet. Two accessible parking spaces may share one aisle. Blue striping or wheel stops, and signage specifying each type of accessible parking space are required.

Joint Use Parking – Operating hours for the Child Care Center are Monday – Friday, while peak operating hours for the church occurs on Sundays. Per CBJ 49.40.200(5), the Planning Commission may authorize a joint use of parking facilities. If the Commission grants authorization, the applicant will be required to present to the director a written instrument, executed by the parties concerned, providing for joint use of off-street parking facilities and approved as to form by the CBJ attorney.

Staff recommends the following conditions of approval:

1. Prior to issuance of a Building Permit for the proposed structure, the applicant must submit a revised site plan showing standard parking spaces, accessible spaces, van accessible spaces, and circulation aisles that comply with the requirements of §49.40.
2. CBJ-approved signage shall be posted for the accessible parking space prior to commencement of the proposed use.

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3. If a joint use agreement is used, the agreement must be approved by the Director prior to Temporary Certificate of Occupancy.

Vegetative Cover and Landscaping – Minimum vegetative cover is 20% for D5 zoned lots, and 30% for D15 zoned lots. Approximately 55% of the lot has vegetative cover (Attachment A).

Lighting – There will be no changes to existing lighting.

Noise – The proposed Child Care Center is not expected to generate noise that is inconsistent with adjacent single-family homes or the big box retail store.

Public Health or Safety – No evidence suggests that the proposed use will endanger public safety. Drop-off and pick-up of children at the Child Care Center is expected to be in the parking lot, which will mitigate chances of pedestrian and vehicle accidents. State Child Care Licensing and CBJ Building Permit Review will determine applicable safety measures, if necessary.

Habitat – No known habitats regulated by Title 49 exist on the site.

Property Value or Neighborhood Harmony – There is no evidence suggesting that the Child Care Center will adversely affect property value or neighborhood harmony.

CONFORMITY WITH ADOPTED PLANS

Comprehensive Plan - The 2013 Comprehensive Plan maps designate the subject site as Medium Density Residential (MDR). The plan describes MDR as:

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

Families with children are likely to live within this style of neighborhood. Therefore, the use proposed is consistent with the needs of such a neighborhood and the wider Mendenhall Valley area.

The 2013 Comprehensive Plan specifically addresses the need for quality Child Care in the City and Borough of Juneau. Chapter 14 of the plan states:

“There is a critical child care shortage in Juneau, and that lack of quality child care makes Juneau a less than attractive place – and even an untenable home – for young families.”

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Chapter 14 goes on to state policies and procedures to encourage an adequate supply of Child Care in the City and Borough of Juneau:

POLICY 14.3. TO SUPPORT THE PROVISION OF QUALITY CHILD CARE IN A SAFE LEARNING ENVIRONMENT BY WELL-TRAINED EDUCATORS AND CHILD CARE PROVIDERS.

14.3 – SOP1 Work with child care providers, advocates, and other stakeholders to ensure that regulatory or permitting requirements do not unduly restrict the availability of affordable, quality child care in Juneau.

14.4 – SOP2 Provide support of child care providers as needed to ensure an adequate supply of available affordable, quality child care opportunities.

Economic Development Plan – A stated goal is to “*prepare and attract the professional, technical, skilled, entrepreneurial, and creative labor force that Juneau’s diverse employers, businesses, and non-profits need*” by increasing “*availability of child care year round, with an emphasis on Kindergarten readiness*”. The document reports that currently there is a shortage of Child Care that restricts young families from flexibly participating in the work force.

Lemon Creek Area Plan – The Economic Development Chapter concurs with the need for Child Care identified in the Juneau Economic Development Plan. Further, “*given the area’s central location and proximity to many of the borough’s largest employers, the Lemon Creek area has the opportunity to capitalize on the need for more childcare.*”

FINDINGS

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

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

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

CBJ 49.15.330 (f), Commission Determinations, states that even if the Commission adopts the Director's determination, it may nonetheless deny or condition the permit if it concludes, based

Planning Commission
Case No.: USE 2019 0019
October 4, 2019
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upon its own independent review of the information submitted at the public hearing, that the development will more probably than not:

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

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

1. Is the application for the requested Conditional Use Permit complete?

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

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

Yes. The requested permit is appropriate according to the Table of Permissible Uses. The permit use of a Child Care Center is listed in CBJ 49.25.300, Section 7.310 for the D5 and D15 zoning districts.

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

Yes. The proposed development complies with the other requirements of this chapter. Public notice of this project was provided in the October 4, 2019 and October 13, 2019 issues of the Juneau Empire's "Your Municipality" section, and a Notice of Public Hearing was mailed to all property owners within 500 feet of the subject parcel. Moreover, a Public Notice Sign was posted on the subject parcel, visible from the public right-of-way.

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

No. Staff finds no evidence suggesting that the proposed use will endanger safety. State Child Care licensing and CBJ Building Permit Review will determine applicable safety measures, if necessary.

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

No. The Assessor's Office did not indicate that the development will decrease the value of neighboring areas. Staff finds that the development is consistent with the neighboring areas.

Planning Commission
Case No.: USE 2019 0019
October 4, 2019
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6. Will the proposed development be in general conformity with the land use plan, thoroughfare plan, or other officially adopted plans?

Yes. Staff finds that the development is consistent with the 2013 Comprehensive Plan, Economic Development Plan, and Lemon Creek Area Plan.

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

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

N/A

RECOMMENDATION

It is recommended that the Planning Commission adopt the Director's analysis and findings and grant the requested Conditional Use Permit. The permit would allow the development of a State of Alaska licensed Child Care Center in an existing church.

The approval is subject to the following conditions:

1. Prior to issuance of a building permit for the proposed structure, the applicant must submit a revised site plan showing standard parking spaces, accessible spaces, van accessible spaces, and circulation aisles that comply with the requirements of §49.40.
2. CBJ-approved signage shall be posted for the accessible parking space prior to commencement of the proposed use.
3. If a joint use agreement is used, the agreement must be approved by the Director prior to temporary certificate of occupancy.



DEVELOPMENT PERMIT APPLICATION

NOTE: Development Permit Application forms must accompany all other Community Development Department land use applications.

To be completed by Applicant	PROPERTY LOCATION		
	Physical Address 8001 Glacier Highway, Juneau, AK 99801		
	Legal Description(s) (Subdivision, Survey, Block, Tract, Lot) US Survey 1852, Tract A		
	Parcel Number(s) Parcel No. 5B 1401020010		
	☐ This property located in the downtown historic district ☐ This property located in a mapped hazard area, if so, which _____		
	LANDOWNER/ LESSEE		
	Property Owner Juneau Christian Center	Contact Person Mike Rose	
	Mailing Address 8001 Glacier Highway, Juneau, AK 99801	Phone Number(s) 789-2176	
	E-mail Address mike.rose@jccalaska.com		
	LANDOWNER/ LESSEE CONSENT Required for Planning Permits, not needed on Building/ Engineering Permits		
I am (we are) the owner(s) or lessee(s) of the property subject to this application and I (we) consent as follows: A. This application for a land use or activity review for development on my (our) property is made with my complete understanding and permission. B. I (we) grant permission for officials and employees of the City and Borough of Juneau to inspect my property as needed for purposes of this application.			
X _____ Landowner/Lessee Signature			
X <u><i>Emily Edenshaw</i></u> _____ Landowner/Lessee Signature			
Date <u>8/12/19</u> Date			
NOTICE: The City and Borough of Juneau staff may need access to the subject property during regular business hours and will attempt to contact the landowner in addition to the formal consent given above. Further, members of the Planning Commission may visit the property before the scheduled public hearing date.			
APPLICANT If the same as OWNER, write "SAME"			
Applicant Jensen Yorba Wall, Inc.		Contact Person Charlene Steinman	
Mailing Address 522 West 10th St		Phone Number(s) 586-1070	
E-mail Address charlene@jensenyorbawall.com			
X _____ Applicant's Signature		Date of Application 7-16-19	

DEPARTMENT USE ONLY BELOW THIS LINE

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

INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED

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

Attachment A - Application

Intake Initials LC
Case Number Use 19-19
Date Received 8/13/19



ALLOWABLE/CONDITIONAL USE PERMIT APPLICATION

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

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

To be completed by Applicant

PROJECT SUMMARY

CHILD CARE CENTER

TYPE OF ALLOWABLE OR CONDITIONAL USE PERMIT REQUESTED

☐ Accessory Apartment – Accessory Apartment Application (AAP)

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

Table of Permissible Uses Category: 7.310 CHILD CARE CENTER

IS THIS A MODIFICATION or EXTENSION OF AN EXISTING APPROVAL?

☐ YES – Case # _____

☒ NO

UTILITIES PROPOSED

WATER: ☒ Public ☐ On Site

SEWER: ☒ Public ☐ On Site

SITE AND BUILDING SPECIFICS

Total Area of Lot 217,800 square feet Total Area of Existing Structure(s) 43,500 square feet

Total Area of Proposed Structure(s) No new structure square feet

EXTERNAL LIGHTING

Existing to remain

☐ No

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

Proposed

☐ No

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

ALL REQUIRED DOCUMENTS ATTACHED

☒ Narrative including:

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

If this is a modification or extension include:

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

☒ Plans including:

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

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

ALLOWABLE/CONDITIONAL USE FEES		Check No.	Receipt	Date
Application Fees	\$ 500.00			
Admin. of Guarantee	\$			
Adjustment	\$			
Pub. Not. Sign Fee	\$ 50.00			
Pub. Not. Sign Deposit	\$ 100.00			
Total Fee	\$ 650.00			

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

INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED

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

Attachment A - Application

Case Number	Date Received
USE 19-19.	8/13/19



MEMORANDUM

Designing Community Since 1935

Date: July 17, 2019
To: Eddie Quinto, CBJ Permit Center

From: Charlene Steinman
RE: Central Council Tlingit & Haida Indian Tribes of Alaska (CCTHITA)
(Tlingit & Haida), Little Eagles & Ravens Childcare
Pre- Application – Conditional Use Permit
CC: Emily Edenshaw, CCTHITA

PROJECT NARRATIVE:

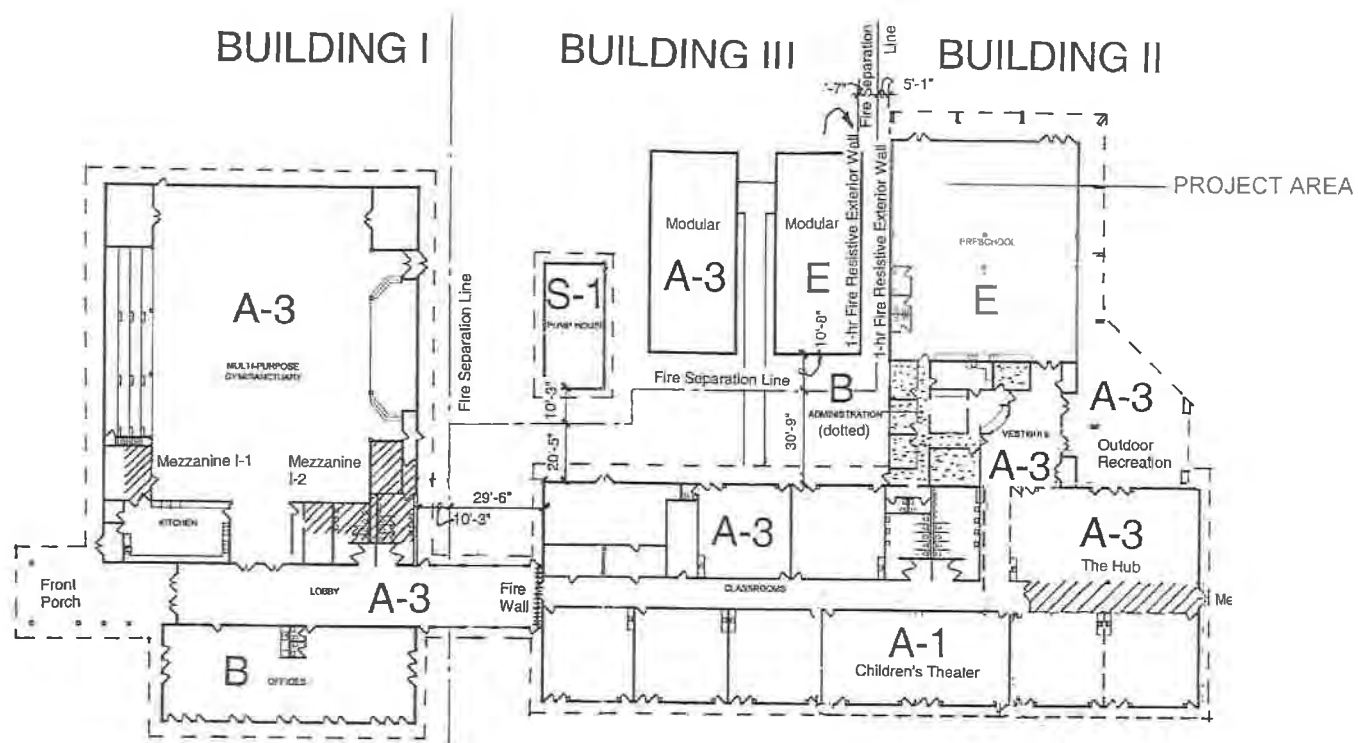
Owned and operated by Central Council Tlingit & Haida Indian Tribes of Alaska (Tlingit & Haida), Little Eagles & Ravens Childcare is Juneau's newest social enterprise.

Grounded in a mission and vision to create a culturally relevant, safe, developmentally, inclusive environment for infant, toddlers, preschool, school age children, Little Eagles & Ravens Childcare will focus on providing high quality services that meet and/or exceeds licensing and recognized industry standards.

From an operations standpoint, business hours are 7 a.m. to 6 p.m., the facility will be licensed up to 75 children, and the center will have at least 20 staff, including one administrator, one assistant, two child development associates and at least 16 childcare providers.

Current Building Use: Church, Sunday school, teen center, offices and storage.

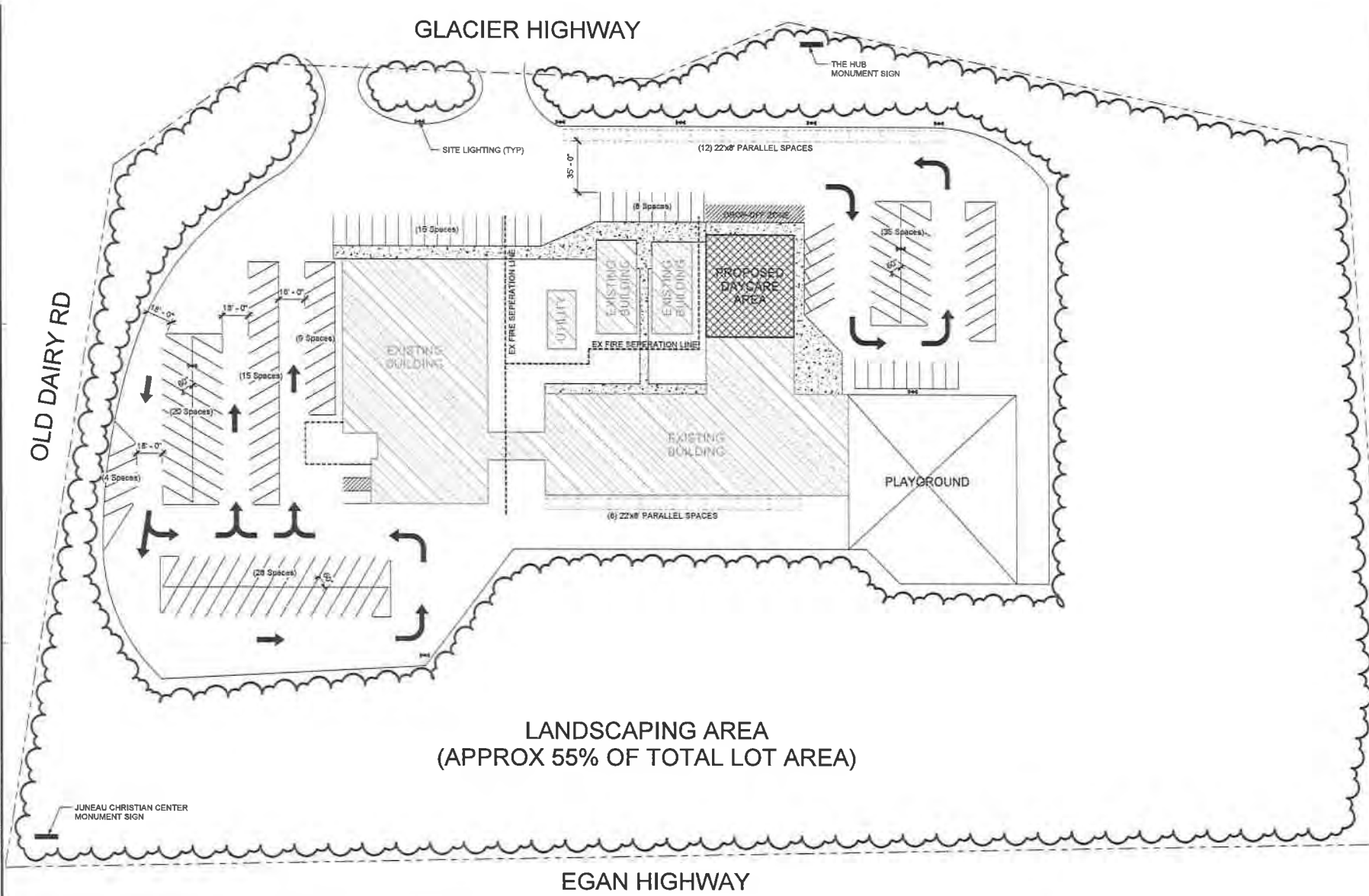
Description of Project: This project will convert an existing vacant space previously used as a Day Care Center into a Day Care Center to be operated by CCTHITA. Traffic to the building will be via Glacier Highway with available parking at the North side of the building for staff and public.



CODE DIAGRAM FOR JUNEAU CHRISTIAN SCHOOL

Scale: NTS

08/02/2019 3:15:11 PM J:\projects\18115\CD\CD\Drawing\Site Plan.dwg



1 SITE PLAN

SCALE: 0 16 32 64




**Jensen
Yorba
Wall Inc.**
552 West 10th Street
Juneau, Alaska 99801
907.586.1070
AEC0157
jensenyorbawall.com

CCTHIA
**DAY CARE CONDITIONAL
USE**

REVISIONS
Date 1
SHEET TITLE
SITE PLAN

DATE: 8-6-2019
FILE: 19092
A101



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

Childcare for up to 75 Children with 20 Staff

Case Number: PAC2019 0051

Applicant: Jensen Yorba Wall Inc.

Property Owner: Juneau Christian Church

Property Address: 8001 Glacier Hwy

Parcel Code Number: 5B1401020010

Site Size: 498,762 Square Feet (11.45 acres)

Zoning: D5 and D15

Existing Land Use: Church

Conference Date:	7/31/2019
Report Issued:	8/5/2019

List of attendees

Note: Copies of the Pre-Application Conference Report will be emailed, instead of mailed, to participants who have provided their email address below.

Name	Title	Email address
Charlene Steinman	Applicant	charlene@jensenyorbawall.com
Laurel Christian Irene Gallion	Planning	Laurel.Christian@juneau.org Irene.Gallion@juneau.org
John Young	Building	John.young@juneau.org
Eddie Quinto	Permit Specialist	Edward.quinto@juneau.org

Pre-Application Conference Final Report

Conference Summary

Questions/issues/agreements identified at the conference that were not identified in the attached reports. The following is a list of issues, comments and proposed actions, and requested technical submittal items that were discussed at the pre-application conference.

Planning Division:

1. **Zoning** – The parcel has two zoning districts, D5 and D15. Childcare centers require a Conditional Use Permit in both zoning districts (TPU Category 7.310).
 - a. **Childcare center definition:** *Childcare center means a building or portion thereof, used for the purpose of providing for the paid care and supervision of 13 or more children under the age of 12. Childcare centers include pre-schools and nursery schools not associated or co-located with an elementary, middle, or high school.*
2. **CBJ 49.65.1120 Child Care Center Standards** – Title 49 sets standards for childcare centers. A copy of this section of code can be found here:
https://library.municode.com/ak/juneau/codes/code_of_ordinances?nodeId=PTIICOOR_TIT49LAUS_CH4_9.65SPUSPR_ARTXCHCAHOCE_49.65.1120CHCACEST
 - a. Please note that any required fencing for outdoor play space shall be constructed of materials of a permanent nature.
3. **Setbacks** – D5 setbacks: 20' front; 20' rear; 15' side; 13' street side. D15 setbacks: 20' front; 15' rear; 13' street side; 5' side.
4. **Height** – D5 and D15 maximum 35' permissible uses; 25' accessory uses
5. **Access** – Access to the parcel is from Glacier Highway.
6. **Parking & Circulation**– Parking for all uses on the lot will be considered during this review, to ensure there is adequate off-street parking on the site. A parking and circulation plan should be provided with the conditional use permit application.
 - a. CBJ 49.65.1120(3) sets standards for parking for childcare centers: One off-street parking space for each **on-shift employee**; plus one space per 10 children served. Additionally, parking and loading areas shall not be located in any setback.
 - b. 49.40.210(a) Parking for churches, auditoriums, and similar places of assembly: 1 space for each 4 seats in the auditoriums
7. **Lot Coverage** – D5 and D15 maximum lot coverage: 50%
8. **Vegetative Coverage** – D5 minimum vegetation: 20%. D15 minimum vegetation: 30%
9. **Lighting** – The Land Use Code requires parking areas should be 'adequately lit'. There is no minimum foot-candle or similar standard. Parking and lighting plans should be designed by a professional engineer or architect. All lighting should be full cut-off and no glare should project onto neighboring property.
10. **Plat or Covenant Restrictions** – No known at this time
11. **Traffic** –The ITE Trip generation manual calculates trip generation for childcare centers by square footage; 74.06 ADTs per 1,000 square feet on a weekday. According to the applicant, the childcare center will be approximately 4130 square feet; so this would generate 306 average daily trips. The ITE trip generation manual also calculates ADT's by employee; however, the square footage calculation is used because the number of employees may vary over time, but the Planning Commission will approve the space (square footage) dedicated to the use.

Pre-Application Conference Final Report

a. According to CBJ 49.40.300(a)(3) when a development is projected to generate 250-500 ADTs; the Director can determine whether or not a TIA is required.

b. Staff will evaluate traffic when an application is received.

12. **Signage** – Any signs for the childcare facility will be required to obtain a separate permit. CBJ 49.45 sets standards for signs. Please note that signs in residential zoning districts must be indirectly lit. The maximum allowed area of signs in residential districts is 32 square feet.

Building Division:

13. **Building** – N/A

14. **Outstanding Permits** –

- a. BLD2001-00378 2,277 sf building infill between the existing preschool building and the main school building. 7/15/03: request to modify with addition of covered entrance and walkway, and install three windows in preschool building adjacent to walkway. Additional bathroom information received on 7/27/07
- b. BLD2006-00460 Grading for parking lot expansion near pre-school area
- c. BLD20180162 Hot tar roof for Bethel Christian School

General Engineering/Public Works:

15. **Engineering** – N/A

16. **Drainage** – N/A

17. **Utilities** – N/A

Fire Marshal:

18. **Fire Items/Access** – N/A – space was previously a childcare center, Fire has no issues to discuss.

Other Applicable Agency Review:

19. DOT should be consulted at time of Conditional Use permit application

List of required applications

Based upon the information submitted for pre-application review, the following list of applications must be submitted in order for the project to receive a thorough and speedy review.

- 1. Conditional Use permit application
- 2. Development permit application

Additional submittal requirements:

Submittal of additional information, given the specifics of the development proposal and site, are listed below. These items will be required in order for the application to be determined Counter Complete.

- 1. A copy of this pre-application conference report.
- 2. Parking and circulation plan – should address all uses on the parcel
- 3. Lighting plan
- 4. Site plan demonstrating vegetative requirement can be met
- 5. Floor plan for proposed child care facility – showing square footage dedicated to the proposed use

Fee estimates

Attachment A - Application

Pre-Application Conference Final Report

The preliminary plan review fees listed below can be found in the CBJ code section 49.85.

Based upon the project plan submitted for pre-application review, staff has attempted to provide an accurate estimate for the permits and permit fees that will be triggered by your proposal.

1. Conditional Use Permit fee – Class II uses \$500.00
2. Sign prep fee - \$50.00 plus \$100.00 refundable deposit (\$150.00 total)

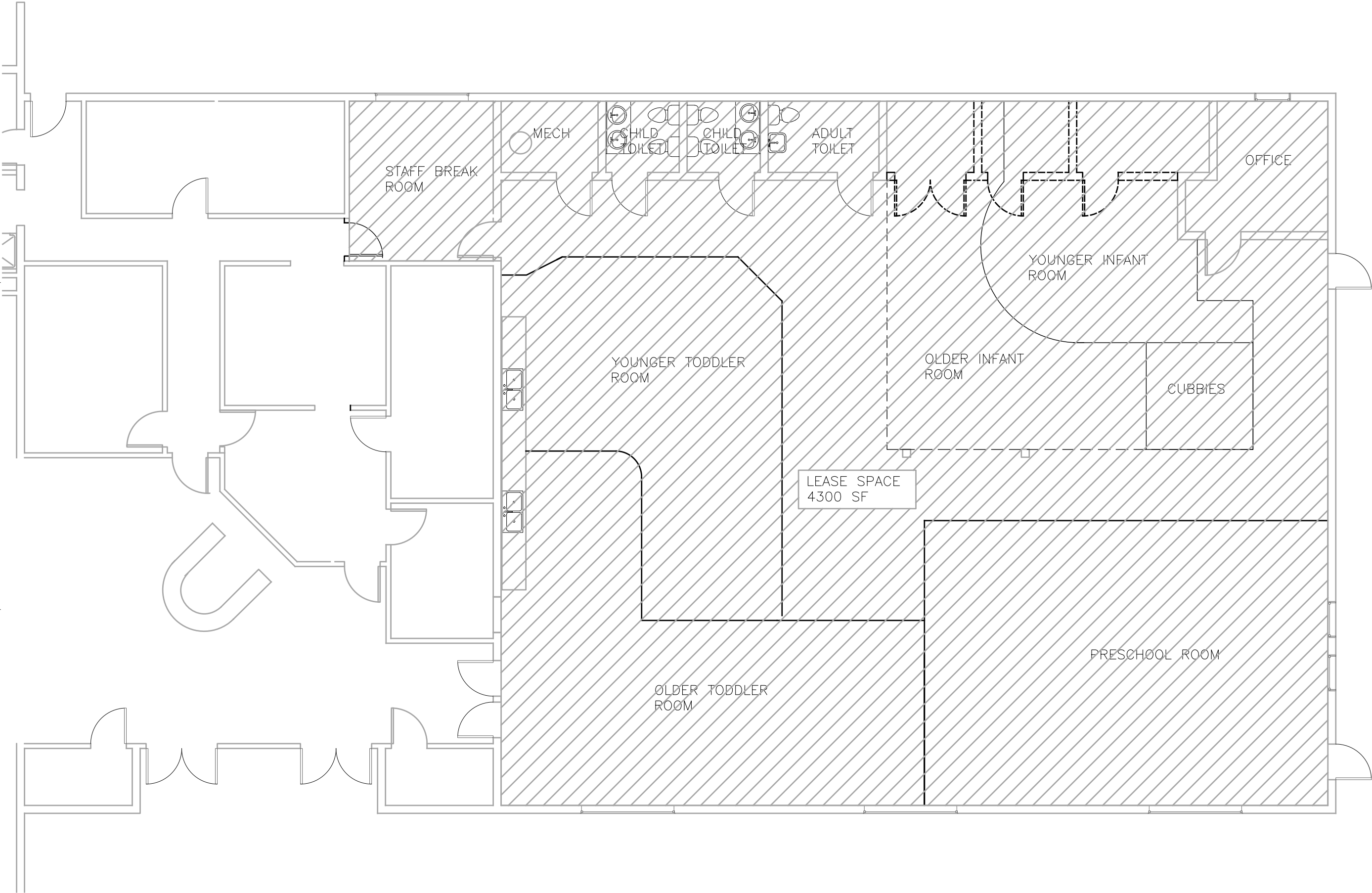
For informational handouts with submittal requirements for development applications, please visit our website at www.juneau.org/cdd.

Submit your completed application

You must submit your application(s) in person with payment to:

City/Borough of Juneau
Permit Center
230 S. Franklin Street,
Fourth Floor Marine View Center
Juneau, AK 99801

Phone: (907) 586-0715
Fax: (907) 586-4529
Web: www.juneau.org/cdd



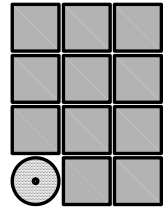
1

FIRST FLOOR ENLARGED CONCEPT PLAN

SCALE: 0 4' 8' 16'



Attachment B - Updated Floor Plan and Information



Jensen
Yorba
Wall Inc.

522 West 10th Street
Juneau, Alaska 99801
907.586.1070
AECC137
jensenyorbawall.com

Central Council of Tlingit & Haida
Indian Tribes of Alaska
CHILD CARE CENTER
8001 Glacier Hwy, Juneau, AK

REVISIONS



SHEET TITLE
ENLARGED CONCE
PLAN

DATE: August 2019
FILE: 19032

A1

Amy Liu

From: 'Work Email' <c_steinman@jensenyorbalott.com>
Sent: Monday, September 09, 2019 4:40 PM
To: Amy Liu
Cc: Jamie Shanley; Emily Edenshaw; Elias Duran
Subject: RE: Reschedule USE20190019, Childcare
Attachments: JCC Base Child Care 9-9-19.pdf

EXTERNAL E-MAIL: BE CAUTIOUS WHEN OPENING FILES OR FOLLOWING LINKS

Amy – see responses to your questions below. I am also attaching an updated concept floor plan showing the general layout for the childcare center.

The SF has been revised to include an area for staff break room. I will need to confirm the location of the accessible parking stall – will get back to you tomorrow with that information.

Charlene Steinman

Interior Designer, Project Manager

JENSEN YORBA WALL, INC.

522 West Tenth Street | Juneau, AK 99801

D 907-789-4526 | O 907-586-1070 | F 907-586-3959

www.jensenyorbawall.com

[Click here](#) to upload files

We are in the process of an exciting transition!

Please update your address book to charlene@jensenyorbawall.com

From: Amy Liu [mailto:Amy.Liu@juneau.org]

Sent: Thursday, September 5, 2019 3:52 PM

To: 'Work Email'

Subject: RE: Reschedule USE20190019, Childcare

Charlene,

Also, I have some questions about the application.

YII What is the area of the child care space? The pre-app report indicates 4130 sf, one building floor plan shows approximately 5557 sf, and the floor plan scale for the child care space itself is somewhat unclear. Please submit a higher resolution version of the child care space floor plan. **See attached revised floor plan indicating actual area for the lease and SF at 4362 SF.**

YII What days will the daycare be open? I see in the application the daycare hours, but am not sure if I should assume all weekdays, or any part of the weekend. **Monday- Friday 7:30 -5:30 pm with children, staff will be there before and after.**

YII What is the age range of the children? **0-6 years per their licensing application**

YII In the floor plan for the child care space, what are the uses of the small rooms not shown as bathrooms? **They are planning on demolishing the small storage rooms, and keeping the toilet rooms – see attached concept floor plan.**

YII Will children at the daycare use the playground? If yes, is it fenced? **The childcare will use the existing fenced playground area.**

YII Are there any accessible or van accessible parking spaces? **There is accessible parking, we will verify at this location.**

YII Do the operators anticipate future growth? **They will only provide child care up to their licensing limit.**

I haven't visited yet, hence some of these site related questions. Thanks!

Amy Liu

From: Amy Liu

Sent: Thursday, September 05, 2019 3:04 PM

To: 'Work Email' <c_steinman@jensenyorbalott.com>

Subject: RE: Reschedule USE20190019, Childcare

Works for me, Charlene. Thanks!

From: Work Email <c_steinman@jensenyorbalott.com>

Sent: Thursday, September 05, 2019 1:54 PM

To: Amy Liu <Amy.Liu@juneau.org>

Subject: Re: Reschedule USE20190019, Childcare

EXTERNAL E-MAIL: BE CAUTIOUS WHEN OPENING FILES OR FOLLOWING LINKS

Hi Amy - I am traveling the rest of this week so I will take a look at the schedule next week and select a date if that works for you.

Charlene

Sent from my iPhone

On Sep 5, 2019, at 11:42 AM, Amy Liu <Amy.Liu@juneau.org> wrote:

Hi Charlene,

We originally put USE20190019, CCTHITA's new child care at the Juneau Christian Center, on the October 8 PC hearing agenda. That meeting was recently canceled, and replaced by one on October 15. The next hearing after that is on October 29. Which date do you prefer? I apologize for any inconvenience. Let me know if you have any questions.

Thank you,

Amy Liu | Planner

[Community Development Department](#) | City & Borough of Juneau, AK

Location: 230 S. Franklin Street, 4th Floor Marine View Building

Office: 907.586.0764



Attachment C - Site Visit Photos



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Attachment C - Site Visit Photos



Attachment C - Site Visit Photos



Attachment C - Site Visit Photos



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Attachment C - Site Visit Photos



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Attachment C - Site Visit Photos



Attachment C - Site Visit Photos



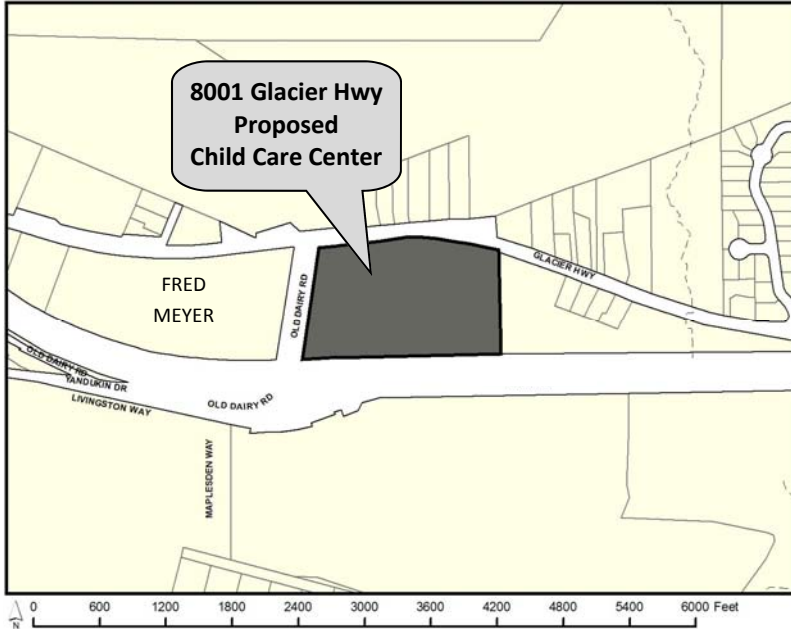
Attachment C - Site Visit Photos



Attachment C - Site Visit Photos

Invitation to Comment

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



155 S. Seward Street Juneau, Alaska 99801

TO:

An application has been submitted for consideration and public hearing by the Planning Commission for a **Conditional Use Permit** for a **Child Care Center** in an **existing church** located at **8001 Glacier Highway** in **D5/D15 zoned parcel**.

TIMELINE

Staff Report expected to be posted **Monday, October 7, 2019** at <https://beta.juneau.org/assembly/assembly-minutes-and-agendas>
Find hearing results, meeting minutes and more here as well.

Now through September 23, 2019

Comments received during this period will be sent to the Planner, **Amy Liu**, to be included in the staff report.

Sept. 24 through 12 noon, Oct. 11

Comments received during this period will be sent directly to Commissioners to read over the weekend in preparation for the hearing.

HEARING DATE & TIME
7:00 pm, October 15, 2019

You may testify and bring up to 2 pages of written material (15 copies) in City Hall's Assembly Chambers, 155 S. Seward St., Juneau.

October 16

The results of the hearing will be posted online.

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

Case No.: USE2019 0019
Parcel No.: 5B1401020010
CBJ Parcel Viewer: <http://epv.juneau.org>



Planning Commission

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

PLANNING COMMISSION NOTICE OF DECISION

Date: October 16, 2019
Case No.: USE2019 0019

Jensen Yorba Wall, Inc.
ATTN: Charlene Steinman
522 West 10th Street
Juneau, AK 99801

Proposal: Conditional Use Permit for a State of Alaska licensed Child Care Center in an existing church

Property Address: 8001 Glacier Highway

Legal Description: USS 1852

Parcel Code No.: 5B1401020010

Hearing Date: October 15, 2019

The Planning Commission, at a special public meeting, adopted the analysis and findings listed in the attached memorandum dated October 4, 2019, and approved the Child Care Center in an existing church to be conducted as described in the project description and project drawings submitted with the application. Approval is subject to the following conditions:

Staff recommends the following conditions of approval:

1. Prior to issuance of a Building Permit for the proposed structure, the applicant must submit a revised site plan showing standard parking spaces, accessible spaces, van accessible spaces, and circulation aisles that comply with the requirements of §49.40.
2. CBJ-approved signage shall be posted for the accessible parking space prior to commencement of the proposed use.
3. If a joint use agreement is used, the agreement must be approved by the Director prior to Temporary Certificate of Occupancy.

Jensen Yorba Wall, Inc.
Case No.: USE2019 0019
October 16, 2019
Page 2 of 2

Attachments: October 4, 2019, memorandum from Amy Liu, Community Development, to the CBJ Planning Commission regarding USE2019 0019.

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

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

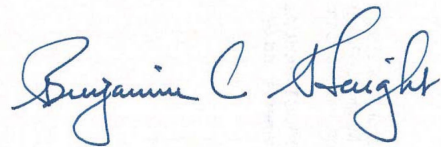
Effective Date: The permit is effective upon approval by the Commission, October 15, 2019.

Expiration Date: The permit will expire 18 months after the effective date, or April 15, 2021, if no Building Permit has been issued and substantial construction progress has not been made in accordance with the plans for which the development permit was authorized. Application for permit extension must be submitted thirty days prior to the expiration date.

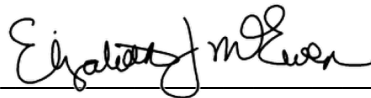
Project Planner:



Amy Liu, Planner
Community Development Department



Benjamin Haight, Chair
Planning Commission



Filed With Municipal Clerk

10/30/2019

Date

cc: Plan Review

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



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

DATE: October 2, 2019

TO: Planning Commission

FROM: Irene Gallion, Planner 
Community Development Department

CASE NO.: USE2019 0020

PROPOSAL: A Conditional Use Permit to expand retail development in a Severe Hazard Area

GENERAL INFORMATION

Applicant: Island Constructors

Property Owner: JNY, LLC

Property Address: 207 South Franklin Street

Legal Description: Juneau Townsite, Block K, Lots 1 & 2 FR

Parcel Code Number: 1C070B0K0010

Site Size: 6,802 square feet

Comprehensive Plan Future Land Use Designation: Traditional Town Center (TTC)

Zoning: Mixed Use (MU)

Utilities: CBJ water/sewer

Access: South Franklin Street

Existing Land Use: Retail (vacant)

VICINITY MAP



PROJECT DESCRIPTION

The applicant requests a Conditional Use Permit for an approximately 800 square foot expansion of retail space. A structure addition would extend the existing building through an existing courtyard, building up to the edge of the city sidewalk. The enlarged building will then be remodeled to accommodate three retail spaces.

Planning Commission
Case No.: USE 2019 0020
October 2, 2019
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It is recommended that the Planning Commission APPROVE the requested Conditional Use Permit for a retail expansion in a hazard area. The risks of this development in a hazard zone can be mitigated through behavior:

- Currently, individuals are asked to be aware of mass wasting risks and modify their behavior appropriately, such as avoiding certain areas during higher risk events.
- The proposed retail use would be attractive to seasonal-tourist-oriented retail. The tourist season takes place when mass wasting hazards are traditionally low (May through September).

BACKGROUND

The property is located on the northeast side of the intersection of Ferry Way and South Franklin Street. CBJ databases indicate the current structure was built in 1960, and includes an approximately 800 square foot courtyard area in the southwest corner. The site has been used for retail.

The courtyard was used for parking until 1998. Due to concerns about vehicles backing into intersection traffic, the City then required the owners to construct a physical barrier that would prevent vehicles from parking in the courtyard. Therefore, the owners built a concrete planter. In 2017, a reconstruction project replaced the curb cut-out with curb, and the planter could be removed.

Agency Comments

The following CBJ Departments were asked to review and comment:

CBJ Building Official: No issues at this time.

CCFR: No issues with this project.

CBJ General Engineering: No issues with this project.

Emergency Programs: The Manager recognizes a number of project features that are a good match for this location. However, outside of this particular project, he is hopeful that the City will engage in larger picture questions when avalanche and landslide mitigation should be required by the City. This is further discussed in "Public Health or Safety."

Public Comments

No public comments were received at the time of issuing this staff report. There was one query on why the subject property was in a Severe Hazard Area.

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ANALYSIS

Project Site -

Table 1: Project Site Summary

Lot feature	Existing	Proposed (additional structure and lot consolidation)	Standards 49.24.400
Lot size	6,802 sf*	6,802 sf	4,000 sf minimum
Building	2,500 sf	3,300 sf	
Lot coverage	37%	49%	No maximum
Lot width	42.80 ft + 24.85 ft	67.65 ft	50 ft minimum
Lot depth	100 ft + 100 ft	100 ft	80 ft

* CBJ Assessor Database combined area of two lots under one tax identification number.

The project site consists of two lots, which are undergoing the lot consolidation process (SLC2019 0003), but share a tax identification number. The area of the combined lots is 6,802 square feet according to the CBJ Assessors data accessed through the CBJ GIS property map. The current lot widths are 42.80 feet and 24.85 feet according to a preliminary plat submitted with the lot consolidation application. The consolidated lot width of 67.65 feet will exceed the 50-foot minimum lot width required for Mixed Use (MU). Current lot depth for both lots is 100 feet, and exceeds the 80-foot minimum lot depth required for MU.

A 2,500 square foot existing building crosses the lots, and when the lots are consolidated, the existing lot coverage will be approximately 37 percent.

The rear of the lot behind the existing structure has a slope of about 80 degrees. The lot uphill from this one has a slope of approximately 41 percent. The slope for the vegetated area behind the building (up to Gastineau Avenue) is approximately 54 percent.

This project is in the Historic District.

Project Design – This project increases the number of retail spaces available and the overall area of retail availability. There are no residences proposed as part of this project.

The existing structure is 2,500 square feet. The conceptual design is to add approximately 800 square feet to the existing structure (in the current courtyard area) for a total of 3,300 square feet. The interior would then be remodeled to accommodate three retail spaces, each with its own restroom and storage area. Approximate sizes would be:

- Unit 1: 1,200 square feet of tenant space including 960 square feet of retail space
- Unit 2: 1,100 square feet of tenant space including 850 square feet retail space
- Unit 3: 1,000 square feet of tenant space including 630 square feet retail space
- Total: 3,300 square feet of tenant space including 2,440 square feet retail space

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These measurements are preliminary and approximate. Unit square footage was estimated by scaling off of preliminary designs, and was rounded. Retail space was estimated using the same technique, but does not account for creative uses of the space by retailers.

The addition would increase lot coverage to 49 percent. The MU zoning district has no maximum lot coverage, and no minimum setback requirements.

Traffic – Based on national standards, the addition of 800 square feet of retail space is estimated to increase traffic by 35 trips.

Trip generation is estimated using the Institute of Transportation Engineer’s (ITE) Trip Generation Manual (9th Edition) estimates for Specialty Retail Centers. These are generally small strip-shopping centers that contain a variety of retail shops.

The average rate for a Specialty Retail Center is 44.32 trips per 1,000 square feet. The 800 square foot addition to the project will generate an additional 35 trips.

While the Specialty Retail Center is the most comparable use in the ITE manual, it is reasonable to assume traffic may be less for this project. The downtown retail area on South Franklin Street generally serves tourists or residents who are already downtown for work or shopping.

Parking and Circulation – One parking spot is required for this proposed project. The project proponent is considering using CBJ’s “Fee In Lieu of Parking.”

The proposed project is in the PD1 parking district. Parking requirements do not apply to the existing building since it was constructed more than 50 years before adoption of CBJ parking district standards (49.40.210(d)(5)(C)(ii)).

49.40.210(a) requires one parking space per 300 square feet of retail space. Part (d) of that chapter allows for a reduction of 60 percent for expansion of an existing building.

Total spaces required (49.40.210(a))

(800 square feet)	/	300 square feet	= 2.7
Area of expansion		per spot square footage	parking spaces required

PD1 parking space reduction (49.40.210(a))

2.7	*	.6	= 1.6
Required parking spaces	60%		number of parking spaces that can be reduced

Total parking spaces with reduction applied

2.7	–	1.6	= 1.1
Required parking spaces		parking reduction	total spaces required

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Rounding down, one parking space is required. The project proponent is investigating Fee In Lieu of Parking (49.40.210(d)(5)(D). The Consumer Price Index adjusted rate for one parking space is \$10,805.

Vegetative Cover and Landscaping – The MU zoning district has no requirements for vegetative cover.

Given the discussion of mass wasting events under “Public Health or Safety” below, one might wonder how the current upslope vegetation might affect the probability of landslides. The studies referenced in the “Public Health or Safety” section do not provide a definitive answer.

Tree roots exert a stabilizing influence through (Technical Report, 1972):

- Anchoring effect of roots growing through the shallow soil and into joints and cracks in the bedrock beneath;
- Intertwining with adjacent root systems to provide a more-or-less continuous long fiber binder to the soil mass over broad slope areas;
- The spread of long lateral roots across zones of weakness and into more stable areas; and
- The buttressing effect of tree root masses holding the soil up slope in place.

Vegetation can also destabilize a slope by (Technical Report, 1972):

- Loosening of soil and rock by the waving of trees in the wind and more drastically by tree blow-down;
- The wedging and loosening of locks of rocks and fragments from cliffs and open rock slopes; and
- The damming of channels and gullies by limbs, trunks and root masses, producing concentrations of debris in the channel, which may fail during periods of high run-off.

Drainage and Snow Storage – Drainage and snow removal are not anticipated to change significantly due to this project.

Lighting – Lighting requirements would be considered under a subsequent building permit application.

Non-motorized transportation – Non-motorized transportation is not anticipated to change significantly due to this project. The project is not anticipated to noticeably increase congestion on the sidewalks, nor does it impact bicycle operation.

Noise – This project is not anticipated to increase noise after completion.

Public Health or Safety – The project is located at the toe of a “severe hazard” area.

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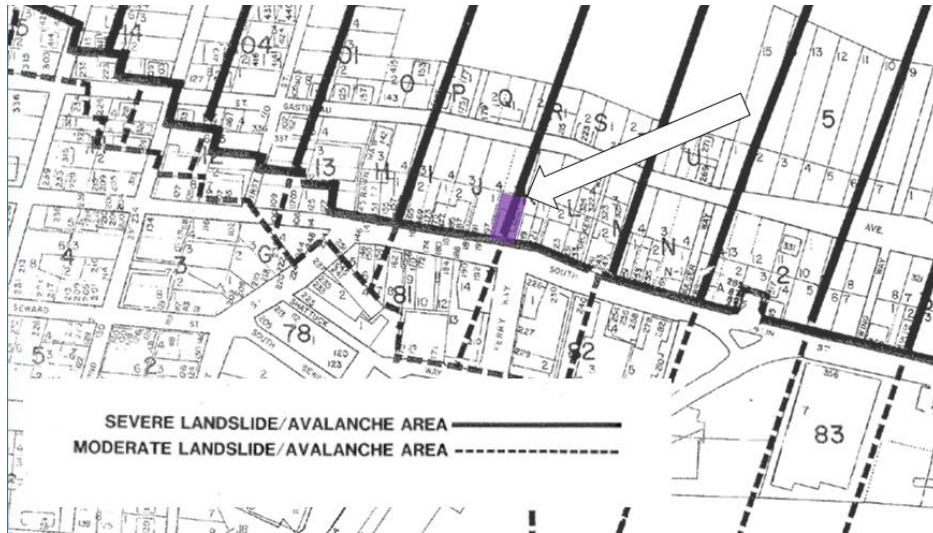


Figure 1: Landslide and Avalanche Area Map. The entire map is found in Attachment B. The white arrow indicates the subject parcel, which is shaded.

To understand what this means, we will review:

- The **definitions** of “severe” and “moderate hazard.”
- The **studies** that shaped our 1987 boundary maps.
- Construction requirements and feasibility.
- Upcoming changes to hazard studies and mapping.
- A review of applicable code.
- Considerations for this project.

Definitions

Juneau’s hazard maps delineate two areas: a “severe landslide/avalanche area,” and a “moderate landslide/avalanche area.” These characterizations were made by combining the discrete hazard definitions for avalanche and mass wasting.

The purpose of the composite hazard rating system was to (Summary Report, 1972):

- Identify areas wherein the aggregate, life and property are exposed to high, moderate and low hazards.
- Provide a basis for prioritizing collective and preventative measures.

Table 2 below shows how the two discrete hazard scenarios were conflated.

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Table 2: Conflated Hazards, Avalanche and Mass Wasting

		Snow Avalanche Hazard Classifications		
		High Hazard	Potential Hazard	No Hazard
Mass Wasting Hazard Classifications	High Hazard	Very High Hazard	High Hazard	High Hazard
	Potential Hazard	High Hazard	Potential Hazard	Potential Hazard
	No Hazard	High Hazard	Potential Hazard	No Hazard

This table accompanied a map that illustrated areas of No Hazard, Potential Hazard, and High Hazard. The map was broken down into smaller area maps and adopted by the Assembly in 1987.

Table 3 below summarizes the criteria for the different degrees of hazard for an avalanche (Summary Report, 1972). The asterisk by the column "Probability of Occurrence" references the reader to Section A of the report. That section clarifies that while estimates of probability can be established scientifically, individual natural events are random and may fall outside of projections, and that probability does not constitute a forecast.

Table 3: Tabulation of Snow Avalanche Criteria from Geophysical Hazards Investigation for the City and Borough of Juneau, Alaska: A Summary Report. Daniel, Mann, Johnson and Mendenhall. Portland, OR. October 1972.

Zone	Zone Characterized As:	Return Period	Damage will Result to Structures not Capable of Withstanding the Wind/Snow Pressures Listed Below	Probability of Occurrence*
No Hazard	Free of Avalanche Hazard	None	20 lb/ft ² wind pressure (= Approx. 70 mph wind)	
Potential Hazard	Avalanches Occur Seldom But May be Powerful	More than 90 yrs.	More than 600 lb/ft ² snow pressure (= More than 350 mph wind)	less than 1% per year
		or		
		More than 30 yrs.	200-600 lb/ft ² snow pressure (= Approx. 220-350 mph wind)	less than 3% per year
		or		
		Less than 30 yrs.	20-200 lb/ft ² snow pressure (= Approx. 70-220 mph wind)	more than 3% per year
High Hazard	Frequent and Powerful Avalanches	Less than 30 yrs.	200-600 lb/ft ² snow pressure (= Approx. 220-350 mph wind)	more than 3% per year
		or		
		Less than 90 yrs.	More than 600 lb/ft ² snow pressure (= More than 350 mph wind)	more than 1% per year

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The definitions for landslides, or “mass wasting,” are more intuitive:

Areas classified as high hazard demonstrate a history of landslides, and have channels or gullies containing substantial amounts of accumulated debris. This accumulation of debris, while temporarily stabilized, will eventually come down into the area below. No predication can be made of when the slide will occur.

Areas classified as potential hazard also exhibit a history of landslides, but the channels or gullies present are relatively free from debris.

Studies

The collection of studies done regarding geophysical hazards in Juneau can be found here:

<http://www.juneau.org/cddftp/GeophysicalHazards.php>

Applicable studies include:

- ADOPTED: Geophysical Hazards Investigation for the City and Borough of Juneau, Alaska: A Summary Report. Daniel, Mann, Johnson and Mendenhall. Portland, OR. October 1972.
- ADOPTED: Geophysical Hazards Investigation for the City and Borough of Juneau, Alaska: Technical Supplement. Daniel, Mann, Johnson and Mendenhall. Portland, OR. October 1972.
- NOT ADOPTED: Juneau Area Mass-Wasting & Snow Avalanche Hazard Analysis. Mears, Art; Fessler, Doug; and Fredson, Jill. Gunnison, CO and Anchorage, AK. February 1992.

Construction requirements and feasibility

The Technical Supplement (1972) states that damage in urban areas can be controlled through:

- Construction of barriers and channels to trap debris and reduce velocity, and
- Building design requirements that include anchoring in bedrock, reinforced concrete structures, buttressed concrete walls, or skeletal walls that could be punched out by a mass wasting event.

While anything can be built to withstand severe hazards, Juneau’s Emergency Programs Manager recognizes there is a point where mitigation costs are prohibitive. If the proposed project included an area where mitigation measures would provide leverage, they might be worth including. This 800 square foot expansion on the downhill side of the hazard area does not include apparent significant structural modifications to the rest of the building.

Review of applicable code

CBJ code outlines construction standards for development in areas of geophysical hazard. If this project was approved through the Conditional Use Permit, the next step is a Development and Building Permit, which would be reviewed for how proposed improvements comply with

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code, such as those regarding geophysical hazards.

49.70.910 - Geophysical hazards.

- (a) Surface modification that would induce excessive erosion, undermine the support of nearby land or unnecessarily scar the landscape is prohibited. Any other modification shall be limited to the smallest extent that is needed for development.*
- (b) Development in areas having known hazards may not be approved until siting, design, and construction measures for minimizing property damage and protecting against loss of life have been provided.*
- (c) Developers shall retain existing vegetative cover to the greatest extent feasible and prudent. In cases where development necessitates removal of vegetation, erosion shall be prevented through revegetation or, if revegetation is not feasible, by other appropriate measures.*
- (e) Mitigating measures are required for development in areas of moderate hazard. These may include dissipating structures or dams, appropriate structural engineering, or other techniques that respond to the specific site hazards.*

(Serial No. 87-49, § 2, 1987)

49.70 Article III – “Sensitive Areas” specifically addresses development in a landslide or avalanche area.

49.70.300 - Landslide and avalanche areas.

- (a) Generally.*
 - (1) Development in all landslide and avalanche areas shall minimize the risk of loss of life or property due to landslides and avalanches.*
 - (2) Boundaries of potential and severe avalanche areas will be as shown on the landslide and avalanche area maps dated September 9, 1987, consisting of sheets 1—8, as the same may be amended from time to time by the assembly by ordinance.*
 - (3) Notwithstanding any other provision, all subdivision other than a boundary line relocation and all development greater than a single-family dwelling within landslide or avalanche areas shall require a conditional use permit.*
 - (4) If a developer disagrees with the boundaries shown on the maps, the developer may seek departmental relocation of the boundaries by submitting site-specific studies prepared by a civil engineer experienced in avalanche and landslide analysis. Such studies shall include detailed analyses of topography, vegetation, potential snow accumulation, and other factors. The results should indicate actual hazard area boundaries and*

potential debris flow direction, time, distance and mass. If, in the opinion of the city engineer, the studies clearly establish that the map boundaries are inaccurate and the proposed development is outside a severe avalanche area or outside any avalanche or landslide area, the department shall proceed accordingly.

- (5) *The commission may require mitigating measures certified as effective by a professional engineer for development in landslide and avalanche areas. Such measures may include dissipating structures or dams, special structural engineering, or other techniques designed for the site. Mitigating measures may also include reduction in the proposed density.*
- (b) *Severe avalanche areas.*
 - (1) *Notwithstanding any other provision, no development or any part of a development, which is within a severe avalanche area shall, by the addition of bedrooms, conversions of buildings, or otherwise, increase the density of that parcel; provided, however, that a single-family house may be constructed on a vacant lot.*
 - (2) *No subdivision shall be approved which creates a lot lacking sufficient building space outside a severe avalanche area.*
- (c) *Warning and disclaimer of liability. Avalanches and landslides may occur outside hazard areas in excess of engineering expectations. The location and severity of the event may be increased by manmade or natural causes. This article does not imply that land outside of designated hazard areas, or uses permitted within such areas, will be free from danger or damage. This article shall not create liability on the part of the City and Borough of Juneau or any officer or employee thereof for any damages that result from reliance of this article or any administrative decision lawfully made under this article.*

(Serial No. 87-49, § 2, 1987; Serial No. 90-03, § 1, 1990; Serial No. 2006-15, § 23, 6-5-2006)

Considerations for this project

- Assuming a tourist-oriented retail endeavor eventually occupies the site, the increased number of people on the site will be highest between May and September, when the weather-related risks are generally low.
- Even if the site was determined to be moderately hazardous, the possible improvements (building into the hillside so flows go over, reinforcing the roof) are not in the scope of this project.
- Risk can be mitigated operationally by monitoring risk factors and vacating the property when risks are high.

Habitat – There are no known habitats regulated by the Land Use Code on this site.

Property Value or Neighborhood Harmony – The project is anticipated to be in harmony and character of the surrounding uses. This project is located in an area that consists of retail primarily

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serving residents and tourists, restaurants, and drinking establishments.

Conformity with Adopted Plans –

Comprehensive Plan

Chapter 5 – Economic Development

POLICY 5.6. TO ENCOURAGE TOURISM, CONVENTION AND OTHER VISITOR-RELATED ACTIVITIES THROUGH THE DEVELOPMENT OF APPROPRIATE FACILITIES AND SERVICES, WHILE PROTECTING JUNEAU’S NATURAL, CULTURAL AND ECONOMIC ATTRACTIONS FOR LOCAL RESIDENTS AND VISITORS ALIKE, AND TO PARTICIPATE IN THE ACCOMMODATION OF THE FUTURE GROWTH OF TOURISM IN A MANNER THAT ADDRESSES BOTH COMMUNITY AND INDUSTRY CONCERNS.

Development Guideline 5.6

DG2 When considering capital improvements and when reviewing permit applications for tourism-related developments, assess the costs and benefits of the proposed projects against the policies of this Comprehensive Plan and any CBJ-adopted Tourism Management Plan or BMPs.

Implementing Action 5.6

IA6 Encourage local private businesses to meet demand for varied and interesting tourism experiences.

Chapter 10 - Land Use

POLICY 10.9. TO ENCOURAGE AND STRENGTHEN JUNEAU’S POSITION AS AN INTERNATIONAL VISITOR DESTINATION BY PROTECTING THE RESOURCES AND ASSETS THAT MAKE IT ATTRACTIVE TO VISITORS, INCLUDING ITS NATURAL ENVIRONMENT, SCENIC BEAUTY, CULTURAL DIVERSITY, HISTORIC RESOURCES AND DIVERSITY OF ACTIVITIES AND EXPERIENCES. VISITOR DESTINATIONS SHOULD CONVEY AUTHENTIC JUNEAU WILDERNESS, RECREATION, HISTORY AND CULTURAL ARTS EXPERIENCES WHILE PROTECTING THOSE RESOURCES FROM OVERUSE AND DEPLETION.

Development Guideline 10.9

DG1 When reviewing permits for visitor destinations and related tourism industry activities, identify and seek to mitigate off-site impacts.

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Implementing Action 10.9

IA3 The CBJ should support citizen initiatives investigating ways to revitalize the downtown Juneau area.

Downtown Historic District Design Standards & Guidelines

The activity proposed in this Conditional Use Permit application is consistent with historical standards for the downtown area.

Upon approval of this Conditional Use Permit, Development Permit and Building Permit applications would be required, and would provide the opportunity to verify compliance with historical design standards.

The existing building is a “non-contributing” property, meaning it does not contribute to the historical significance of the area. The property must be compatible with the character of the district, and guidelines for new construction will apply.

FINDINGS

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

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

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

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

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

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

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

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

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

Yes. The requested permit is appropriate according to the Table of Permissible Uses. The use for retail establishment is listed at CBJ 49.25.300, Section 2.1 or 2.2 for the MU zoning district.

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

Yes. The proposed development complies with the other requirements of this chapter. Public notice of this project was provided in the Friday, October 4, 2019 and Sunday, October 13, 2019 issues of the Juneau Empire's "Your Municipality" section, and a Notice of Public Hearing was mailed to all property owners within 500 feet of the subject parcel. Moreover, a Public Notice Sign was posted on the subject parcel, visible from the public Right-of-Way.

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

No. This finding hinges on the idea of "materially endanger." "Materially" is taken to mean "significant or substantial." "Endanger" is "to bring into danger or peril."

Development in a hazard area increases danger to users in certain circumstances – in this case, in the event of high precipitation or snowmelt, which would trigger a mass wasting event. These circumstances can be monitored, and actions can be taken by individual property owners to mitigate danger. People who might not be aware of the hazard because they are not from here will generally be visiting during the tourist season when the hazard is low. For these reasons, the resultant endangerment is not "material."

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

No. This proposed retail would be in harmony with other uses in the neighborhood, which include retail, restaurants, and bars.

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

Yes. The proposed use is in conformity with existing plans. Subsequent permitting for the

Planning Commission
Case No.: USE 2019 0020
October 2, 2019
Page 15 of 15

construction of the building will provide an opportunity to verify compliance with any structural requirements for building in a hazard area, and for confirming compliance with Historical District design standards.

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

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

N/A

RECOMMENDATION

It is recommended that the Planning Commission adopt the Director's analysis and findings and approve the requested Conditional Use Permit. The permit would allow the addition of 800 square feet to an existing 2,500 square foot building, and allow remodel of that building into three retail units. The approval is subject to the following condition:

1. Prior to issuance of a Building Permit, the applicant must record the plat for the lot consolidation (SLC2019 0003);
2. Prior to issuance of a Building Permit, the applicant must provide parking that meets the Land Use Code requirements;
3. Prior to issuance of a Building Permit, the applicant must provide a lighting plan that meets Land Use Code requirements, with review and approval by the Historic Resources Advisory Committee;
4. Prior to issuance of a Building Permit, the applicant must receive approval of the project design by the Historic Resources Advisory Committee.

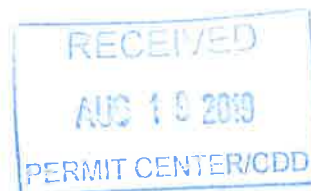


DEVELOPMENT PERMIT APPLICATION

NOTE: Development Permit Application forms must accompany all other Community Development Department land use applications.

To be completed by Applicant	PROPERTY LOCATION		
	Physical Address <u>207 FRANKLIN ST.</u> <u>207 S. Franklin St.</u>		
	Legal Description(s) (Subdivision, Survey, Block, Tract, Lot) <u>Juneau Townsite BLK K LTS 132</u>		
	Parcel Number(s) <u>1C070BOK0010</u>		
	☒ This property located in the downtown historic district ☒ This property located in a mapped hazard area, if so, which <u>LANDSLIDE / AVALANCHE</u>		
	LANDOWNER/LESSEE		
	Property Owner <u>JNY, LLC</u>	Contact Person <u>Paul Brooks</u>	
	Mailing Address <u>see below</u>	Phone Number(s) <u>see below</u>	
	E-mail Address <u>see below</u>		
	LANDOWNER/LESSEE CONSENT Required for Planning Permits, not needed on Building/ Engineering Permits		
I am (we are) the owner(s) or lessee(s) of the property subject to this application and I (we) consent as follows: A. This application for a land use or activity review for development on my (our) property is made with my complete understanding and permission. B. I (we) grant permission for officials and employees of the City and Borough of Juneau to inspect my property as needed for purposes of this application.			
X <u>Hendricka Flanagan, Manager for JNY, LLC</u> Landowner/Lessee Signature		Date <u>July 3, 2019</u>	
X <u>[Signature]</u> Landowner/Lessee Signature		Date	
NOTICE: The City and Borough of Juneau staff may need access to the subject property during regular business hours and will attempt to contact the landowner in addition to the formal consent given above. Further, members of the Planning Commission may visit the property before the scheduled public hearing date.			
APPLICANT If the same as OWNER, write "SAME"			
Applicant <u>PAUL BROOKS - ISLAND CONTRACTORS</u>		Contact Person	
Mailing Address <u>PO BOX 241036 DOUGLAS AK 99824</u>	Phone Number(s) <u>907-209-0854</u>		
E-mail Address <u>PAUL@ISLANDCONTRACTORS-AK.COM</u>			
X <u>Paul Brooks</u> Applicant's Signature		Date of Application	

DEPARTMENT USE ONLY BELOW THIS LINE



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

INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED

Case Number

Intake Initials

LC

Date Received

AUG 19 2019



ALLOWABLE/CONDITIONAL USE PERMIT APPLICATION

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

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

PROJECT SUMMARY

Add approx 800 sq ft to existing 2500 sq ft structure
and creating ③ retail spaces approx 1100 sq ft ea

TYPE OF ALLOWABLE OR CONDITIONAL USE PERMIT REQUESTED

- ☐ Accessory Apartment – Accessory Apartment Application (AAP)
☐ Use Listed in 49.25.300 – Table of Permissible Uses (USE)

Table of Permissible Uses Category: Retail Store

IS THIS A MODIFICATION or EXTENSION OF AN EXISTING APPROVAL?

☐ YES – Case # _____ ☒ NO

UTILITIES PROPOSED

WATER: ☒ Public ☒ On Site

SEWER: ☒ Public ☒ On Site

SITE AND BUILDING SPECIFICS

Total Area of Lot 6830 square feet Total Area of Existing Structure(s) 2500 square feet

Total Area of Proposed Structure(s) 800 square feet

EXTERNAL LIGHTING

Existing to remain
Proposed

☒ No
☐ No

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

ALL REQUIRED DOCUMENTS ATTACHED

☒ Narrative including:

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

If this is a modification or extension include:

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

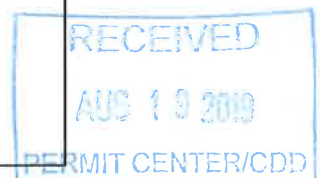
☒ Plans including:

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

DEPARTMENT USE ONLY BELOW THIS LINE

ALLOWABLE/CONDITIONAL USE FEES

	Fees	Check No.	Receipt	Date
Application Fees	\$ <u>500.00</u>			
Admin. of Guarantee	\$ _____			
Adjustment	\$ _____			
Pub. Not. Sign Fee	\$ <u>50.00</u>			
Pub. Not. Sign Deposit	\$ <u>100.00</u>			
Total Fee	\$ <u>650.00</u>			



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

INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED

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

Case Number

USE 19-020

Date Received

LL Aug 19, 2019

NARRATIVE -

The building is vacant and not being used.

*Project consist of adding approx 800 sq ft
to existing building to create ③ retail spaces*

*Proposed use complies with downtown retail
comprehensive plan.*





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

S Franklin Lot Consolidation and CUP for Severe Landslide/Avalanche Area

Case Number: PAC20190045

Applicant: Paul Brooks

Property Owner: JNY LLC

Property Address: 207 S Franklin St

Parcel Code Number: 1C070B0K0010 (two legal lots with one assessors tax ID)

Site Size: 6,802

Zoning: MU

Existing Land Use: Commercial Retail

Conference Date:	6/26/2019
Report Issued:	6/27/2019

List of attendees

Note: Copies of the Pre-Application Conference Report will be emailed, instead of mailed, to participants who have provided their email address below.

Name	Title	Email address
Paul Brooks	Applicant	paul@islandcontractorsak.com
Laurel Christian	Planning	laurel.christian@juneau.org
John Young	Building	John.young@juneau.org
Autumn Sapp	General Engineering	Autumn.sapp@juneau.org
Eddie Quinto	Permit Specialist	Edward.quinto@juneau.org



Pre-Application Conference Final Report

Conference Summary

Questions/issues/agreements identified at the conference that were not identified in the attached reports. The following is a list of issues, comments and proposed actions, and requested technical submittal items that were discussed at the pre-application conference.

Planning Division:

1. **Lot Consolidations (CBJ 49.15.403)** – When a new plat is required, lot consolidations shall follow the minor subdivision process. The most recent recorded plat that CDD has on file is from 1934 (Plat 1934-1). This plat does not adequately show the parcel in question. **A new plat will be required for this lot consolidation and this consolidation will follow the minor subdivision process.**
2. **Zoning** – The subject parcel is in the Mixed Use zoning District (MU). The minimum lot size in the MU zoning district is 4,000 square feet. Minimum lot width is 50' and minimum lot depth is 80'. It appears that once the lots are consolidated, they will meet these requirements.
3. **Downtown Historic District** – Parcel is within the Downtown Historic District. Design standards apply for new construction. This will be reviewed at the building permit stage; a review by the Historic Resources Advisory Committee will be required when a building permit application is submitted. Regulations can be found here:
http://www.juneau.org/history/documents/FINAL_DHDDSG_ASSEMBLYADOPTION_1072009.pdf
4. **Setbacks** – There are no required setbacks in the MU zoning district.
5. **Height** – There is no height limit in the MU zoning district.
6. **Access** – Access is provided from S Franklin St.
7. **Parking & Circulation**– (check if in Juneau / Douglas Geographic area)
 - a. PD1 Parking District – Parcel is within the PD1 parking district. Parking requirements do not apply to the existing building; for the expanded building area, the parking requirement can be reduced by 60%. This will be reviewed when a development proposal is submitted for the expansion of the building.
 - b. Based on sketches provided by the applicant at the pre-application conference, the proposed addition would be approximately 800 square feet of retail-commercial space. 1 space per 300 square feet of retail commercial space is required. The addition would require 2.66 parking spaces; however, in the PD1 parking district, this parking requirement can be reduced by 60%. This project would therefore require one parking space. This space would need to be ADA van accessible. Options for parking:
 - i. Fee in-lieu of parking: The applicant can pay a 1-time fee to the CBJ per parking space. If the fee is paid, no parking is required on-site.
 - ii. The commission may authorize joint use parking facilities off-site. This must be within 500 feet walking distance to the building on the parcel.
 - iii. The applicant can apply for a variance to the parking requirement; this would require a hearing before the Planning Commission.
8. **Lot Coverage** – No maximum in the MU zoning district.
9. **Vegetative Coverage** – There is no required vegetated cover in the MU zoning district.
10. **Lighting** – Any exterior lighting that is installed as part of this project must be of full cut-off design and must not produce glare onto neighboring properties.
11. **Flood** – (check floodplain) – NA.

Pre-Application Conference Final Report

12. **Hazard/Mass Wasting/Avalanche/Hillside Endorsement** – Parcel is located in the severe landslide/avalanche area special regulations in CBJ 49.70.300 apply. The addition to the structure will require a Conditional Use permit to be issued by the Planning Commission. All development greater than a single-family dwelling requires a conditional use permit when the development is located in the severe landslide/avalanche area.
13. **Plat or Covenant Restrictions** – No known at this time.

Building Division:

14. **Building** – Plans will be reviewed through the building permit review
15. **Outstanding Permits** – BLD1998-00115 – Architectural and structural changes to BLD98-00060 and electrical plans

General Engineering/Public Works:

16. **Engineering** – NA
17. **Drainage** – NA
18. **Utilities** – NA

Fire Marshal:

19. **Fire Items/Access** – N/A

List of required applications

Based upon the information submitted for pre-application review, the following list of applications must be submitted in order for the project to receive a thorough and speedy review.

1. Lot Consolidation Application: <http://www.juneau.org/cddftp/documents/SubdivisionApplication.pdf>
2. Development Permit Application: <http://www.juneau.org/cddftp/documents/DPA.pdf>
3. Conditional Use Permit Application: <http://www.juneau.org/cddftp/documents/USE-Allowable-ConditionalUse.pdf>

Additional submittal requirements:

Submittal of additional information, given the specifics of the development proposal and site, are listed below. These items will be required in order for the application to be determined Counter Complete.

1. A copy of this pre-application conference report.
2. A new survey plat is required for this lot consolidation.
3. Preliminary plat checklist.
4. An as-built survey will be required to be submitted with the preliminary plat to show existing structures in relation to new property lines.
5. All items listed on the Conditional Use Permit Application

Fee estimates

The preliminary plan review fees listed below can be found in the CBJ code section 49.85.

Based upon the project plan submitted for pre-application review, staff has attempted to provide an accurate estimate for the permits and permit fees that will be triggered by your proposal.

1. Subdivision creating no additional lots: \$110.00 plus \$25 for each lot changed (\$160.00 total).

Attachment A - Application

Pre-Application Conference Final Report

2. Conditional Use Permit Application: \$500.00 for Class II Uses.
3. Public Notice Sign Fee: \$50.00 plus \$100.00 refundable deposit (\$150.00 total).

For informational handouts with submittal requirements for development applications, please visit our website at www.juneau.org/cdd.

Submit your completed application

You must submit your application(s) in person with payment to:

City/Borough of Juneau
Permit Center
230 S. Franklin Street,
Fourth Floor Marine View Center
Juneau, AK 99801

Phone: (907) 586-0715
Fax: (907) 586-4529
Web: www.juneau.org/cdd

TDP OF PARAPET 18'-6"

MATCH EXISTING CANOPY
AND METAL ROOFING

207 FRANKLIN
STREET

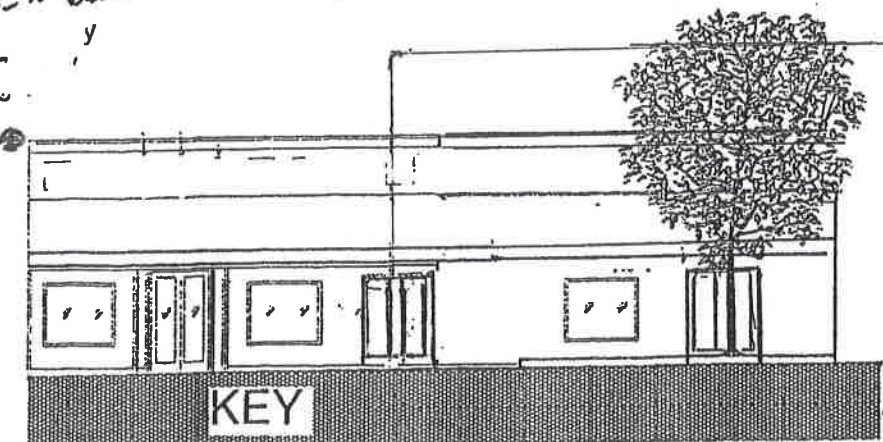
NOTE: MATCH EXISTING
wall shall be hardiplank painted.
Contractor shall match adjacent
cedar siding spacing. If this can not be
executed then side w/ cedar.

NOTE: REPAINT EXTERIOR
Cedar and matching hardiplank profiles
are to be chosen by contractor and
approved by architect.



MATCH EXISTING DOORS
72" W X 80" H DBL
FULL LITE

18'-6"



KEY

ELEVATION A

Attachment A - Application

RICH CONNEEN
REGISTERED ARCHITECT
7099 N. Douglas Hwy.
Juneau, AK. 99801
586-3180 (T) 586-3182

207 S. FRANKLIN ST.
JUNEAU, ALASKA

ELEVATIONS

NO.	DESCRIPTION	DATE
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		

Date: 3-10-98
Scale: 1/4" = 1'-0"
Sheet:

A-2



WIRING

- JUNCTION BOX
- CONDUIT CONCEALED IN CEILING OR WALL
- CONDUIT CONCEALED IN FLOOR OR UNDER SLAB
- HOT CONDUCTOR
- NEUTRAL CONDUCTOR
- GROUND CONDUCTOR
- ISOLATED GROUND CONDUCTOR
- HOMERUN TO INDICATED DESTINATION
- FLEXIBLE CONDUIT CONNECTION

NOTE: WIRING NOT SHOWN WHERE ONLY A HOT, NEUTRAL, AND GROUND ARE REQUIRED.

LIGHTING

- RECESSED LUMINAIRE
- EMERGENCY LIGHT
- EXIT SIGN

SWITCHING

- TOGGLE SWITCH

SIGNAL

- DATA OUTLET

POWER DEVICES

- DUPLEX RECEPTACLE

DISTRIBUTION

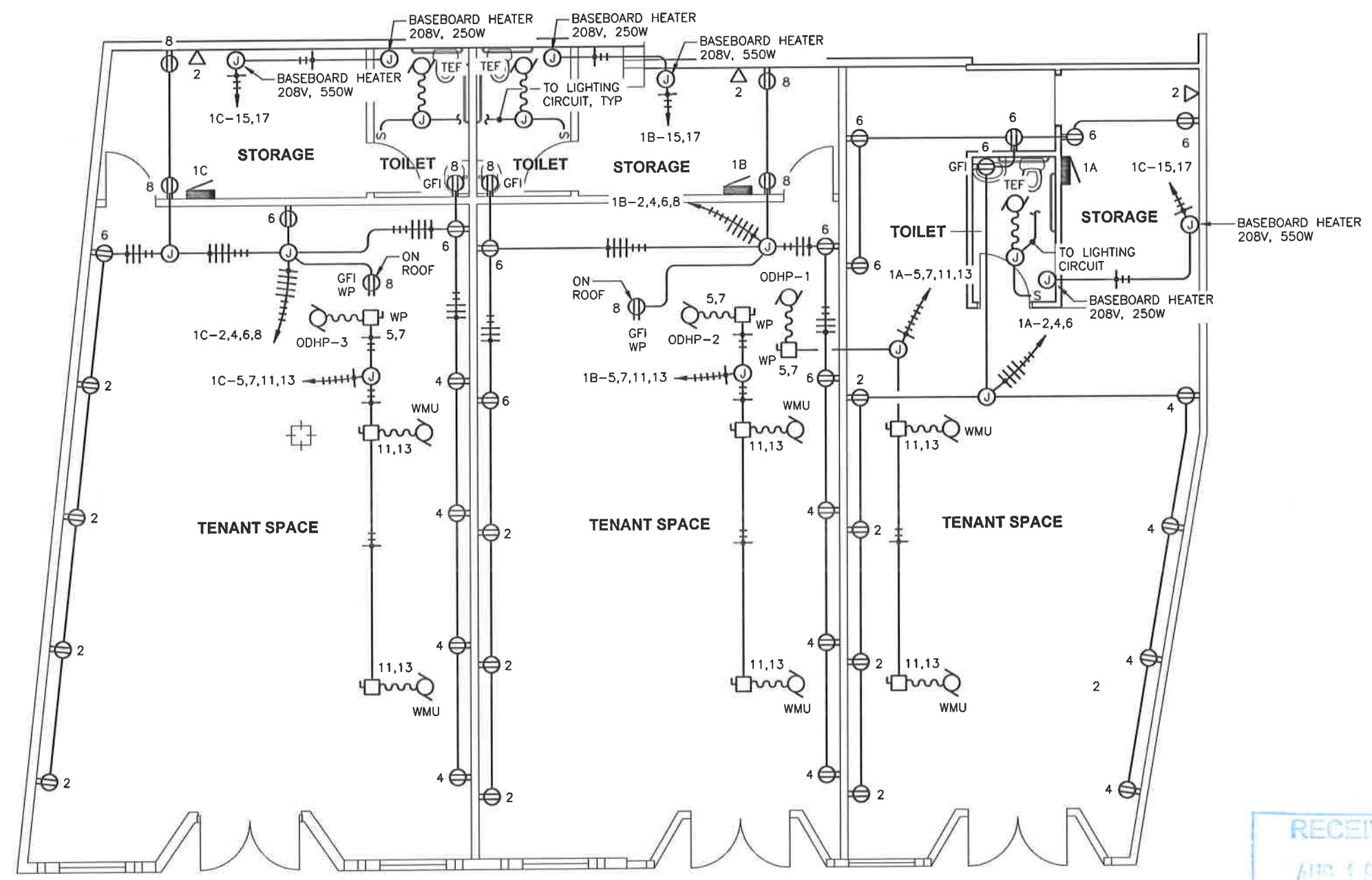
- BRANCH CIRCUIT PANELBOARD
- MOTOR CONNECTION
- DISCONNECT SWITCH
- FUSED DISCONNECT SWITCH
- COMBINATION STARTER
- STARTER OR CONTACTOR

REFERENCE SYMBOLS

- SHEET NOTE REFERENCE
- DETAIL REFERENCE
- EXISTING
- NEW
- DEMOLISH
- RELOCATE
- REPLACE
- REMOVE AND SALVAGE

ABBREVIATIONS

- A AMPERES
- C CONDUIT
- FLA FULL LOAD AMPERES
- GFI GROUND FAULT CIRCUIT INTERRUPTER
- G GROUND
- HP HORSEPOWER
- KW KILOWATTS
- KVA KILOVOLT-AMPERES
- N NEUTRAL (GROUNDED CONDUCTOR)
- PH PHASE
- TYP TYPICAL
- V VOLTS
- W WATT
- WP WEATHERPROOF



1 POWER AND SIGNAL PLAN
SCALE: 1/4" = 1'-0"
SCALE: 0 2' 4' 8'
PLAN NORTH

RECEIVED
AUG 10 2019
PERMIT CENTER/CDD

STATE OF ALASKA
49th
Barry J. Begenyi
E.E. 10453
JUNE 4, 2019

BEGENYI
ENGINEERING, LLC

217 2nd ST., STE 208, JUNEAU, AK 99801
PH: (907) 586-5900 / FAX: (907) 586-5901

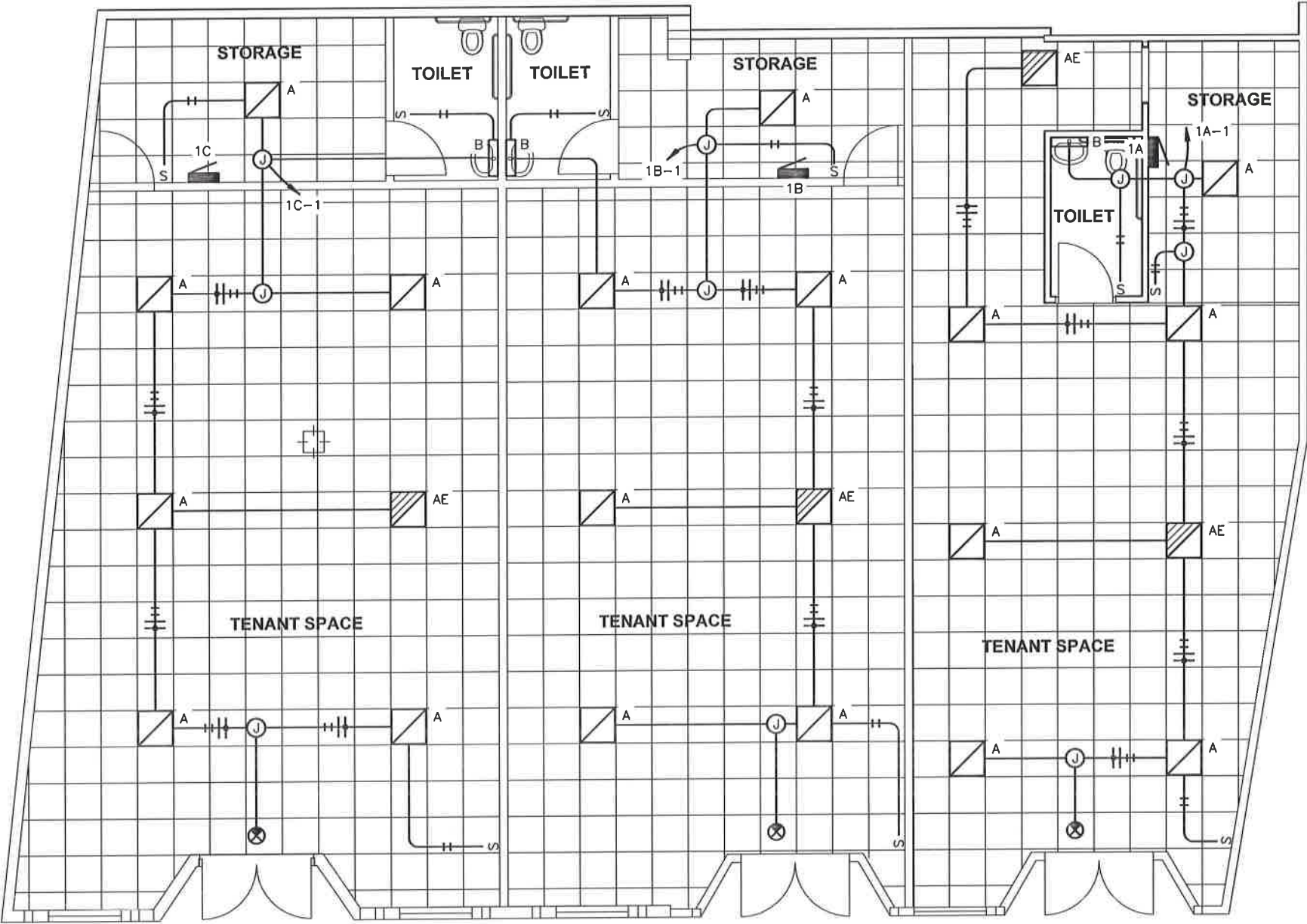
REVISION	DESCRIPTION	DATE

PROJECT NO: 200-18
207 South Franklin Street
Addition and Renovation

SHEET TITLE
Power and Signal Plan

DRAWING NUMBER	SCALE
E201	AS NOTED
	DATE
	JUNE 4, 2019

- NOTES:
- 1. LIGHT FIXTURE TYPE A: RECESSED 2X2 LED TROFFER, LITHONIA LIGHTING 2GTL 2 40L A12125 GZ10 LP835, OR SIMILAR.
 - 2. LIGHT FIXTURE TYPE AE: SAME AS TYPE A WITH EMERGENCY BATTERY OPTION EL14L, OR SIMILAR.
 - 3. LIGHT FIXTURE TYPE B: 2'L LED WALL BRACKET, LITHONIA LIGHTING WL2 22L GZ10 LP835, OR SIMILAR.
 - 4. EXIT SIGN: THERMOPLASTIC WITH RED LETTERS, EMERGENCY BATTERY, DIAGNOSTICS, LITHONIA LIGHTING EXR LED EL M6, OR SIMILAR.

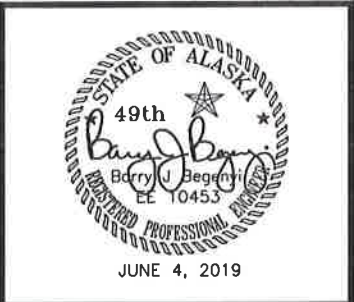


1 LIGHTING PLAN
SCALE: 1/4" = 1'-0"

SCALE: 0 2' 4' 8'



PLAN NORTH



REVISION	DESCRIPTION	DATE

PROJECT NO: 200-18
207 South Franklin Street
Addition and Renovation

SHEET TITLE
Lighting Plan

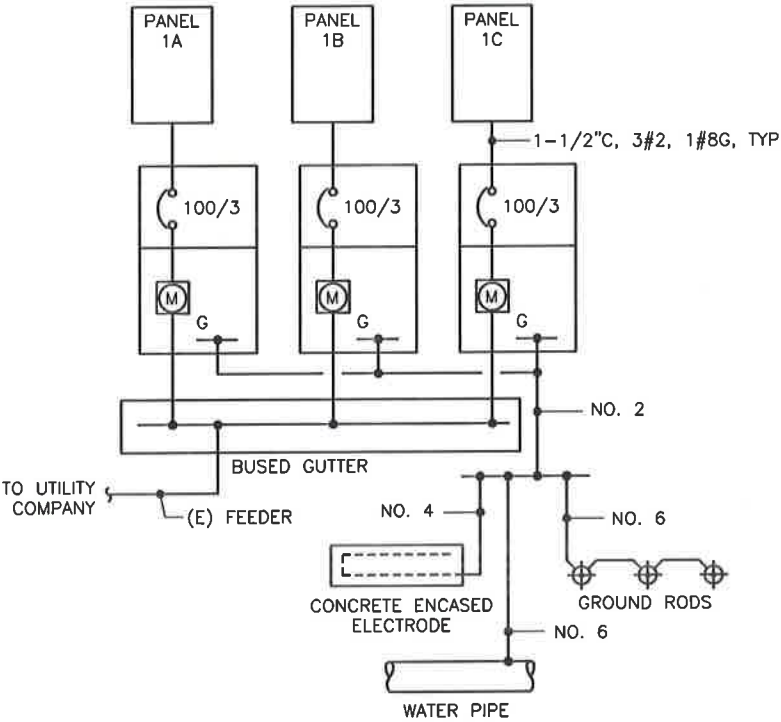
DRAWING NUMBER	SCALE
E301	AS NOTED
DATE	JUNE 4, 2019



PANEL 1A										
POLE NO.	LOAD SERVED	LOAD		CB	PH	CB	LOAD		LOAD SERVED	POLE NO.
		TYPE	KVA					KVA		
1	LIGHTING	L	0.3	20/1	A	20/1	R	0.7	RECEPTACLES	2
3	HWH	C	2.0	30/1	B	20/1	R	0.7	RECEPTACLES	4
5	ODHP-1	M	2.1	30/2	C	20/1	R	1.1	RECEPTACLES	6
7	----	M	2.1	---	A	20/1			SPARE	8
9	TEF	M	0.1	15/1	B	20/1			SPARE	10
11	WMU	M	0.1	15/2	C	20/1			SPARE	12
13	----	M	0.1	---	A	20/1			SPARE	14
15	BASEBOARD HEATERS	C	0.4	15/2	B	20/1			SPARE	16
17	----	C	0.4	---	C	20/1			SPARE	18
VOLTAGE: 120/208V, 3P,4W		LOAD SUMMARY		CONNECTED LOAD (KVA)		DEMAND FACTOR		DEMAND KVA		NOTES:
AIC RATING: 10,000		(L) LIGHTING		0.3		100% OF LOAD		0.3		
		(R) RECEPTACLE		2.5		NEC 220-44		2.5		
MOUNTING: SURFACE		(M) MOTOR		4.5		NEC 430-24		5.6		
		(C) CONTINUOUS		2.8		125% OF LOAD		3.5		
MAIN: 100/3		(N) NON-CONTINUOUS		.		100% OF LOAD		.		
		(K) KITCHEN		.		NEC 220-56		.		
BUS: 100A		TOTAL		.				12.0		

PANEL 1B										
POLE NO.	LOAD SERVED	LOAD		CB	PH	CB	LOAD		LOAD SERVED	POLE NO.
		TYPE	KVA					TYPE		
1	LIGHTING	L	0.3	20/1	A	20/1	R	0.5	RECEPTACLES	2
3	HWH	C	2.0	30/1	B	20/1	R	0.5	RECEPTACLES	4
5	ODHP-2	M	2.1	30/2	C	20/1	R	0.7	RECEPTACLES	6
7	-----	M	2.1	---	A	20/1	R	0.4	RECEPTACLES	8
9	TEF	M	0.1	15/1	B	20/1			SPARE	10
11	WMU	M	0.1	15/2	C	20/1			SPARE	12
13	-----	M	0.1	---	A	20/1			SPARE	14
15	BASEBOARD HEATERS	C	0.4	15/2	B	20/1			SPARE	16
17	-----	C	0.4	---	C	20/1			SPARE	18
VOLTAGE: 120/208V, 3P,4W		LOAD SUMMARY		CONNECTED LOAD (KVA)		DEMAND FACTOR		DEMAND KVA		NOTES:
AIC RATING: 10,000		(L) LIGHTING		0.3		100% OF LOAD		0.3		
		(R) RECEPTACLE		2.1		NEC 220-44		2.1		
MOUNTING: SURFACE		(M) MOTOR		4.5		NEC 430-24		5.6		
		(C) CONTINUOUS		2.8		125% OF LOAD		3.5		
MAIN: 100/3		(N) NON-CONTINUOUS		.		100% OF LOAD		.		
		(K) KITCHEN		.		NEC 220-56		.		
BUS: 100A		TOTAL		.				11.5		

PANEL 1C										
POLE NO.	LOAD SERVED	LOAD		CB	PH	CB	LOAD		LOAD SERVED	POLE NO.
		TYPE	KVA					TYPE		
1	LIGHTING	L	0.3	20/1	A	20/1	R	0.7	RECEPTACLES	2
3	HWH	C	2.0	30/1	B	20/1	R	0.7	RECEPTACLES	4
5	ODHP-3	M	2.1	30/2	C	20/1	R	0.5	RECEPTACLES	6
7	----	M	2.1	--	A	20/1	R	0.4	RECEPTACLES	8
9	TEF	M	0.1	15/1	B	20/1			SPARE	10
11	WMU	M	0.1	15/2	C	20/1			SPARE	12
13	-----	M	0.1	--	A	20/1			SPARE	14
15	BASEBOARD HEATERS	C	0.4	15/2	B	20/1			SPARE	16
17	-----	C	0.4	--	C	20/1			SPARE	18
VOLTAGE: 120/208V, 3P,4W		LOAD SUMMARY		CONNECTED LOAD (KVA)		DEMAND FACTOR		DEMAND KVA		NOTES:
AIC RATING: 10,000		(L) LIGHTING		0.3		100% OF LOAD		0.3		
		(R) RECEPTACLE		2.3		NEC 220-44		2.3		
MOUNTING: SURFACE		(M) MOTOR		4.5		NEC 430-24		5.6		
		(C) CONTINUOUS		2.8		125% OF LOAD		3.5		
MAIN: 100/3		(N) NON-CONTINUOUS		.		100% OF LOAD		.		
		(K) KITCHEN		.		NEC 220-56		.		
BUS: 100A		TOTAL		.				11.7		



MECHANICAL EQUIPMENT SCHEDULE													
TAG	DESCRIPTION	HP	KW	AMPS	VOLTS	PHASE	TOTAL KVA	WIRING	DISCONNECT	FUSE	CONTROL	STARTER SIZE	REMARKS
HWH	HOT WATER HEATER (3 TOTAL)		2.0		120	1	2.0	2#10, 1#10G	30/1				
ODHPU-1	OUTDOOR HEAT PUMP			20	208	1	4.2	2#10, 1#10G	30/2				
ODHPU-2	OUTDOOR HEAT PUMP			20	208	1	4.2	2#10, 1#10G	30/2				
ODHPU-3	OUTDOOR HEAT PUMP			20	208	1	4.2	2#10, 1#10G	30/2				
TEF	TOILET EXHAUST FAN (3 TOTAL)			0.1	120	1	0.1	2#12, 1#12G					
WMU	INDOOR HEAT PUMP (6 TOTAL)			0.6	208	1	0.1	2#12, 1#12G	30/2				



217 2nd ST, STE 208, JUNEAU, AK 99801
PH: (907) 586-5900 / FAX: (907) 586-5901

REVISION	DESCRIPTION	DATE

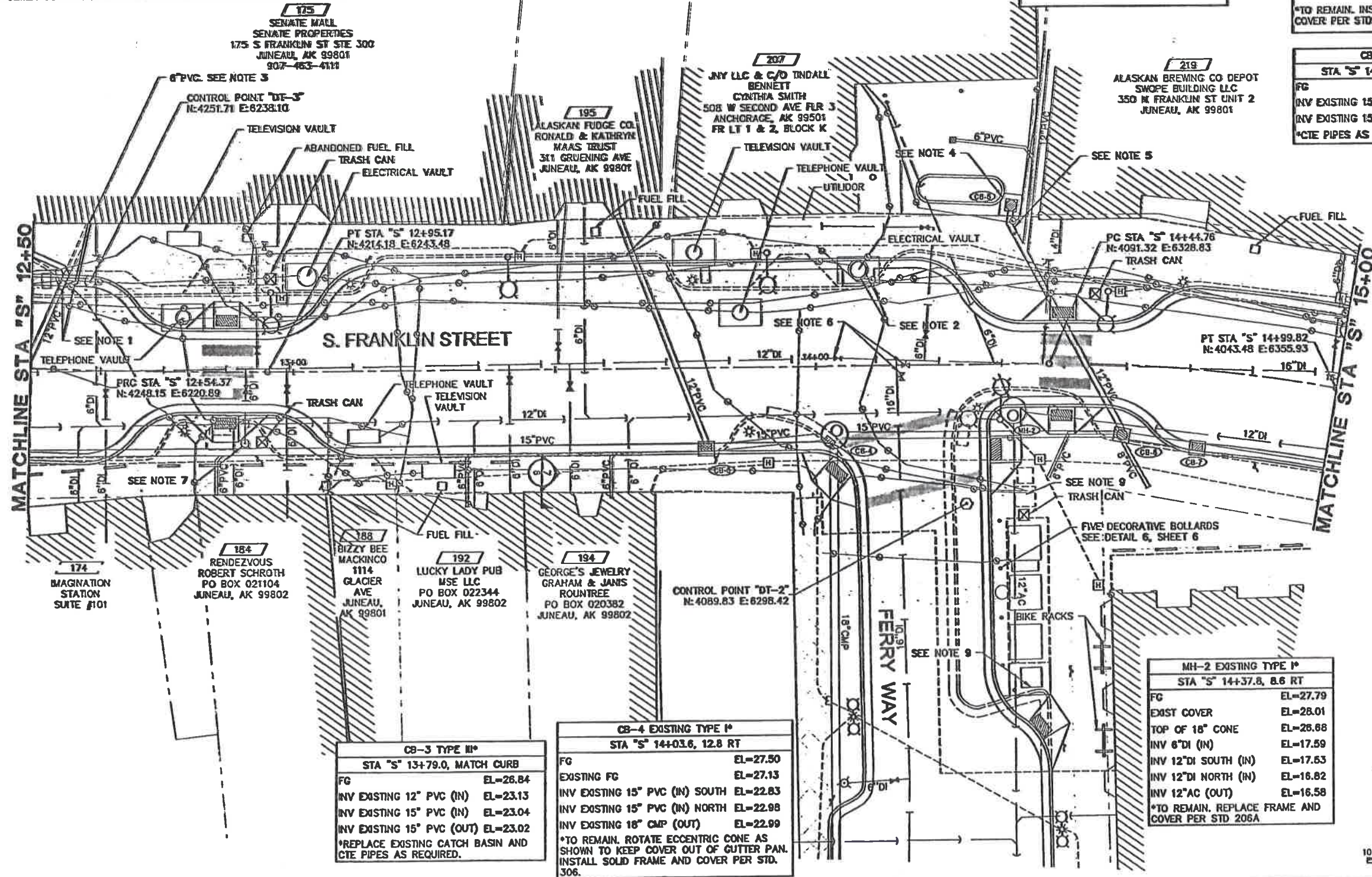
PROJECT NO: 200-18
207 South Franklin Street
Addition and Renovation

SHEET TITLE
Single Line Diagram and
Schedules

DRAWING NUMBER	SCALE
E401	AS NOTED
DATE	JUNE 4, 2019

NOTES:

1. REPLACE EXISTING 12"X6" WYE AND REVERSE SERVICE SIZES AS SHOWN.
2. REPLACE 3'-6" ELECTRICAL FRAME AND COVER WITH A 3'-0" COVER AND INSTALL CONCRETE COLLAR AS SHOWN.
3. CONNECT TO EXISTING WITH ALL ADAPTERS, ELBOWS, AND OTHER FITTINGS NECESSARY TO CONNECT TO DISSIMILAR PIPE SIZES, MATERIALS AND DEPTHS.
4. PROTECT IN PLACE OR REMOVE AND REPLACE PLANTER BLOCK WALL AS REQUIRED FOR AREA DRAIN INSTALLATION.
5. EXTEND 12" PVC TO CB-5.
6. CONNECT THE THREE MAINLINE VALVES TO TWO 18" ANODE BAGS PER C104.
7. CLEAN AND REPAINT FIRE HYDRANT AND INSTALL STORZ COUPLING.
8. REPLACE ALL WATER MAIN AND SERVICE VALVE BOXES WITHIN THE PROJECT LIMITS.
9. EXISTING TRANSFORMER TO BE RELOCATED BY AEL&P FROM STA 14+40.24 RT TO 14+40.58 RT.
10. REPLACE ALL STORM AND SEWER SERVICE CLEANOUT FRAMES AND COVERS WITHIN THE PROJECT LIMITS.



CB-6 TYPE III W/ AREA DRAIN*
STA "S" 14+37.4, 29.6 RT

FG	EL=28.24
INV 12" PVC	EL=24.86**

*INSTALL IN ACCORDANCE WITH STD 309, EXCEPT THAT OVERALL DIMENSIONS SHALL BE APPROXIMATELY 4'-0"X4'-0"

**ADJUST INVERT AS REQUIRED TO ACHIEVE 0.025 SLOPE.

CB-6 TYPE III*
STA "S" 14+59.3, 13.0 RT

FG	EL=27.77
EXISTING FG	EL=28.85
INV EXISTING 6" PVC (IN)	EL=24.81
INV EXISTING 15" PVC (IN)	EL=23.91
INV EXISTING 12" PVC (IN)	EL=23.74
INV EXISTING 15" PVC (OUT)	EL=23.50

*TO REMAIN. INSTALL SOLID FRAME AND COVER PER STD. 306.

CB-7 TYPE III*
STA "S" 14+74.3 MATCH CURB

FG	EL=27.47
INV EXISTING 15" PVC (IN)	EL=23.92
INV EXISTING 15" PVC (OUT)	EL=23.92

*CITE PIPES AS REQUIRED

MH-2 EXISTING TYPE I*
STA "S" 14+37.8, 8.6 RT

FG	EL=27.79
EXIST COVER	EL=28.01
TOP OF 18" CONE	EL=28.68
INV 6" DI (IN)	EL=17.59
INV 12" DI SOUTH (IN)	EL=17.63
INV 12" DI NORTH (IN)	EL=16.82
INV 12" AC (OUT)	EL=16.58

*TO REMAIN. REPLACE FRAME AND COVER PER STD 206A

CB-3 TYPE III*
STA "S" 13+79.0, MATCH CURB

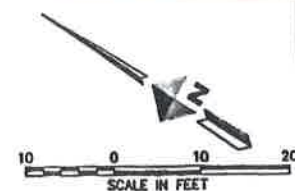
FG	EL=26.84
INV EXISTING 12" PVC (IN)	EL=23.13
INV EXISTING 15" PVC (IN)	EL=23.04
INV EXISTING 15" PVC (OUT)	EL=23.02

*REPLACE EXISTING CATCH BASIN AND CTE PIPES AS REQUIRED.

CB-4 EXISTING TYPE I*
STA "S" 14+03.6, 12.8 RT

FG	EL=27.50
EXISTING FG	EL=27.13
INV EXISTING 15" PVC (IN) SOUTH	EL=22.83
INV EXISTING 15" PVC (IN) NORTH	EL=22.98
INV EXISTING 18" CMP (OUT)	EL=22.99

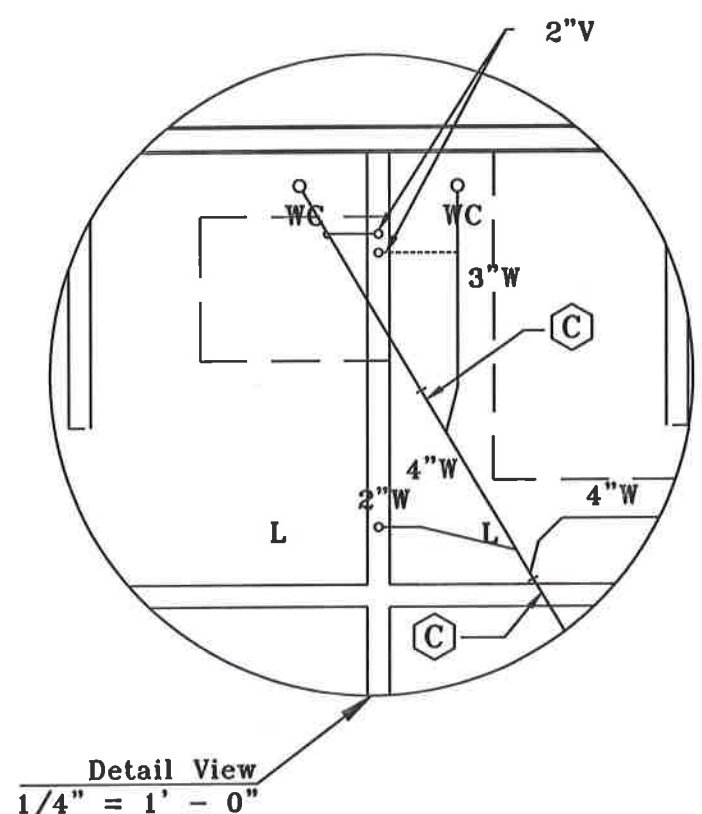
*TO REMAIN. ROTATE ECCENTRIC CONE AS SHOWN TO KEEP COVER OUT OF GUTTER PAN. INSTALL SOLID FRAME AND COVER PER STD. 306.



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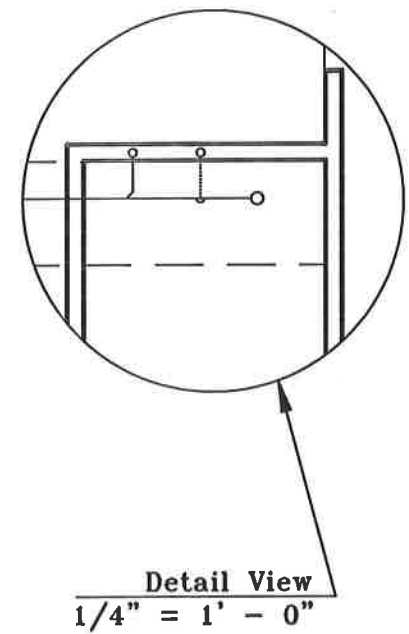
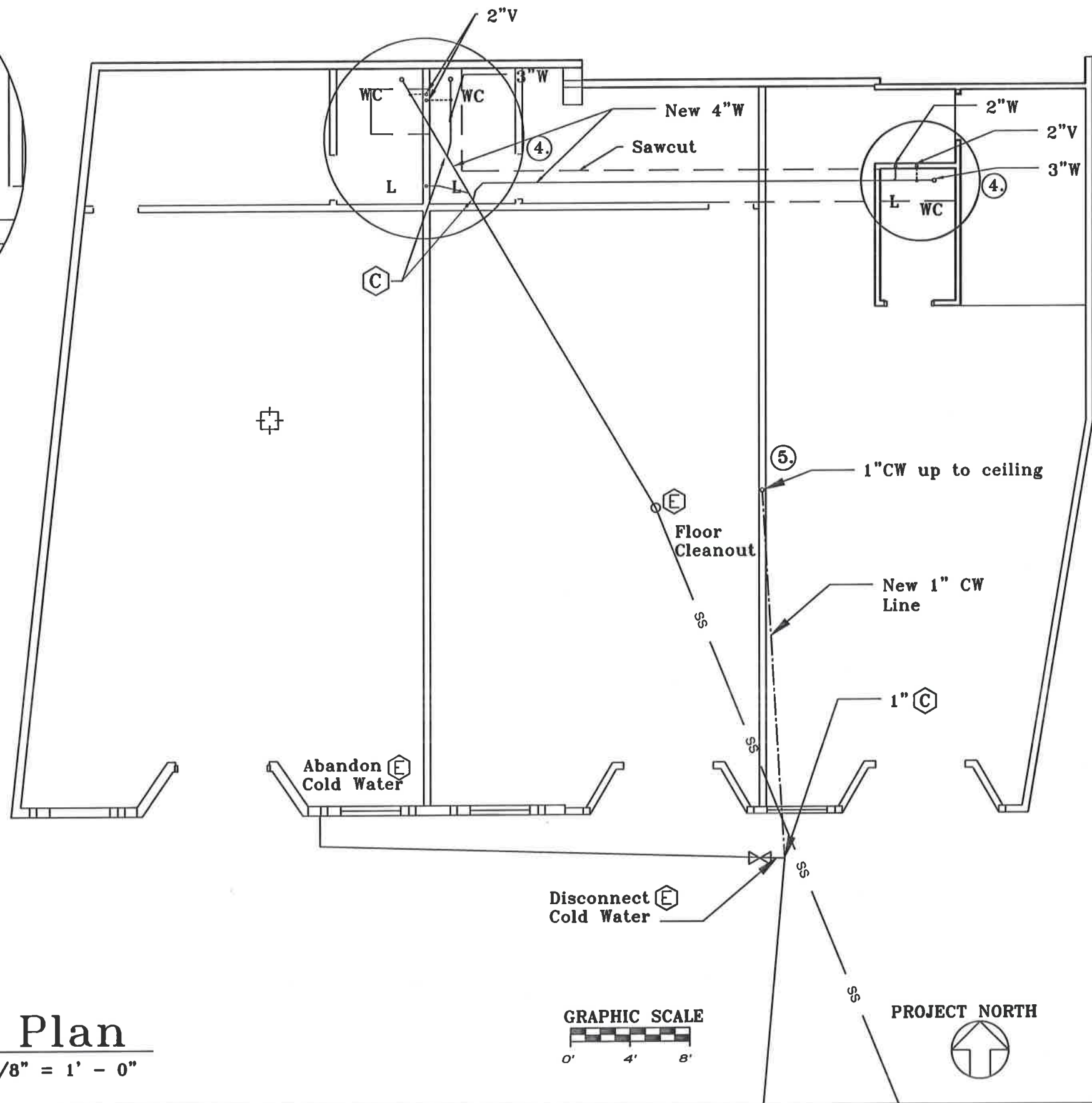
	DOWL Consulting Engineers • Land Surveyors • Construction Administration 5368 Commercial Blvd. Juneau, Alaska 99801 (907) 780-3533 Office (907) 780-3535 Fax	CITY/BOROUGH OF JUNEAU ALASKA'S CAPITAL CITY DEPARTMENT OF ENGINEERING	DOWNTOWN STREET IMPROVEMENTS - PHASE I CONTRACT NO. BE17-137	PLAN - S. FRANKLIN STREET STA "S" 12+50 TO STA "S" 15+00	SHEET NO. C.302
					18 of 39

JOB NO. J70876 DRAWN BY: STAFF DESIGNED BY: T. LOCKHART CHECKED BY: N. HOBBS DATE: OCT. 2016



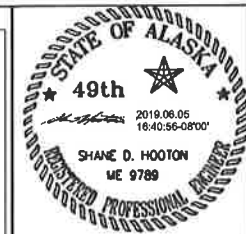
Detail View
1/4" = 1' - 0"

- Sheet Notes**
- Existing rooftop air handlers removed. Demolish and remove existing ducts, grilles, and hangars in space
 - Install sheet metal cap over existing roof curb. Provide exterior cross support to bolt new outdoor heat pump on cover. New refrigeration piping to be installed through side wall of curb with goose neck / water proof penetration.
 - Use condensate pump and install condensate piping back to lavatory.
 - New 4" waste installed to both new bathrooms by saw cutting slab.
 - Bring new 1" CW line into building and separate to 3/4" to each of the 3 separate spaces.
 - 4" diameter duct serving toilet exhaust fan through roof.



Detail View
1/4" = 1' - 0"

Underground Plan
1/8" = 1' - 0"



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**207 Franklin Street Remodel
Island Contractors
Juneau, Alaska**

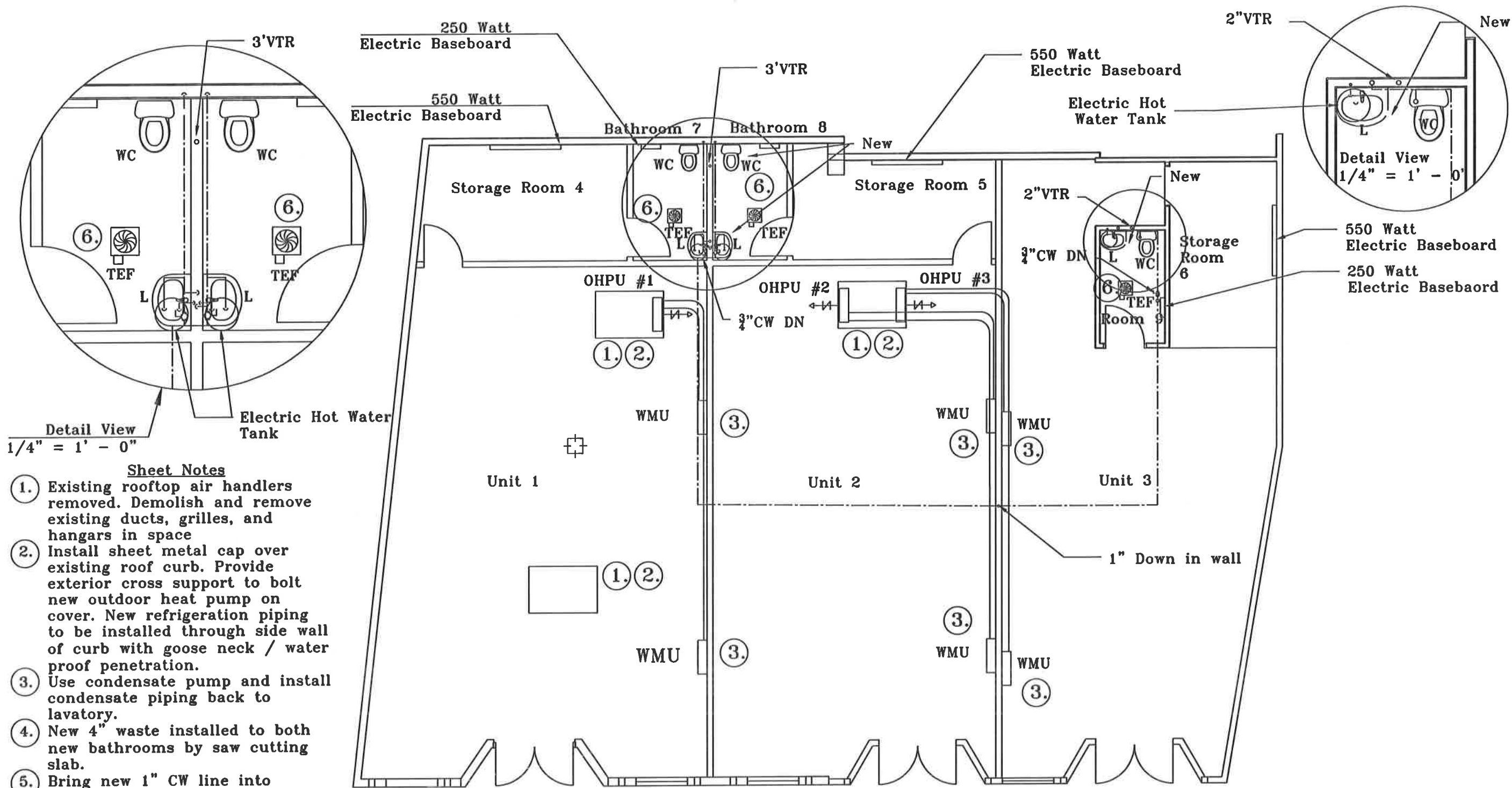
**Mechanical Plans:
Underground Plan**

REVISION	DESCRIPTION	DATE

SHEET NUMBER

M1

JOB NO. 1-672
DATE: June 2019



Detail View
1/4" = 1' - 0"

Detail View
1/4" = 1' - 0"

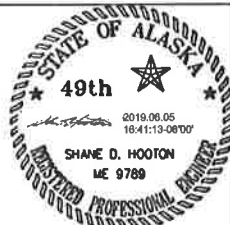
- Sheet Notes**
- Existing rooftop air handlers removed. Demolish and remove existing ducts, grilles, and hangars in space
 - Install sheet metal cap over existing roof curb. Provide exterior cross support to bolt new outdoor heat pump on cover. New refrigeration piping to be installed through side wall of curb with goose neck / water proof penetration.
 - Use condensate pump and install condensate piping back to lavatory.
 - New 4" waste installed to both new bathrooms by saw cutting slab.
 - Bring new 1" CW line into building and separate to 3/4" to each of the 3 separate spaces.
 - 4" diameter duct serving toilet exhaust fan through roof.

Floor Plan

1/8" = 1' - 0"



PROJECT NORTH



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Island Contractors
Juneau, Alaska

Mechanical Plans:
Floor Plan

REVISION	DESCRIPTION	DATE

SHEET NUMBER

M2

JOB NO. 1-672
DATE: June 2018

SPECIFICATIONS

Section 15010 – General Mechanical

A. Work Included: The scope of work includes the installation of new mechanical equipment, piping, ductwork and appurtenances described briefly below. New equipment will be installed as shown on the plans and equipment schedule. Any substitutions require design engineer approval before ordering. Submittals provided for review by mechanical engineer. Removal of the 3 existing rooftop units will be done with all associated duct and fittings. All removed equipment and appurtenances to become property of contractor. New roof curb covers will be manufactured to cap the existing roof curbs and allow mounting of the new heat pumps. 3 new outdoor heat pumps will be installed with refrigerant piping to 6 new wall mounted indoor units. New cold water main will be installed with new 4" waste to serve the 2 new bathrooms. New toilet exhaust fans with exhaust through the roof are to be installed in the bathrooms. New electric hot water tanks will be installed high above the lavatories to serve each sink. Mechanical Contractor to coordinate with Owner on any questions regarding placement and installation on any equipment. The Mechanical Contractor is to coordinate the controls with the electrical contractor. Any discrepancies found is to be brought to the attention of the Owner and engineer, coordination will be provided promptly and a logical solution recommended by either party. Coordination is essential between all disciplines. Contractor shall utilize these specifications and drawings for furnishing labor, equipment, and materials with any incidental items not shown or specified to provide a complete operational mechanical system. All work will be provided with a warranty of 1 year.

B. Codes and Regulations: All work here under shall be strictly in conformance with 2015 International Mechanical and Uniform Plumbing Code, NFPA, Title 19 and applicable codes. All electrical equipment shall bear the U.L. label.

C. Approvals: Trade names and catalog numbers of manufactured products included herein are given in an equipment schedule. The equipment to be as specified with no substitute unless approval is given by the mechanical engineer.

D. As-Built Drawings: All changes shall be noted on a set of red line prints as data for later preparation of as-built drawings. This set shall show all changes in location, dimensioned accurately from established building lines. The as-built prints shall show locations of all underground piping whether changed or not, dimensioned from building lines. The prints marked for as-built conditions shall be delivered to the mechanical engineer by the contractor.

E. Testing & Adjusting Systems: At the completion of the work, the toilet exhaust fans shall be checked for proper operation and flow, performed by the contractor, the adjustment will be done by a qualified firm with minimum 3 years experience in balancing mechanical systems. Logs will be recorded of all data and provided to the owner before final inspection.

Any problems to be coordinated with the mechanical contractor.

F. Field Measurements: All measurements shall be verified at the site. The existing conditions shall be fully observed before beginning the work here under, and the work here under executed in full coordination with the existing conditions observed. Variations apparently necessary due to existing conditions shall be made only on approval in writing by the Contracting Officer.

G. Electrical Work: Includes control wiring for electrical equipment specified herein. Wiring from equipment power inlet, or from outlets provided in the ELECTRICAL division. Such wiring provided as required whether shown on the drawings or not. Work in accordance with the ELECTRICAL specification and applicable codes and the National Electrical Code and NFPA 70. Wiring to be copper only, Low voltage control wiring in accessible areas in conduit or otherwise protected. all conduit and wiring in finished spaces shall be concealed unless approved otherwise by the Contracting Officer. Low voltage wiring to be 18 AWG minimum.

SECTION 15050 – BASIC MECHANICAL

- A. Refrigeration Tubing: Hard copper type ACR B (nitrogenized) or annealed copper ASTM 280 ACR copper tubing. Silver brazed and nitrogen purged.
- B. Domestic Water Piping: Hard-drawn copper pipe Type L, with solder or ProPress fittings. Contractor the option of installing AquaPEX in concealed spaces with appropriate fittings.
- All exposed piping is to be copper.
- C. Waste and Vent Piping: All vertical & horizontal waste to be schedule 40 ABS.
- D. System Valves: Ball valves full port seat or threaded. Swing check valves bronze swing disc, sweat or threaded.

SECTION 15250 – PIPE & DUCT INSTALLATION

- A. Pipe/Tubing: Closed cell rubber minimum 1/2 thick with self sticking edges All exterior piping covered with aluminum jacket or plastic wrap over rubber insulation to prevent damage from birds. Sealed weather tight. Vapor seal outside of insulation on piping that may run cold. All domestic water piping insulated, all refrigerant tubing insulated.
- B. Duct: All exhaust air duct within 3 feet of the exterior wall or roof to be wrapped with fiberglass insulation with foil exterior. Seams taped in a secure manner.

SECTION 15800 – AIR DISTRIBUTION

- A. Sheet Metal: All sheet metal fabricated of minimum 24 gage galvanized steel. As per SMACNA standards.
- Construction and installation per latest edition of SMACNA. Change in direction and size: Elbows with throat radius 75 percent of the dimension of the adjacent duct width as measured in the same direction, except where otherwise detailed. Miter elbows with turn vanes. Leading edge of the turn vane parallel to the leaving duct. Transitions with lengths not shorter than shown. Joints: Airtight for the purpose intended. Sealed with 2-mil aluminum foil tape, self-adhesive, similar to Fascon or Polyken. Duct supports: Ducts secured against displacement and vibration. Anchored to structural parts of the building at intervals not greater than 10 feet. Ducts suspended with 1 inch wide 18-gage galvanized steel straps. manual dampers:
- B. Toilet Exhaust Fans: Exhaust fans as specified on the equipment schedule. Rated at a volume and static pressure as shown on schedule.

MECHANICAL EQUIPMENT SCHEDULE

EQUIPMENT	DESIGN MANUFACTURER	MODEL	FEATURES/CONTROLS/OPTIONS
Outdoor Heat Pump Unit (ODHPU #1, ODHPU #2, ODHPU #3)	Daikin	MODEL 3MXL240MVJU	Outdoor heating & cooling unit, 2-ton 208-230 volt, single phase, 19 amps, 20 amps MCA. low ambient operation to -13°F with wind baffle kit. Installed on Structural roof curb for bolting unit down. Install piping and conduit in sidewall penetration to the existing curb with gooseneck or other waterproof penetration.
Indoor Heat Pump Wall Mount (WMU)	Daikin	MODEL FTXS12LVJU	Indoor heating & cooling wall mounted units, 438-307 cfm, 208-230 volt, single phase, 0.6 running amps, install with provided thermostat, provide with condensate pump. Indirect drain to lavatory.
Toilet Exhaust Fans (TEF)	Panasonic	FV-05-11VK2	Panasonic whisper green select exhaust fan, built in speed selector, provide Motion Sensor FV-MSVK1 & Multi-speed with Time delay, 50 cfm on motion sensor, operate 30 cfm for an additional 20 minutes. Single-phase, 120 volt, 0.1 amps.
Electric Hot Water Tank	Rheem	6 Gallon XE06PD6PU20U0	6 gallon electric water heater, 120 volt, 16.7 amps, 2000 watt element. Provided with drain pan, p&I. Install on platform above sink. Drain pan and relief to sump. Connect 3/4" cold to existing 3/4" branch and hot water to both sinks.



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Juneau, Alaska

Mechanical Plans:
Specifications & Schedule

REVISION	DESCRIPTION	DATE

SHEET NUMBER

M3

JOB NO. 1-672
DATE June 2019



GENERAL NOTES

ABBREVIATIONS

CRITERIA

CODE: 2012 EDITION OF INTERNATIONAL BUILDING CODE (IBC) AS AMENDED BY THE STATE OF ALASKA AND CITY AND BOROUGH OF JUNEAU

STRUCTURAL RISK CATEGORY: II

LOADS:

SNOW

GROUND SNOW LOAD: 70 PSF
THERMAL COEFFICIENT $C_t = 1.0$, (NON VENTED ROOF)
EXPOSURE COEFFICIENT, $C_e = 0.9$ (TERRAIN CATEGORY D, PARTIALLY EXPOSED)
IMPORTANCE, $I_s = 1.0$ (OCCUPANCY CATEGORY II)
FLAT ROOF SNOW AT OFFICE: 50 PSF
UN BALANCED AND DRIFT SNOW PER ASCE 7-2010

WIND LOADS:

ULTIMATE WIND SPEED: 133 MPH
EXPOSURE: D; $K_z = 1.03$ $K_{zt} = 1.0$; $K_d = 0.85$
ULTIMATE STATIC PRESSURE, $q_u = 39.6$

SEISMIC LOADS

SITE CLASS: D
 $S_{ds} = 0.53$ g; $S_{d1} = 0.36$ g
DESIGN CATEGORY D; IMPORTANCE = 1.0
 $R = 6.5$ (LIGHT FRAMED WOOD WITH PLYWOOD PANELS)
 $C_s = 0.075$ g

FOUNDATION:

FOUNDATION HAS BEEN DESIGNED WITH AN ALLOWABLE BEARING PRESSURE OF 2,000 PSF BASED UPON THE ANTICIPATION OF ENCOUNTERING TYPE 4 SOILS (SAND, SILTY SAND, CLAYEY SAND, SILTY GRAVEL OR CLAYEY GRAVEL) AS DEFINED IN TABLE 11806.2 OF THE INTERNATIONAL BUILDING CODE. CONTRACTOR SHALL VERIFY CONDITIONS AT THE LIMIT OF EXCAVATION AND REPORT TO THE ENGINEER.

STRUCTURAL MATERIALS AND CONSTRUCTION

BASE COURSE

BASE COURSE SHALL CONFORM TO GRADATION C1 OR D1 OF SECTION 703-2.03 OF ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES STANDARD SPECIFICATION FOR HIGHWAY CONSTRUCTION, 2015 EDITION. PLACE BASE COURSE IN ONE LIFT AND COMPACT WITH A MINIMUM LEVEL OF EFFORT OF 6 PASSESS WITH A VIBRATORY DOUBLE DRUM ROLLER OR PLATE COMPACTOR WITH A MINIMUM RATING OF 10,000 POUNDS.

CONCRETE

MIXING, PLACING, AND CURING OF CONCRETE AND SELECTION OF MATERIALS SHALL BE IN ACCORDANCE WITH THE IBC. PROPORTIONS OF AGGREGATE, CEMENT AND WATER SHALL BE SUCH TO RESULT IN A DENSE WORKABLE MIX WHICH CAN BE PLACED WITHOUT EXCESS SURFACE WATER. A MIX DESIGN, WITH RECORDED CYLINDER TEST RESULTS SHALL BE SUBMITTED FOR REVIEW AND APPROVAL PRIOR TO MOBILIZING CONCRETE EQUIPMENT TO THE SITE. MAXIMUM SLUMP SHALL BE 4 INCHES PRIOR TO ADDING PLASTICISERS OR WATER REDUCERS ON SITE. 28-DAY COMPRESSIVE STRENGTH (f_c') SHALL BE 3,000 PSI. CONCRETE SHALL BE ENTRAINED WITH AIR SO THAT AIR CONTENT WILL BE BETWEEN 5 AND 8 PERCENT.

CONCRETE REINFORCING SHALL COMPLY WITH ASTM A615 GRADE 60. LAP REINFORCING STEEL 50 BAR DIAMETERS UNLESS OTHERWISE NOTED. AT CORNERS ADD CORNER BARS AT EACH HORIZONTAL BAR WITH LEG LENGTH AT LEAST 50 DIAMETER LAP LENGTH OR EXTEND THE HORIZONTAL BARS WITH A 90 DEGREE HOOK WITH A 50 DIAMETER LAP LENGTH.

REINFORCING SHALL BE SUPPORTED AND SECURED IN PLACE PRIOR TO CONCRETE PLACEMENT USING WELL-CURED CONCRETE BLOCKS OR APPROVED STEEL CHAIRS. WELDING OF REINFORCING IS PROHIBITED UNLESS SPECIFICALLY NOTED.

PROVIDE MINIMUM COVER AT REINFORCING BARS AS FOLLOWS: CAST AGAINST EARTH 3 INCHES, EXPOSED TO EARTH OR WEATHER 2 INCHES AND SLABS ON GRADE 1.5 INCHES.

SHEATHING

SHEATHING SHALL BE PLYWOOD AND SHALL CONFORM WITH APA PS 1, EXPOSURE 1 SHEATHING GRADE CD OR OF A BETTER GRADE.

TIMBER FRAMING

SPECIES AND GRADES: UNLESS NOTED OTHERWISE, ALL TIMBER 2 TO 4 INCHES THICK SHALL BE HEM FIR NO 2 GRADE, TIMBER 5 INCHES AND GREATER IN THICKNESS SHALL BE HEM FIR NO 1 GRADE OR OF A BETTER SPECIES AND GRADE, VISUALLY GRADED IN ACCORDANCE WITH THE WESTERN WOODS PRODUCTS ASSOCIATION, LATEST GRADING RULES. ALL SAWN FRAMING SHALL BE STAMPED WITH LUMBER SPECIES AND GRADE.

TIMBER SHALL BE FABRICATED AND JOINED TO CREATE SNUG TIGHT CONNECTIONS UNLESS NOTED OTHERWISE. BOLTS SHALL CONFORM TO ASTM A307 AND BE GALVANIZED. HOLES FOR BOLTS SHALL BE NO GREATER THAN THE BOLT DIAMETER PLUS 1/8 INCH. ALL BOLTS WITH HEAD OR NUT IN CONTACT WITH TIMBER SHALL BE INSTALLED WITH GALVANIZED WASHERS UNDER THE HEAD AND NUTS. ALL NAILED CONNECTIONS SHALL BE CONNECTED USING GALVANIZED BOX NAILS.

PRE-FABRICATED HANGERS AND CONNECTORS NOTED IN THE PLANS ARE THE PRODUCT OF THE SIMPSON STRONG-TIE COMPANY. HANGERS AND CONNECTORS MADE BY OTHER MANUFACTURER'S MAY BE CONSIDERED FOR SUBSTITUTION IF THE HANGER OR CONNECTOR HAS EQUAL OR GREATER LOAD CAPACITY, EQUAL OR GREATER CORROSION RESISTANCE AND BE OF AN APPROPRIATE EQUAL CONFIGURATION. SUBMIT ICBO ER FOR REVIEW AND APPROVAL WITH ANY REQUEST FOR SUBSTITUTION.

TIMBER AND LUMBER NOTED AS TREATED SHALL BE PRESSURE PRESERVATIVE TREATED IN ACCORDANCE WITH AWPA UC3B FOR IN GROUND CONTACT USING A PRESERVATIVE APPROVED BY THE ENGINEER. FIELD TREAT ALL DAMAGE TO PRESSURE TREATED ENDS AND SURFACES IN ACCORDANCE WITH AWPA M-4 USING 2 COATS OF COPPER NAPHTHANATE SOLUTION AT DAMAGE, CUTS, HOLES, CHAMFERS, DAPS, COUNTERSINKS, ETC.

I JOISTS

I JOISTS SHALL CONSIST OF SOLID TIMBER OR LAMINATED VENEER LUMBER FLANGES AND A PLYWOOD WEB. I JOISTS SHALL BE AS MANUFACTURED BY THE RED BUILT COMPANY AND BE THE TYPE INDICATED ON THE PLANS OR OF APPROVED EQUAL. IF ALTERNATE I JOIST IS PROPOSED THE SUBSTITUTION SHALL HAVE THE SAME CHARACTERISTICS, STIFFNESS AND LOAD CAPACITY OF THE MAKE AND MODEL INDICATED. ANY REQUEST FOR SUBSTITUTION SHALL INCLUDE AN ICBO EVALUATION REPORT. HANDLE AND STORE IN ACCORDANCE WITH MANUFACTURER INSTRUCTIONS.

GLUED LAMINATED TIMBER BEAMS SHALL BE MADE OF DOUGLAS FIR AND BE COMBINATION 24F-V4 FOR SIMPLE SPAN BEAMS AND 24F-V8 FOR CONTINUOUS OR CANTILEVERED SPANS.

LAMINATED VENEER LUMBER

LAMINATED VENEER LUMBER SHALL BE REDBUILT COMPANY RED LAM LVL OR APPROVED EQUAL. CHARACTERISTICS AND ALLOWABLE STRESSES INCLUDE THE FOLLOWING:

MODULUS OF ELASTICITY:	$E = 2.0 \times 10^6$ PSI
ALLOWABLE FIBER BENDING,	$F_b = 2,900$ PSI
ALLOWABLE SHEAR	$F_v = 285$ PSI
ALLOWABLE COMPRESSION PERPENDICULAR TO THE GRAIN	$F_{cperp} = 725$ PSI
ALLOWABLE COMPRESSION PARALLEL TO GRAIN	$F_c = 2750$ PSI

HANDLE AND STORE IN ACCORDANCE WITH MANUFACTURER'S INSTRUCTIONS

ACI	AMERICAN CONCRETE INSTITUTE
AITC	AMERICAN INSTITUTE OF TIMBER CONSTRUCTION
APA	AMERICAN PLYWOOD ASSOCIATION
ASCE	AMERICAN SOCIETY OF CIVIL ENGINEERS
ASTM	AMERICAN SOCIETY FOR TESTING AND MATERIALS
AWPA	AMERICAN WOOD PRESERVERS ASSOCIATION
IBC	INTERNATIONAL BUILDING CODE
ICBO	INTERNATIONAL CONFERENCE OF BUILDING OFFICIALS
MAX	MAXIMUM
MIN	MINIMUM
NO	NUMBER
OC	ON CENTER
PS	PRODUCT STANDARD
PSF	POUNDS PER SQUARE FOOT
PSI	POUNDS PER SQUARE INCH
STD	STANDARD
TYP	TYPICAL



REVISIONS

REV.	DATE	DESCRIPTION	DWN.	CKD.	APP.



9360 Glacier Highway Ste 100
Juneau, Alaska 99801
Phone: 907-586-2093
Fax: 907-586-2099
www.pndengineers.com

DESIGN: CMG CHECKED: CMG
DRAWN: DRD APPROVED: _____

SCALE:



207 FRANKLIN ST REMODEL
ISLAND CONTRACTORS

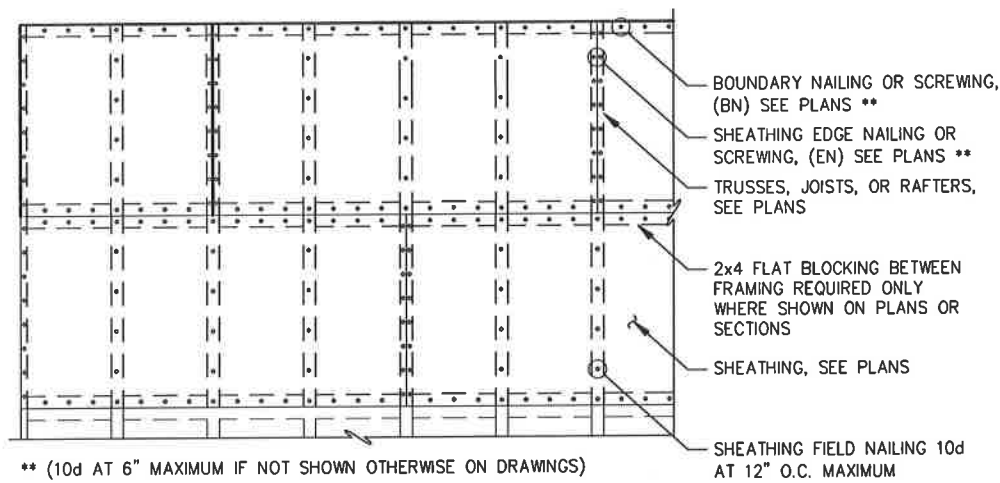
SHEET TITLE:

STRUCTURAL GENERAL NOTES

S001

PND PROJECT NO.: 192026

C.A.N. NO.: AECC250



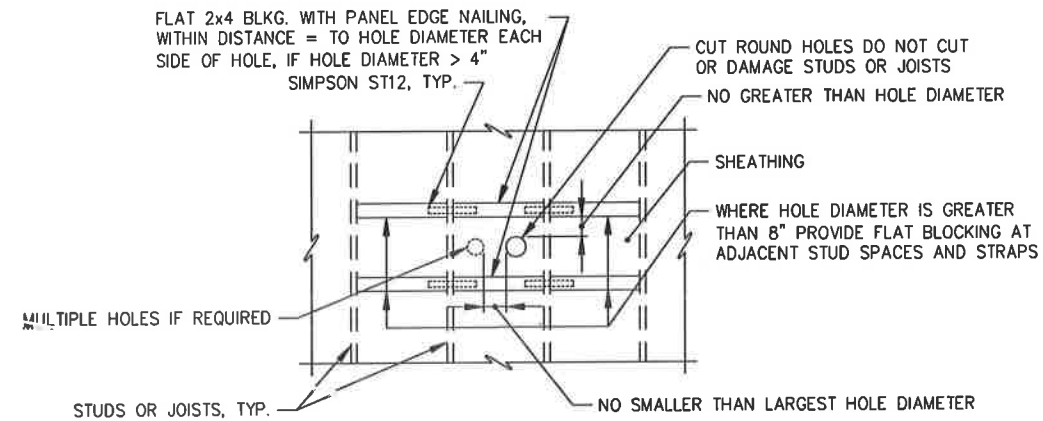
** (10d AT 6" MAXIMUM IF NOT SHOWN OTHERWISE ON DRAWINGS)

PLAN

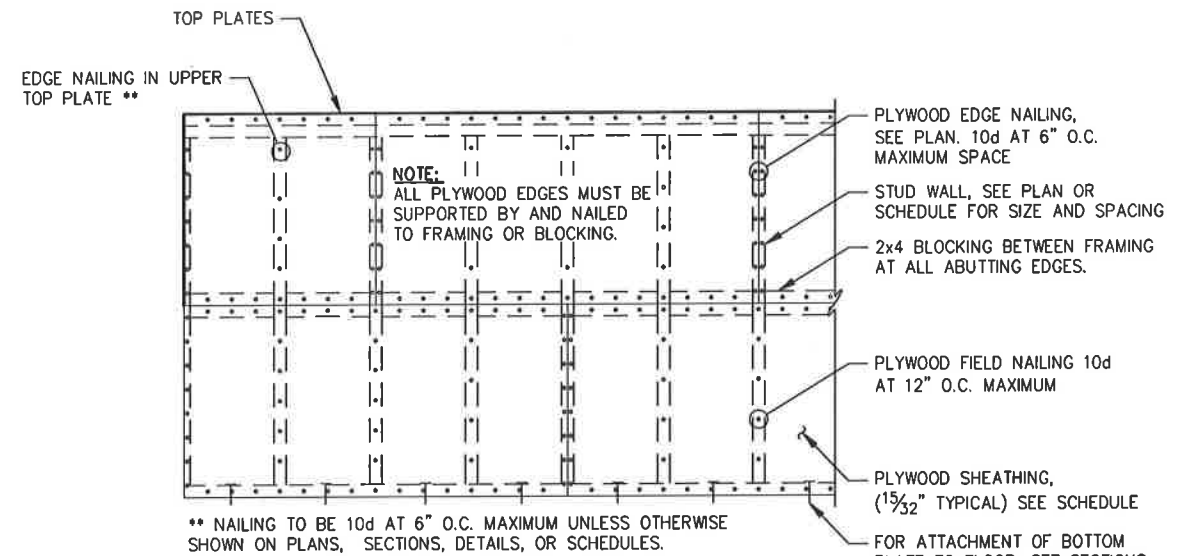
NOTES:

1. STAGGER SHEATHING JOINTS A MINIMUM OF TWO JOIST SPACES
2. NAILS AT ABUTTING SHEATHING EDGES MUST PENETRATE THE SAME PIECE OF FRAMING OR BLOCKING.

A TYPICAL PLYWOOD DIAPHRAGM FOR ROOF DETAIL



C TYPICAL SHEAR WALL AND DIAPHRAGM PENETRATION DETAIL



** NAILING TO BE 10d AT 6" O.C. MAXIMUM UNLESS OTHERWISE SHOWN ON PLANS, SECTIONS, DETAILS, OR SCHEDULES.

ELEVATION

NOTES:

1. PLYWOOD IS SHOWN HORIZONTAL, IT MAY ALSO BE POSITIONED VERTICAL.
2. STAGGER PLYWOOD JOINTS A MINIMUM OF TWO STUD SPACES.
3. NAILS AT ABUTTING PLYWOOD EDGES MUST PENETRATE THE SAME PIECE OF FRAMING OR BLOCKING.
4. SEE TYPICAL WALL ELEVATIONS AND PLANS FOR HOLD DOWNS, STRAPS AND ADDITIONAL BLOCKING.

B TYPICAL SHEAR WALL DETAIL



REVISIONS					
REV.	DATE	DESCRIPTION	DWN.	CKD.	APP.

P | N | D
ENGINEERS, INC.

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www.pndengineers.com

DESIGN: CMG CHECKED: CMG
DRAWN: DRD APPROVED: _____

SCALE:



**207 FRANKLIN ST REMODEL
ISLAND CONTRACTORS**

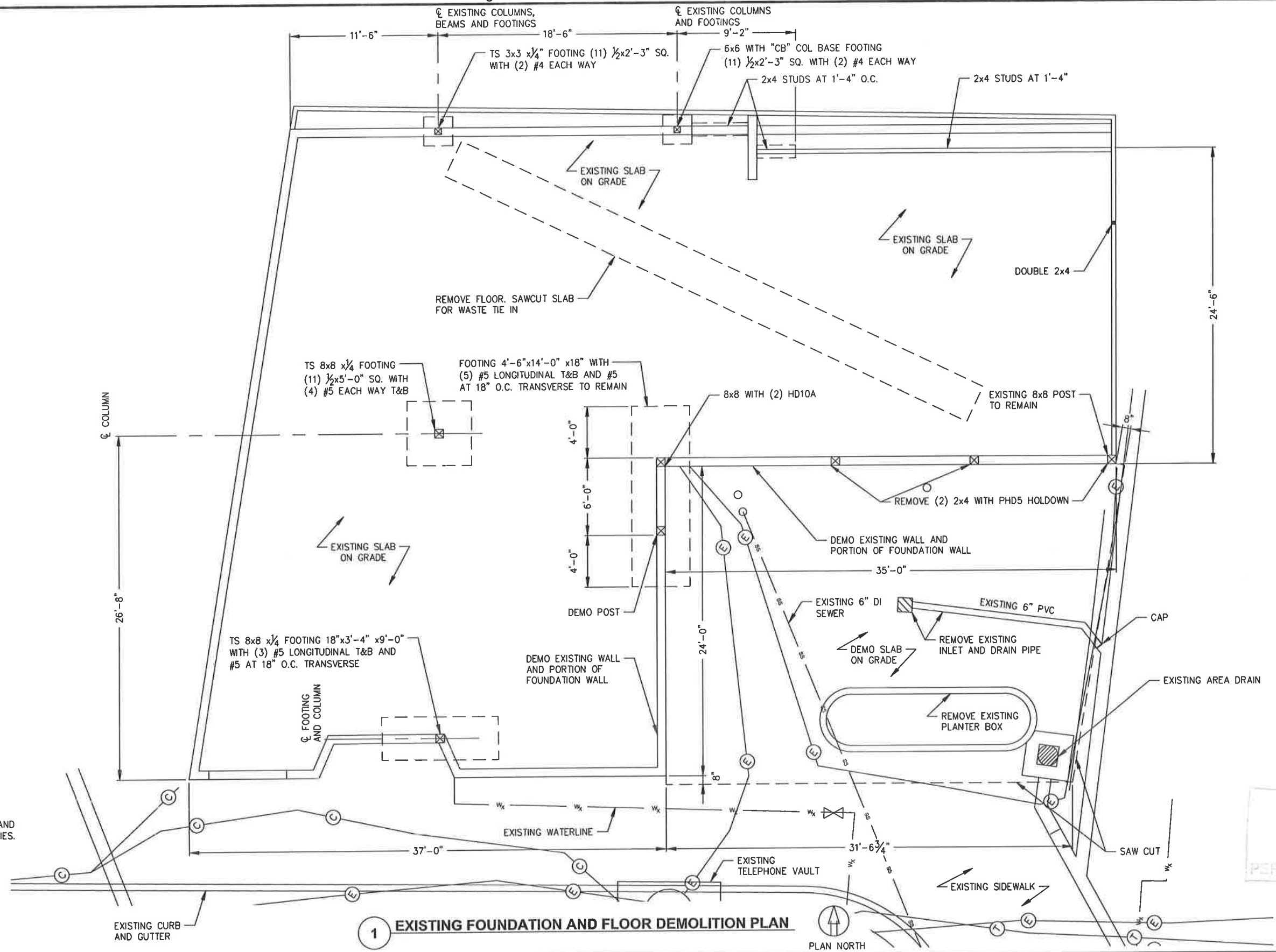
SHEET TITLE:

TYPICAL DETAILS

S002

PND PROJECT NO.: 192026

C.A.N. NO.: AECC250



NOTE:
1. CALL "DIAL BEFORE YOU DIG" AND LOCATE EXISTING BURIED UTILITIES.

RECEIVED
AUG 13 2019
PERMIT CENTER/CD

1 EXISTING FOUNDATION AND FLOOR DEMOLITION PLAN

REVISIONS

REV.	DATE	DESCRIPTION	DWN.	CKD.	APP.

P | N | D
ENGINEERS, INC.

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Juneau, Alaska 99801
Phone: 907-586-2093
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DESIGN: CMG CHECKED: CMG
DRAWN: DRD APPROVED: _____

SCALE: SCALE IN FEET
0 4 8 FT

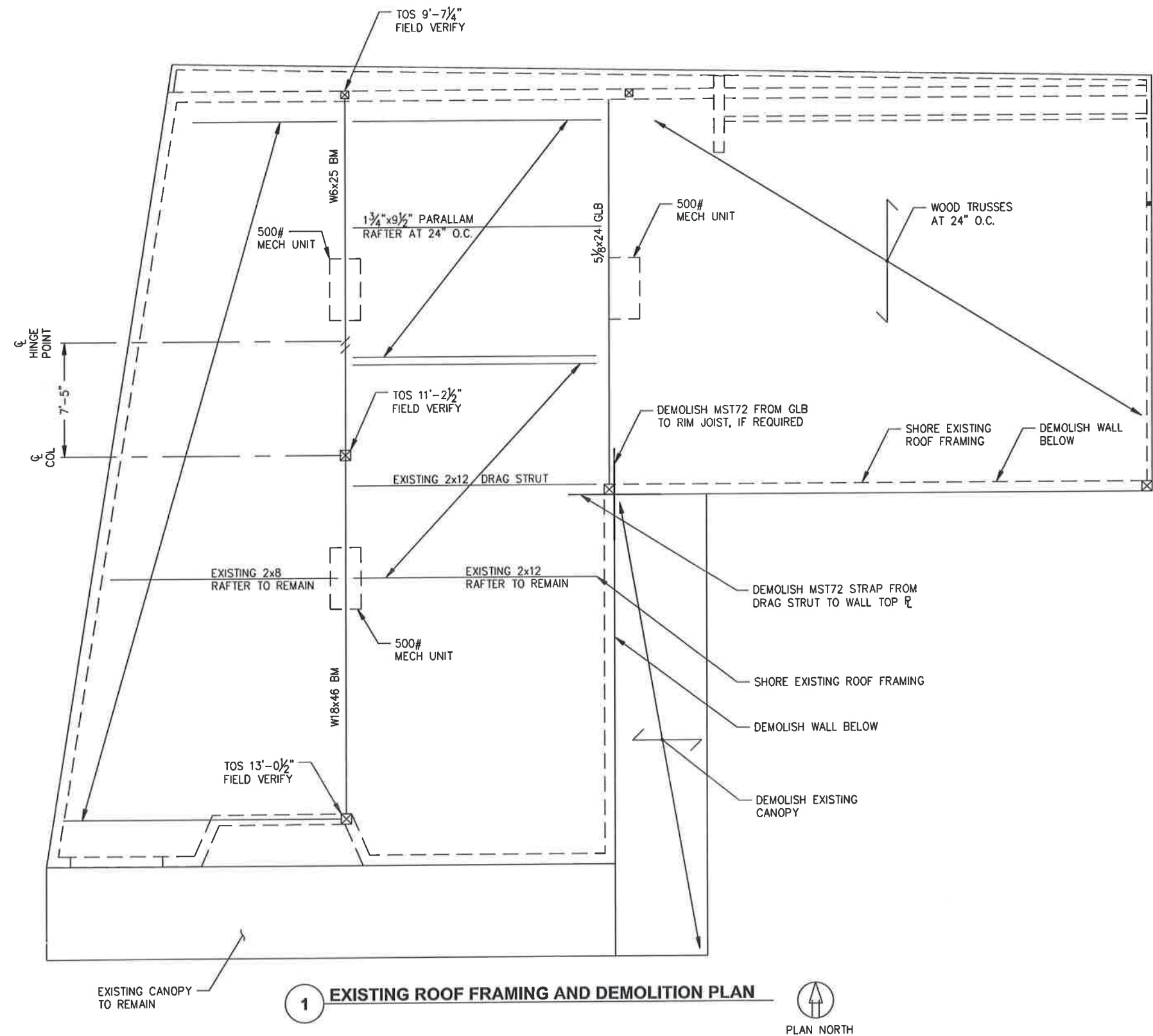


**207 FRANKLIN ST REMODEL
ISLAND CONTRACTORS**

SHEET TITLE:
**EXISTING FOUNDATION AND
FLOOR DEMOLITION PLAN**

PND PROJECT NO.: 192026 C.A.N. NO.: AECC250

S100



RECEIVED
AUG 10 2019
PERMIT CENTER

1 EXISTING ROOF FRAMING AND DEMOLITION PLAN

REVISIONS				
REV.	DATE	DESCRIPTION	DWN.	CKD.

PND

ENGINEERS, INC.

9360 Glacier Highway Ste 100
Juneau, Alaska 99801
Phone: 907-586-2093
Fax: 907-586-2099
www.pndengineers.com

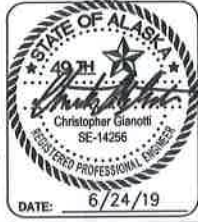
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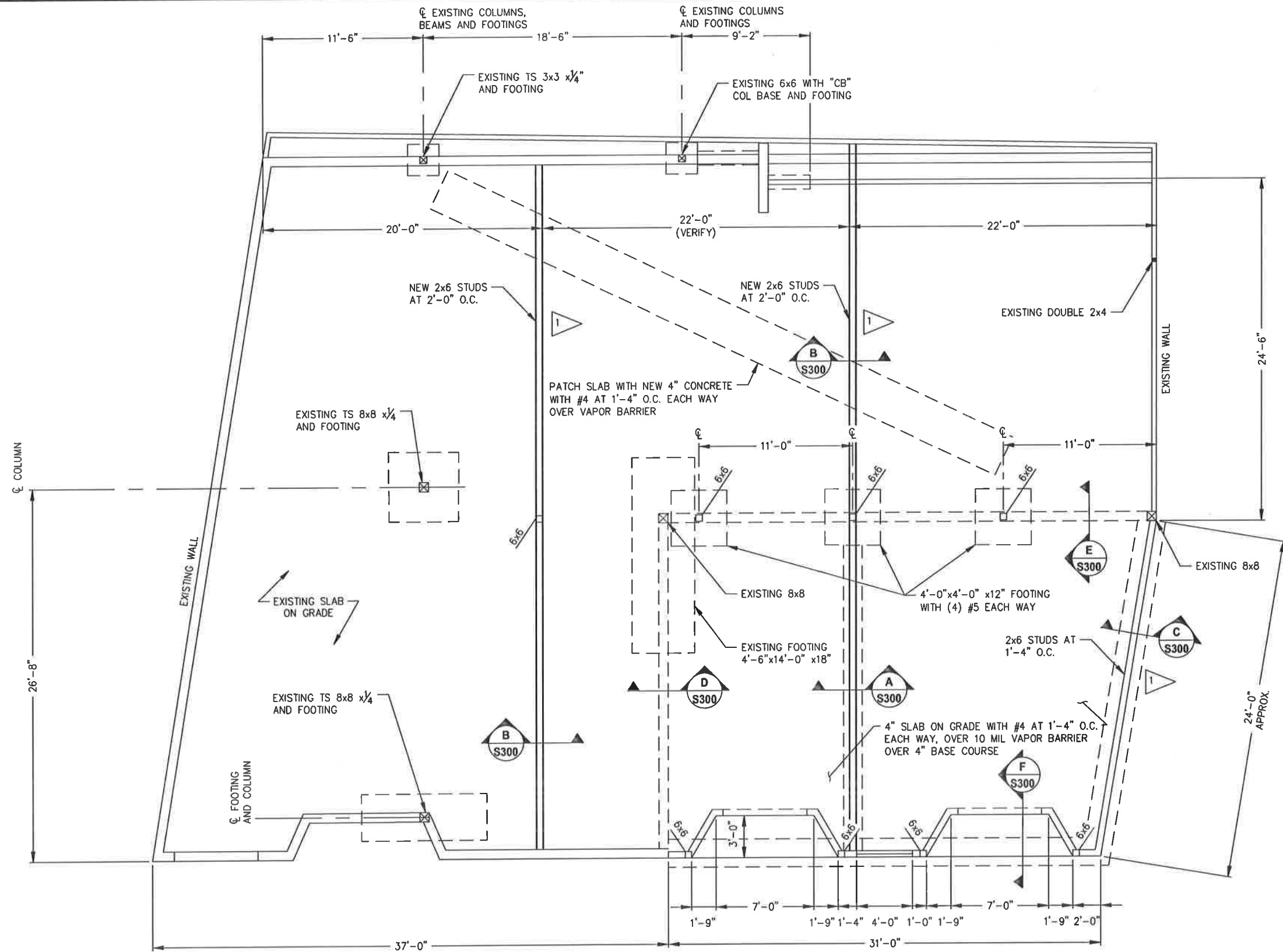


207 FRANKLIN ST REMODEL
ISLAND CONTRACTORS

SHEET TITLE:
EXISTING ROOF FRAMING
AND DEMOLITION PLAN

PND PROJECT NO.: 192026 C.A.N. NO.: AECC250

S101



1 FOUNDATION AND FLOOR FRAMING PLAN



- NOTES:**
1. # INDICATES SHEAR WALL TYPE. SEE SCHEDULE AND TYPICAL DETAIL.



REVISIONS				
REV.	DATE	DESCRIPTION	DWN.	CKD.

PND
ENGINEERS, INC.

9360 Glacier Highway Ste 100
Juneau, Alaska 99801
Phone: 907-586-2093
Fax: 907-586-2099
www.pndengineers.com

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APPROVED:

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207 FRANKLIN ST REMODEL
ISLAND CONTRACTORS

SHEET TITLE:
FOUNDATION AND FLOOR FRAMING PLAN

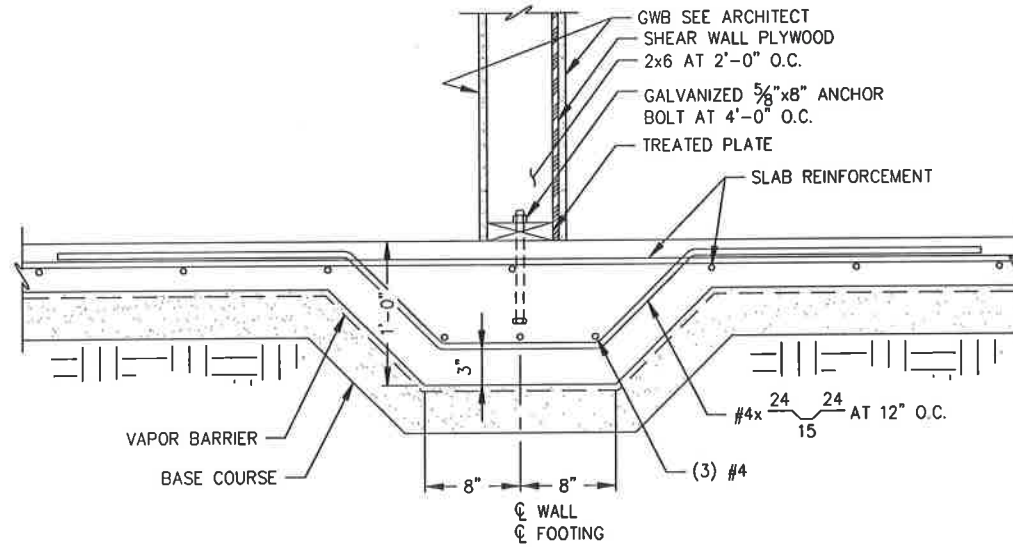
PND PROJECT NO.: 192026
C.A.N. NO.: AECC250

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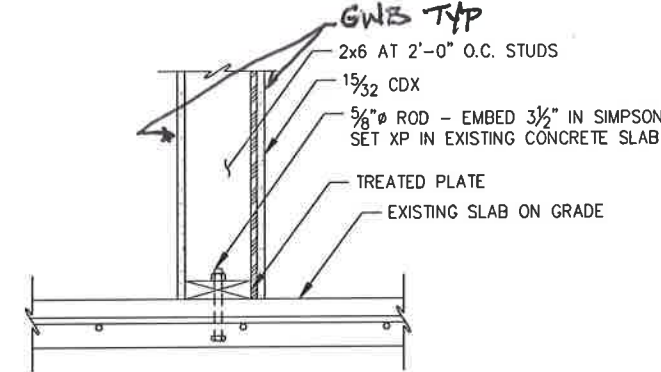


P N D ENGINEERS, INC.		9360 Glacier Highway Ste 100 Juneau, Alaska 99801 Phone: 907-586-2093 Fax: 907-586-2099 www.pndengineers.com
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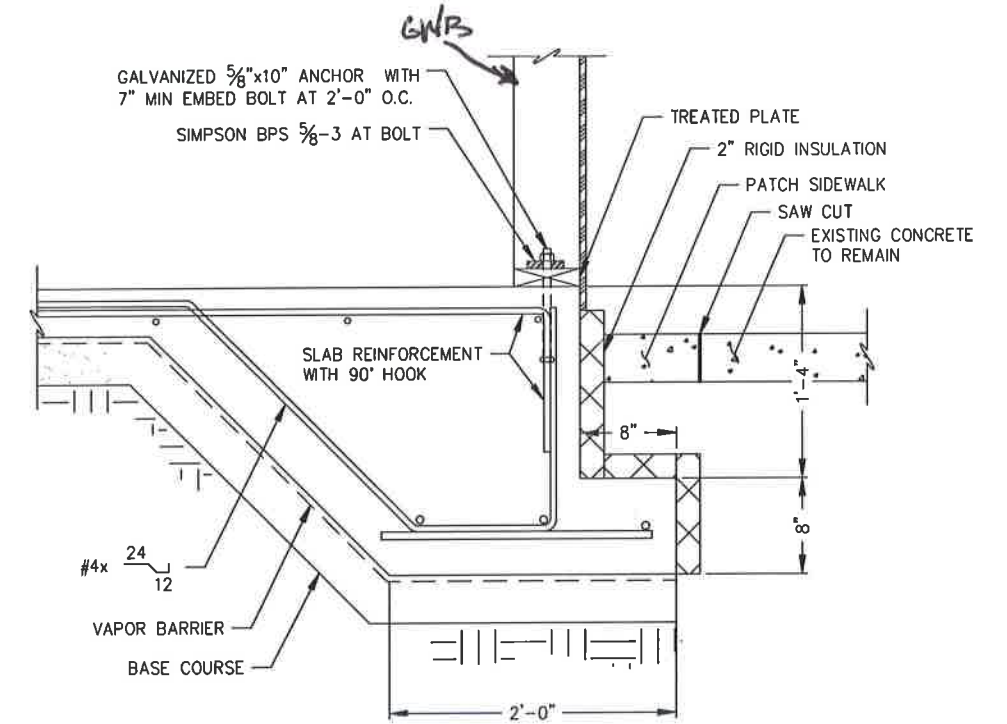




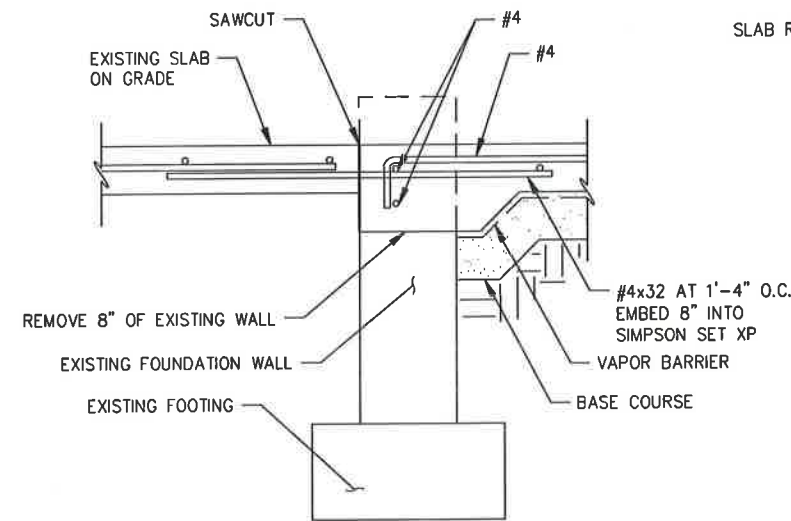
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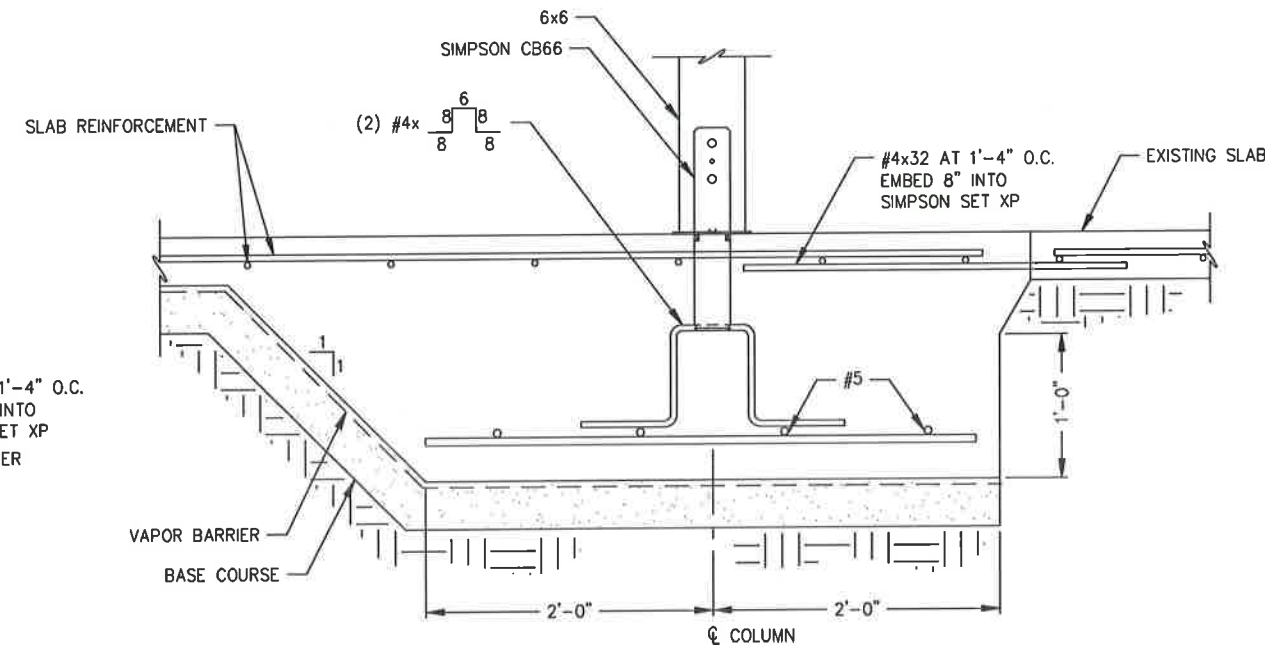
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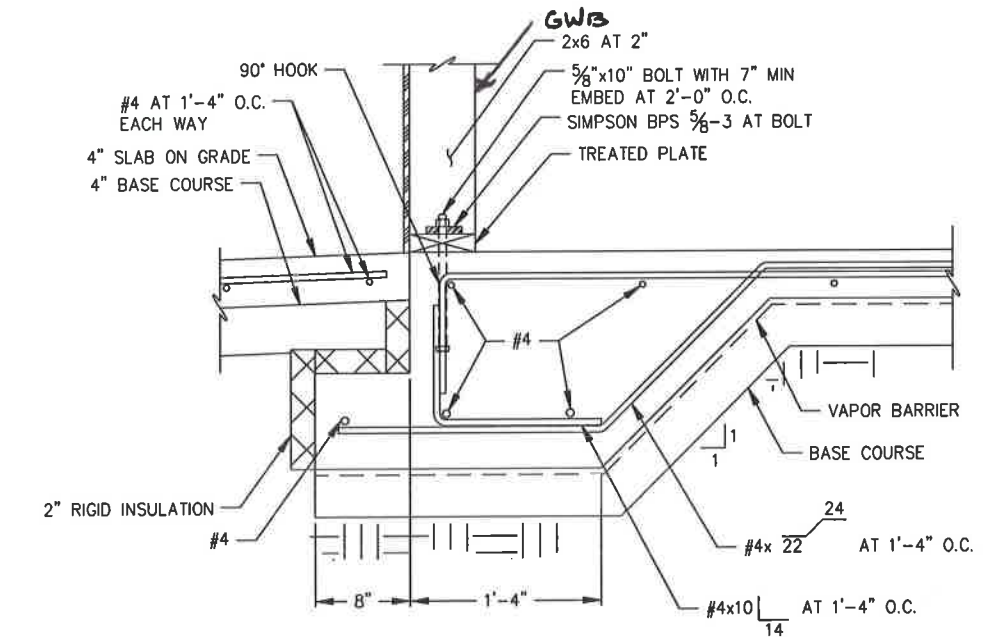
C FOUNDATION DETAIL



D SECTION AT EDGE OF NEW SLAB



E POST FOOTING DETAIL



F FRONT WALL FOUNDATION



REVISIONS				
REV.	DATE	DESCRIPTION	DWN.	CKD.

PND ENGINEERS, INC.

9360 Glacier Highway Ste 100
Juneau, Alaska 99801
Phone: 907-586-2093
Fax: 907-586-2099
www.pndengineers.com

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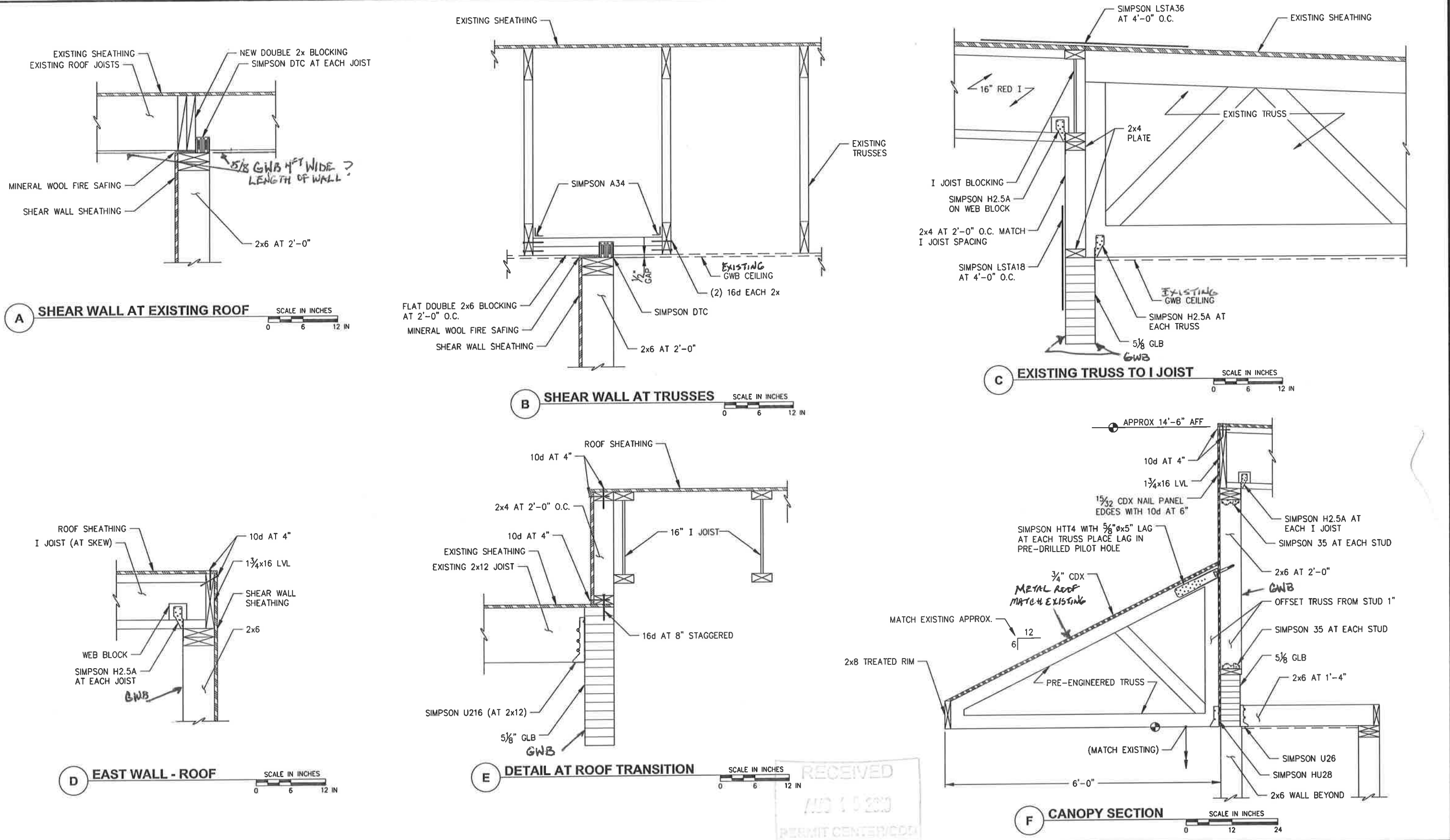


**207 FRANKLIN ST REMODEL
ISLAND CONTRACTORS**

SHEET TITLE: **DETAILS**

PND PROJECT NO.: 192026 C.A.N. NO.: AECC250

S300



REVISIONS

REV.	DATE	DESCRIPTION	DWN.	CKD.	APP.

PND
ENGINEERS, INC.

9360 Glacier Highway Ste 100
Juneau, Alaska 99801
Phone: 907-586-2093
Fax: 907-586-2099
www.pndengineers.com

DESIGN: CMG CHECKED: CMG
DRAWN: DRD APPROVED: _____

SCALE: AS SHOWN



**207 FRANKLIN ST REMODEL
ISLAND CONTRACTORS**

SHEET TITLE:

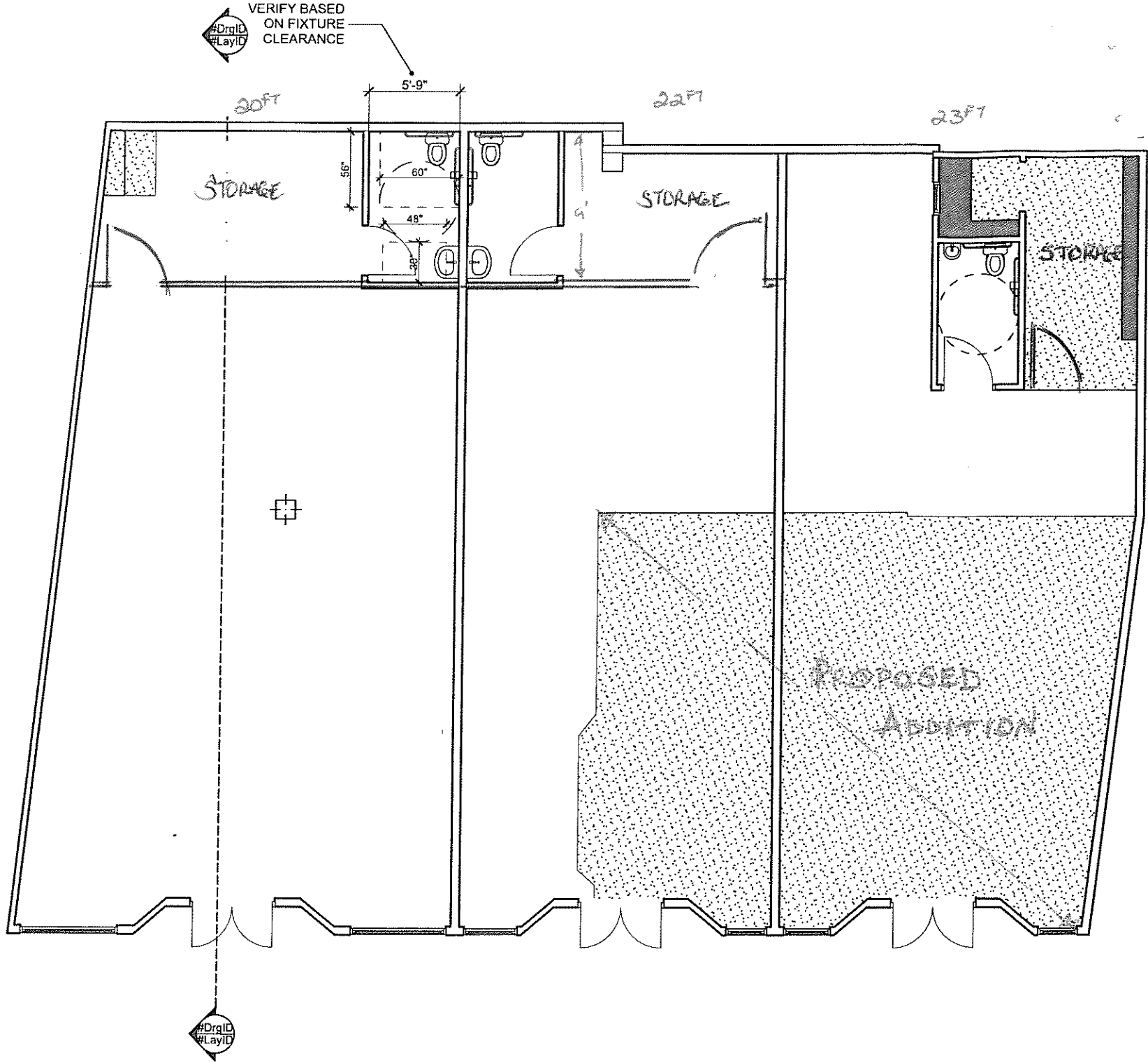
DETAILS

S301

PND PROJECT NO.: 192026

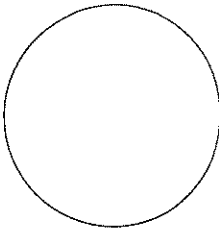
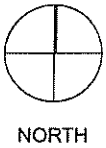
C.A.N. NO.: AECC250

DATE: 6/24/19



FIRST FLOOR PLAN

SCALE: 1/8" = 1'-0"



W
N
NorthWind
Architects LLC
126 Seward St
Juneau, AK 99801
Ph #907.586.6150
www.northwindarch.com

1" ACTUAL
IF THE ABOVE DIMENSION DOES NOT MEASURE ONE INCH (1") EXACTLY, THIS DRAWING WILL HAVE BEEN ENLARGED OR REDUCED, AFFECTING ALL LABELED SCALES.

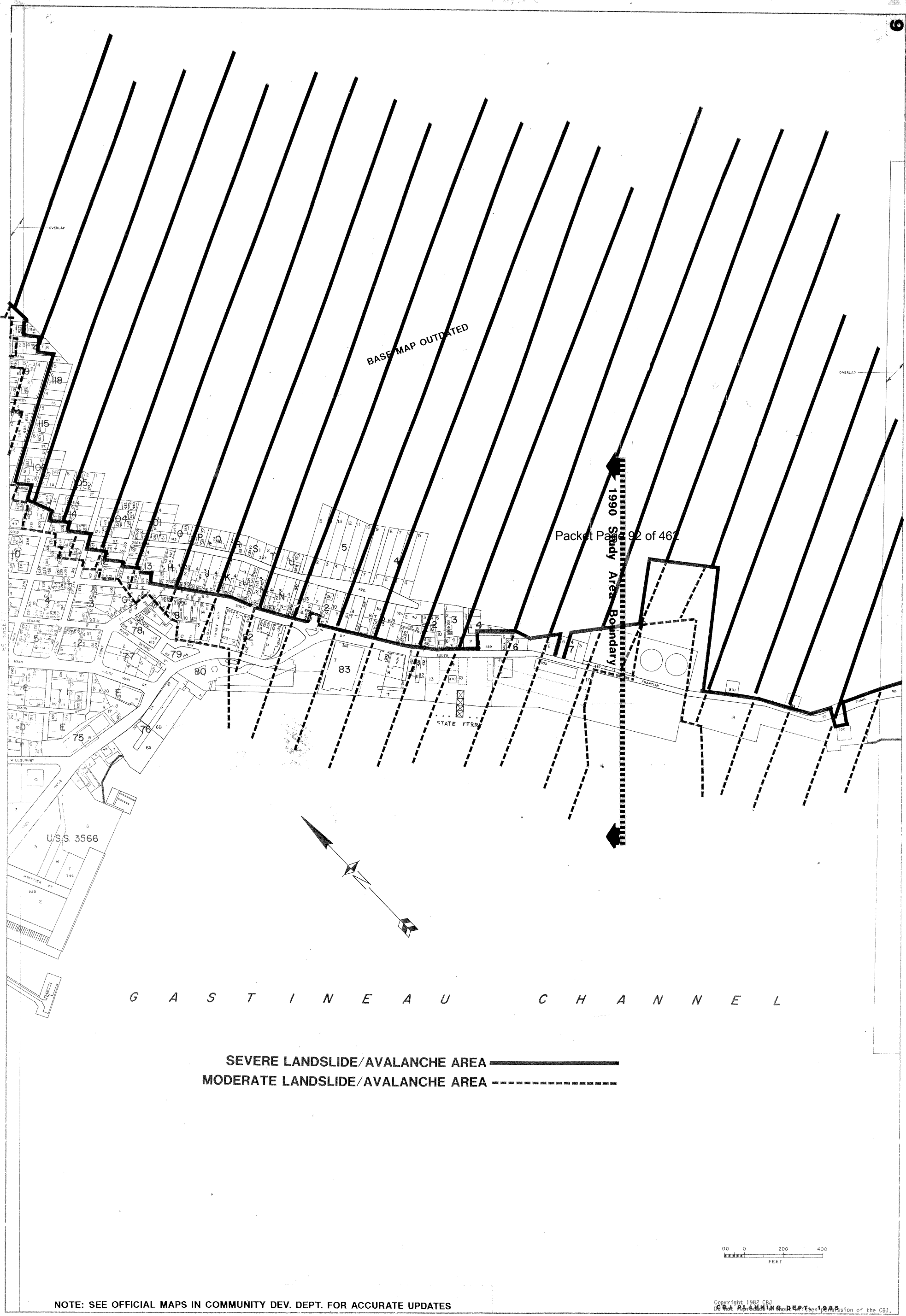
** PROJECT NAME **
*** PROJECT NUMBER ***
#Site City, #Site State

SHEET TITLE:
FLOOR PLANS

CHECKED XX
DRAWN XX

SHEET #

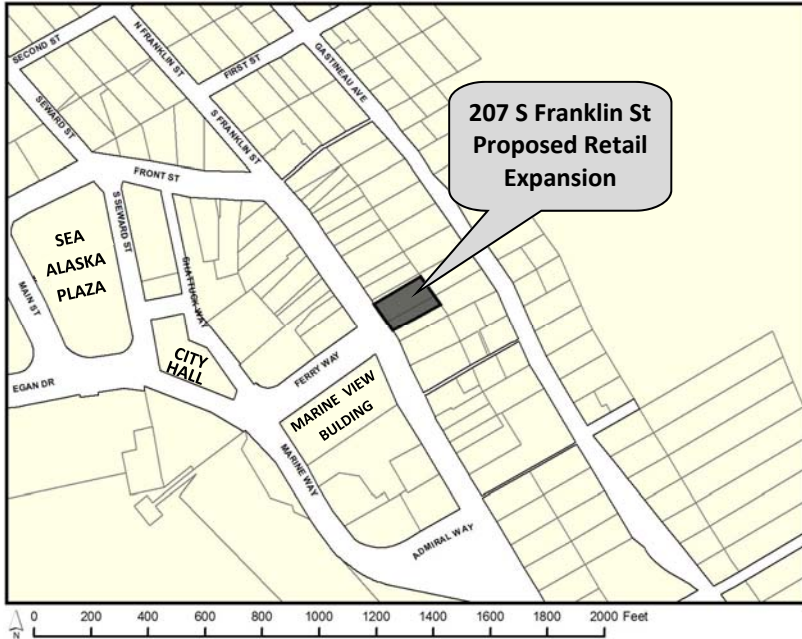
A1
PLOT DATE 7/13/18
ISSUE DATE **



Attachment B - Landslide and Avalanche Area Map, Adopted 1987

Invitation to Comment

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



155 S. Seward Street Juneau, Alaska 99801

TO:

An application has been submitted for consideration and public hearing by the Planning Commission for a **Conditional Use Permit** to **expand retail development** in a **severe hazard area** located at **207 S Franklin Street** in a **Mixed Use Zone**.

TIMELINE

Staff Report expected to be posted **Monday, October 7, 2019** at <https://beta.juneau.org/assembly/assembly-minutes-and-agendas>
Find hearing results, meeting minutes and more here as well.

Now through September 23, 2019

Comments received during this period will be sent to the Planner, **Irene Gallion**, to be included in the staff report.

Sept. 24 through 12 noon, Oct. 11

Comments received during this period will be sent directly to Commissioners to read over the weekend in preparation for the hearing.

HEARING DATE & TIME
7:00 pm, October 15, 2019

You may testify and bring up to 2 pages of written material (15 copies) in City Hall's Assembly Chambers, 155 S. Seward St., Juneau.

October 16

The results of the hearing will be posted online.

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

Case No.: USE2019 0020
Parcel No.: 1C070B0K0010
CBJ Parcel Viewer: <http://epv.juneau.org>



Planning Commission

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

PLANNING COMMISSION NOTICE OF DECISION

Date: October 24, 2019
Case No.: USE2019 0020

Island Constructors
ATTN: Paul Brooks
P.O. Box 241036
Douglas, AK 99824

Proposal: A Conditional Use Permit to expand retail development in a Severe Hazard Area

Property Address: 207 South Franklin Street

Legal Description: Juneau Townsite, Block K, Lots 1 & 2 FR

Parcel Code No.: 1C070B0K0010

Hearing Date: October 15, 2019

The Planning Commission, at a special public meeting, adopted the analysis and findings listed in the attached memorandum dated October 2, 2019, and APPROVED the Conditional Use Permit for an 800 square foot expansion of retail to be conducted as described in the project description and project drawings submitted with the application, and with the following conditions:

1. Prior to issuance of a Building Permit, the applicant must record the plat for the lot consolidation (SLC2019 0003).
2. Prior to issuance of a Building Permit, the applicant must provide parking that meets the Land Use Code requirements.
3. Prior to issuance of a Building Permit, the applicant must provide a lighting plan that meets Land Use Code requirements, with review and approval by the Historic Resources Advisory Committee.

Island Constructors
Case No.: USE2019 0020
October 24, 2019
Page 2 of 2

4. Prior to issuance of a Building Permit, the applicant must receive approval of the project design by the Historic Resources Advisory Committee.

Attachments: October 2, 2019, memorandum from Irene Gallion, Community Development, to the CBJ Planning Commission regarding USE2019 0020.

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

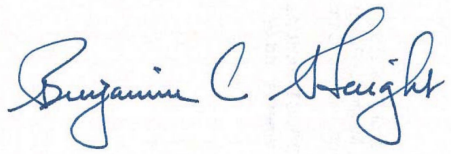
This Notice of Decision constitutes a final decision of the CBJ Planning Commission. Appeals must be brought to the CBJ Assembly in accordance with CBJ 01.50.030. Appeals must be filed by 4:30 P.M. on the day twenty days from the date the decision is filed with the City Clerk, pursuant to CBJ 01.50.030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

Effective Date: The permit is effective upon approval by the Commission, October 15, 2019.

Expiration Date: The permit will expire 18 months after the effective date, or April 15, 2021, if no Building Permit has been issued and substantial construction progress has not been made in accordance with the plans for which the development permit was authorized. Application for permit extension must be submitted thirty days prior to the expiration date.

Project Planner:


Irene M. Gallion, Planner
Community Development Department


Benjamin Haight, Chair
Planning Commission


Filed With Municipal Clerk

10/30/2019
Date

cc: Plan Review

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



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

DATE: September 26, 2019

TO: Planning Commission

FROM: Tim Felstead, Planner
 Community Development Department

FILE NO.: AME2019 0009

PROPOSAL: Zoning upgrade for twelve D1(T)D3 transitional zone lots, 10825 thru 10965 Glacier Highway

The City and Borough of Juneau Code states in CBJ 49.70.700 that a transition zone is an overlay zone district for certain lands located in the urban service boundary that are set aside for higher density development after public water and sewer have been provided. The overlay specifies the current lower density zoning classification as well as the proposed increase. The increase in density will take place at the time public services are provided.

Applicant: City & Borough of Juneau

Property owner:	Property Address:	Legal Description:	Parcel Code No.:	Site Size:
Barbara Ann Sandberg; David Carl Sandberg	10965 Glacier Hwy	USS 2741 LT 4	4B2301000110	23,087 sf (0.5300ac)
Nolan E Davis	10945 Glacier Hwy	USS 2741 LT 3	4B2301000100	21,606 sf (0.496ac)
Nolan E Davis	10925 Glacier Hwy	USS 2741 LT 2	4B2301000090	25,439 sf (0.584ac)
Winston P Smith; Katherine L Smith	10915 Glacier Hwy	USS 3274 LT 57	4B2301000080	9,148 sf (0.210 ac)
Kimberley D Grande	10909 Glacier Hwy	USS 3274 LT 56	4B2301000070	9,583 sf (0.220 ac)
Randy Le; Tammy Wu	10903 Glacier Hwy	USS 3274 LT 55	4B2301000060	10,454 sf (0.240 ac)
City and Borough of Juneau	No address	USS 3274 LT 55	4B2301000050	30,492 sf (0.700 ac)
Dana H Hanselman; Stacey Anne K Shotwell	10885 Glacier Hwy	USS 2386 LT L TR 1	4B2301000040	19,950 sf (0.458 ac)
Dana H Hanselman; Stacey Anne K Shotwell	10845 Glacier Hwy	USS 2386 LT L FR	4B2301000030	28,924 sf (0.664 ac)

Planning Commission
 File No.: AME2019 0009
 September 26, 2019
 Page 2 of 11

Property owner:	Property Address:	Legal Description:	Parcel Code No.:	Site Size:
Leonard R Calloway Jr; Virginia Calloway	10835 Glacier Hwy	USS 2386 LT L FR	4B2301000020	34,674 sf (0.796 ac)
Fredrik J Thorsteinson; Carolyn D Thorsteinson	10827 Glacier Hwy 10829 Glacier Hwy	USS 2386 LT K PAR 1	4B2301000010	43,560 sf (1.000 ac)
Laurie Ferguson Craig	10825 Glacier Hwy	USS 2386 LT K PAR 2	4B2201070120	40,075 sf (0.920 ac)

Zoning: D1(T)D3

Utilities: Public sewer; public water

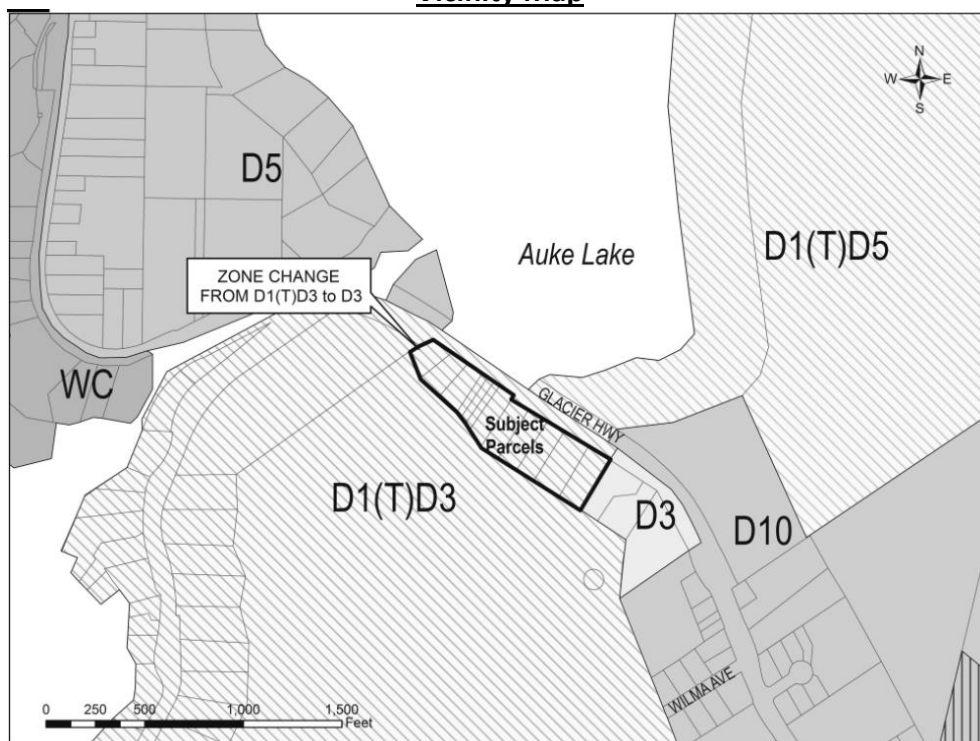
Access: Individual lots with direct access onto Glacier Highway

Existing Land Use: Single-family residential or vacant

Surrounding Land Use:

Northeast	-	Glacier Highway, DOT&PF ROW, CBJ Major Arterial); Auke Lake; Vacant lands (D1)
Southeast	-	Single family residential (D3)
Southwest	-	Vacant land (D1(T)D3)
Northwest	-	Vacant (D1(T)D3);

Vicinity Map



Planning Commission
File No.: AME2019 0009
September 26, 2019
Page 3 of 11

ATTACHMENTS

Attachment A – Map showing full D1(T)D3 area

Attachment B – Agency review comments from CBJ Engineering and Public Works and Alaska Department of Transportation and Public Facilities (DOT&PF)

BACKGROUND

CBJ49.70.700 describes the purpose of transition zones:

49.70.700 - Transition zones, generally.

(a) Purpose. A transition zone is an overlay zone district for certain lands located in the urban service boundary that are set aside for higher density development after public water and sewer have been provided. Transition zones shall be identified as such by the designator "T" on the official zoning maps adopted pursuant to section 49.25.110. The overlay district specifies the current lower density zoning classification as well as the proposed increase. The increase in density will take place at the time public services are provided.

During a recent inquiry from the public regarding one of the subject lots, it was noticed that the transitional zoning had not been upzoned from D1 to D3 for a number of lots despite CBJ water and sewer being installed in 2014.

The twelve subject lots for this zoning upgrade request are part of a larger identified transitional area zoned D1(T)D3. This transitionally zoned area is large and encompasses smaller lots accessing directly onto Glacier Highway opposite Auke Lake, as well as a large area of CBJ owned land at higher elevations bounded by Engineers Cut-Off Road, Glacier Highway, and Fritz Cove Road (see Attachment A).

The CBJ owned lot at the intersection of Glacier Highway and Fritz Cove Road is not included in this zoning upgrade due to complexities with access and the significant additional sewer load that full development of this lot could add.

Public water has been available to the subject properties for some time, and public sewer was extended along this portion of Glacier Highway in 2014. The sewer improvements were a Local Improvement District project (LID 96; Ord. 2013-02) as part of the West Mendenhall Valley Sewer Extension project. LID projects apportion some of the improvement costs to the property owners who benefit from the improvements. In this instance, per the Ordinance, CBJ agreed to pay \$476,000 of the estimated \$500,000 project. The remainder was met by the individual private property owners who have been making yearly payments to CBJ for four years as part of the LID – all but two properties have paid their full balance. The type of sewer main installed also required property owners to install a residential pump station. CBJ Engineering has informed CDD that all but one of the developed properties have connected to CBJ sewer since the extension was completed.

Planning Commission
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 September 26, 2019
 Page 4 of 11

Some property owners who would be involved in this zoning upgrade had concerns regarding the upzoning of three other lots to the southeast that were part of the same LID. In that case (AME2015 0007; CBJ Ord. 2015-36), the lots were identified as D1(T)D10 and were ultimately rezoned from D1 to D3 instead. It is unclear why the subject lots were not included in that previous zoning upgrade. During that rezone process, neighbors had concerns about D10 zoning contributing higher levels of traffic at what they perceived was an unsafe section of Glacier Highway due to sight distances, in addition to the capacity of the sewer lines.

A neighborhood meeting was held on August 7, 2019. No concerns or objections were raised by the five attendees at that time. One subject lot owner had concerns that property taxes would rise as a result of a rezone. The CBJ Assessor has stated that the land component of the assessed value would not increase as a result of the rezone from D1 to D3.

ANALYSIS

CBJ 49.70.720(1)(B) describes the process for Planning Commission approval of a zoning upgrade when the required improvements have been installed by CBJ. This process differs from the standard rezone process.

49.70.720 - Zoning upgrade.

For lands located within a transition zone, the zoning will be upgraded to the higher density classification at the time public water, sewer or other required improvements are provided according to the following procedures:

(1) Procedure. A zoning upgrade in a transition zone may be initiated by either of two different procedures:

A. The applicant for a major development permit in a transition zone may make a concurrent request for a zoning upgrade. The plans accompanying the development permit application shall be based upon the density requested. A request for a zoning upgrade shall include preliminary plans and a determination by a certified engineer that such improvements are feasible.

B. The planning commission may initiate a zoning upgrade if the public sewer, water, or other required improvements already exist or will be provided by the City and Borough.

(2) Hearing and decision.

A. Hearing. The commission shall consider the upgrade at a hearing upon notice provided in accordance with section 49.15.230. The commission shall base its decision to grant the upgrade on the determination of the feasibility of providing public water, sewer, and other required

Planning Commission
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September 26, 2019
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improvements. The staff report to the commission shall include a review of the plans and a feasibility report by the City and Borough engineer. The feasibility of providing public services shall consider the ability of the existing sewer and water system to handle the increased demand created by the proposed development. [Emphasis added]

B. Decision.

(a) The commission may grant a zoning upgrade only to the classification indicated by the prefix (T) on the official zoning maps. A change to any other classification shall be considered pursuant to section 49.75.130.

(b) The commission shall determine the boundary of the area to be upgraded.

(c) If the public water, sewer or other required improvements are not constructed or bonded, the commission may grant only conditional approval to the zoning upgrade request. The effective date of the zoning upgrade will be the date of final acceptance or bonding of the improvements.

Planning Commission agreed to initiate the zoning upgrade at the May 14, 2019 regular meeting.

By applying the predetermined transitional zone designation when the zoning maps were adopted by the Assembly, the Assembly has essentially provided a conditional approval for adoption of the higher zoning district and given the Planning Commission the responsibility to verify the public improvement requirements for the zoning upgrade have been met.

Lot size – Currently ten of the lots are undersized for the current D1 zoning district. Three lots will remain undersized for a D3 zoning district if the zoning upgrade is approved.

Uses – Both D1 and D3 are residential zoning districts although some other uses are allowed in these zoning districts. CBJ 49.25.210 describes the purpose of each zoning district:

The D1, residential district, is intended to accommodate primarily single-family and duplex residential development in areas outside the urban service boundary at a density of one dwelling unit per acre. Certain D1 zoned lands, however, may exist within the urban service boundary in transition areas if public sewer or water are absent but planned for. The D1 classification will be changed to a higher density upon provision of services.

The D3, residential district, is intended to accommodate primarily single-family and duplex residential development at a density of three dwelling units per acre.

D3 zoned lands are primarily located outside the urban service boundary where public utilities are not provided. The density reflects the existing pattern of development of properties in the district. There is a limited amount of D3 zoned lands located within the urban service boundary. These are lands for which lower density is deemed appropriate or, in the case of transition zones, where the zoning will be changed to a higher density when sewer and water are provided. [Emphasis added]

It can be seen from the description of the D1 zoning district that having a transition zone is within the intent of such a zone and that the area should be upzoned following the provision of City sewer. The description of the D3 zoning district, while suggesting these zoning districts should primarily be located outside of the urban service area, there is provision for D3 zoning within the urban service area. The subject lots are located inside the urban service area and limiting the density to D3 would be in keeping with its location on an arterial where the number of future access points should be limited, the area's proximity to the natural setting of Auke Lake, and the limited available capacity of the sewer main.

There is very little difference in permissible and conditional uses between D1 and D3. Table 1 below provides a complete list of how use allowances differ in the two zoning districts.

USE	D1	D3
Heavy manufacturing	CUP	Not allowed
Storage of goods not related to sale or use on same lot - enclosed	CUP	Not allowed
Storage of goods not related to sale or use on same lot - outdoors	CUP	Not allowed
Snow storage	CUP	CUP every 5 yr
Parking or storage of equipment unless minor and incidental to use	CUP	Not allowed
Kennel	CUP	Not allowed
Zoos, aquaria, animal rehab with visitor component	CUP	Not allowed
Elementary and secondary schools	CUP	CUP
Horseback riding stables, dog team yards	CUP	Not allowed
Animal based commercial agriculture	CUP	Not allowed

USE	D1	D3
Marijuana Cultivation less than 500 square feet	CUP	Not allowed
Silviculture/Timber harvesting	CUP	Not allowed
Transit center	Not allowed	CUP
Open air markets (farm, craft, flea, and produce)	Dept or CUP	Not allowed
Resort, lodge/campground/visitor cultural facilities related site	CUP	Not allowed

Table 1: List of uses permissible conditional uses that differ from D1 to D3

One development type that may be permissible, if the area is upzoned to D3, is cottage housing. This requires a minimum of four cottage dwellings and a maximum of 12 dwelling units, and requires 4,500 square feet of lot area per cottage dwelling. There are other design requirements for open space, parking, access roads, and screening, etc. which would also limit the size of any cottage development.

Following an upzoning to D3, more lots will be eligible for additional primary dwelling units and accessory apartments than would currently be allowed (see Table 2 below).

Property Address	Legal Description	Parcel Code No.	Site Size (D3 minimum lot size 12,000 square feet)	Primary dwelling units currently	Primary dwelling units possible at D3
10965 Glacier Hwy	USS 2741 LT 4	4B2301000110	23,087 sf (0.5300ac)	1	1
10945 Glacier Hwy	USS 2741 LT 3	4B2301000100	21,606 sf (0.496ac)	1	1
10925 Glacier Hwy	USS 2741 LT 2	4B2301000090	25,439 sf (0.584ac)	0	2
10915 Glacier Hwy	USS 3274 LT 57	4B2301000080	9,148 sf (0.210 ac)	1	1
10909 Glacier Hwy	USS 3274 LT 56	4B2301000070	9,583 sf (0.220 ac)	1	1
10903 Glacier Hwy	USS 3274 LT 55	4B2301000060	10,454 sf (0.240 ac)	1	1
NAN	USS 3274 LT 55	4B2301000050	30,492 sf (0.700 ac)	0	2
10885 Glacier Hwy	USS 2386 LT L TR 1	4B2301000040	19,950 sf (0.458 ac)	1	1
10845 Glacier Hwy	USS 2386 LT L FR	4B2301000030	28,924 sf (0.664 ac)	0	2
10835 Glacier Hwy	USS 2386 LT L FR	4B2301000020	34,674 sf (0.796 ac)	1	2
10827 Glacier Hwy 10829 Glacier Hwy	USS 2386 LT K PAR 1	4B2301000010	43,560 sf (1.000 ac)	1	2

Planning Commission
 File No.: AME2019 0009
 September 26, 2019
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Property Address	Legal Description	Parcel Code No.	Site Size (D3 minimum lot size 12,000 square feet)	Primary dwelling units currently	Primary dwelling units possible at D3
10825 Glacier Hwy	USS 2386 LT K PAR 2	4B2201070120	40,075 sf (0.920 ac)	1	2

Table 2: Comparison of number of primary dwelling units allowed with D3 zoning, based on minimum lot size and actual lot size, versus current number of primary dwelling units. Each primary dwelling unit could have an accessory apartment; although, on substandard sized lots it would require a Conditional Use Permit.

Potential for future subdivision – As the lots become more conforming, a number of lots will become more than twice the D3 minimum lot size of 12,000 square feet. However, the portion of Glacier Highway in front of subject lots is classified by the CBJ Road Classification Map as a major arterial. CBJ 49.35.201(b) requires that an access street or frontage road shall be required or the minimum lot size meets the minimum D1 lot size of 36,000 square feet (among other requirements). There is one large lot and two sets of adjacent lots under common ownership that could potentially be subdivided and be able to accommodate some reduced width right-of-way or shared access easement, while meeting the minimum width and depth requirements of D3 zoned lots. In general, an upzone to D3 would provide relatively limited opportunity for further subdivision of the subject lots.

Sewer capacity - While public sewer has been provided, the type of sewer system is a ‘forced main’ sewer. The system design requires each property owner to have a pump that pressurizes the system. At present, each property has a pump that is sized as appropriate for the existing development on the lot. CBJ Engineering has stated that the type of moderate development that would be allowed on each lot following an upzone to D3 would not exceed the capacity of the sewer main, although some increase in individual pump capability may be necessary (see Attachment B). If additional development takes place on a lot, the developer would be required through the building permit review to demonstrate the overall public sewer mains operation would not be compromised.

Traffic – Glacier Highway is a State right-of way. The DOT&PF have commented that there may be some sight distance issues for driveways further toward the brow of the hill. This would be reviewed as development occurs on the subject lots (see Attachment B).

COMPLIANCE WITH THE COMPREHENSIVE PLAN

Comprehensive Plan Contents

Land Use map designations are defined in the Comprehensive Plan in Chapter 11. The subject lots are designated as Urban Low Density Residential (ULDR).

These lands are characterized by urban or suburban residential lands with detached single-family units, duplex, cottage or bungalow housing, zero-lot-line dwelling units and manufactured homes on permanent foundations at densities of

Planning Commission
 File No.: AME2019 0009
 September 26, 2019
 Page 9 of 11

one to six units per acre. Any commercial development should be of a scale consistent with a single-family residential neighborhood, as regulated in the Table of Permissible Uses (CBJ 49.25.300). (p.147)

The Comprehensive Plan also describes the purpose of transition zones:

Transition Area: *These lands are located within the urban service area and are not yet provided public sewer service. When provided with sewer service, and when roadway and intersections serving these lands have adequate capacities to accommodate new development (such that post-development, the road and intersection Levels of Service (LOS) would not be worse than LOS D), transition areas should be rezoned for the designated higher density residential development. Transition areas are designated as the intended higher density on the Comprehensive Plan land use maps, but rezoning these areas to match the land use designation must wait until public sewer service is extended to them. (p.15)*

It also describes how the use of transition zones is intended to provide efficient use of land:

One mechanism the CBJ government has used in the past to provide some opportunity for more efficient use of land, while assuring adequate community services to these lands, has been use of the transition zone concept, applicable to areas located within the USAB but not yet provided public sewer and/or water service. A designation in a transition zone specifies the lower density zone that can be accommodated by well and/or on-site septic service and it specifies a higher density zone that may go into effect with the provision of public water and sewer and adequate roads to the property. This tool is used in the regulatory Zoning Maps, but is not used in the Comprehensive Plan Land Use Maps, which are aspirational in nature (p.16).

Interestingly, it also states an implementing action for transition zoning to be approved by the Director, and not require Planning Commission review of zoning upgrades.

Implementing Actions

3.1 - IA1 Revise the Land Use Code to allow, in zoning Transitional (T) zones, the higher density zoning designation to be allowed upon petition by the property owner and approval by the Community Development Department (CDD) Director, rather than by a rezoning action, provided that, as a condition of approval, the property owner ensures the provision of adequate municipal water and sewer service and provides adequate roadway capacity to serve the increased population. (p.19)

For example, a D3(T)D10 could transition to D10, and a D1(T)D5 could transition to a D5 as a zoning map amendment, with CDD Director's approval, upon the

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 File No.: AME2019 0009
 September 26, 2019
 Page 10 of 11

financial assurance of provision of the water, sewer, road and intersection capacity at a LOS D or better prior to its development.

Discussion

The upgrading of the zoning to D3 is in keeping with the current Comprehensive Plan Land Use designation. The public water and sewer have been provided to the subject lots, and policies and supporting language in the Comprehensive Plan supports the lots being upzoned. There are no street intersections in the subject area, so there are no LOS considerations. Allowing Director approval of zoning upgrades may be something the Commission wishes to explore as a future change to the Land Use Code.

COMPLIANCE WITH CBJ LAND USE CODE

Based on staff's analysis, no uses would be made nonconforming by the upgrade to D3 zoning. Findings that demonstrate compliance with the Land Use Code zoning upgrade procedure are provided below.

HABITAT

There is no regulated habitat within the subject lots. Auke Lake is an anadromous waterbody but the subject properties are not within the 50-foot development buffer required by the Land Use Code. It is understood from discussions with CBJ Engineering that part of the purpose of the sewer extension was to remove any wastewater discharge entering Auke Lake from older, on-site wastewater systems on the subject properties.

FINDINGS

The requirements for a zoning upgrade by the Planning Commission are provided above. The requirements of the Land Use Code for a zoning upgrade have been met with provision of public water and sewer.

1. Was the zoning upgrade initiated by an applicant for a major development or by the Planning Commission as required by the procedure in CBJ 49.70.720(1)?

Yes. The Planning Commission made a motion to initiate the zoning upgrade at the May 14, 2019 regular meeting.

2. Has notice been given for the zoning upgrade per the requirements of CBJ 49.15.230?

Yes. Public notice of this project was provided in the October 4, 2019 and October 13, 2019 issues of the Juneau Empire's "Your Municipality" section, and a Notice of Public Hearing was mailed to all property owners within 500 feet of the subject parcel. Moreover, Public Notice Signs were posted at either end of the subject lots, visible from the public right-of-way.

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3. *Has the developer, or City and Borough, demonstrated the feasibility of providing, or already provided, public water, sewer, and other required improvements?*

Yes. The subject lots are provided with public water and sewer. CBJ Engineering has determined that the public water and sewer can adequately handle the moderate level of additional development that would be possible on the subject lots following the zoning upgrade. Some improvements of water and sewer services by the property owners may be required to allow further development on their lots.

4. If approved by the Commission, will the decision be consistent with the requirements of CBJ 49.70.720(2)(B) and ...

a. Only grant a zoning upgrade to the classification indicated by the prefix (T) on the official zoning maps?

Yes. The lots subject to the zoning upgrade are currently designated as D1(T)D3 on the official zoning maps and the Planning Commission decision would upgrade the lots to D3.

b. Determine the boundaries of the area to be upgraded?

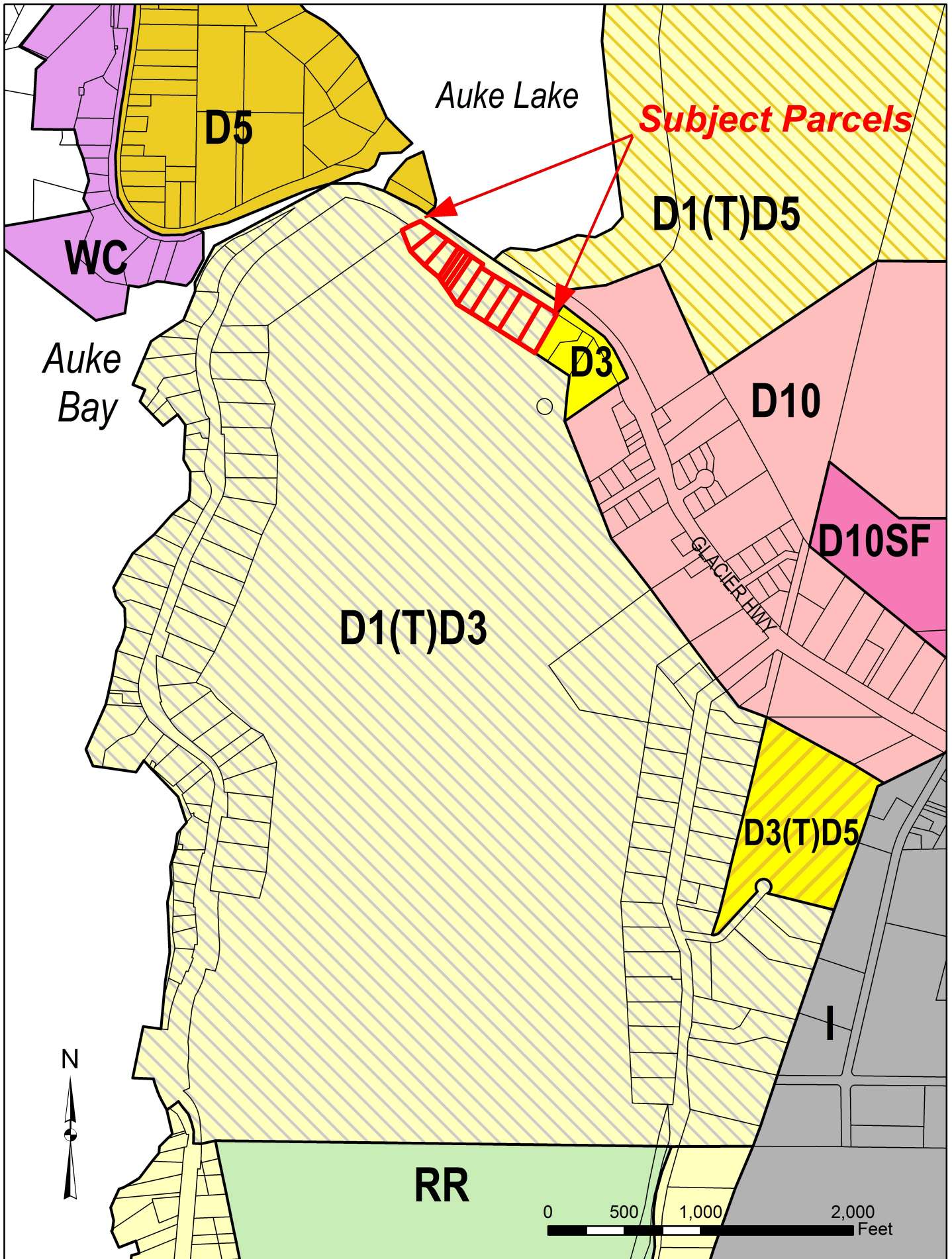
Yes. The boundary of the 12 contiguous lots subject to this zoning upgrade is identified in the list of parcels and vicinity map provided above.

c. Be a conditional approval if public water, sewer, or other required improvements are not already constructed or bonded?

Not applicable. Public water and sewer have already been provided to the subject lots.

STAFF RECOMMENDATION

It is recommended that the Planning Commission adopt the Director's analysis and findings and **APPROVE** the zoning upgrade of the subject lots from D1(T)D3 to D3.



Attachment A - Map Showing Full D1(T)D3 Area



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

COMMUNITY DEVELOPMENT DEPARTMENT - REQUEST FOR AGENCY COMMENT

DEPARTMENT: CBJ Engineering and Public Works
STAFF PERSON/TITLE: John Bohan (CBJ Chief CIP Engineer & Water Superintendent)
DATE:
APPLICANT: CBJ
TYPE OF APPLICATION: Zoning Upgrade of D1(T)D3 to D3
PROJECT DESCRIPTION:

Zoning upgrade for twelve transitional zone lots, 10825 thru 10965 Glacier Highway

LEGAL DESCRIPTION: USS 2741 LT 4; USS 2741 LT 3; USS 2741 LT 2; USS 3274 LT 57; USS 3274 LT 56; USS 3274 LT 55; USS 3274 LT 55; USS 2386 LT L TR 1; USS 2386 LT L TR 1; USS 2386 LT L TR 1
PARCEL NUMBER(S): 4B2301000110, 4B2301000100, 4B2301000090, 4B2301000080, 4B2301000070, 4B2301000060, 4B2301000050, 4B2301000040, 4B2301000030, 4B2301000020, 4B2301000010, 4B2301000000
PHYSICAL ADDRESS: 10825 thru 10965 Glacier Highway (12 lots total)

SPECIFIC QUESTIONS FROM PLANNER:

How many more dwellings can the existing sewer line handle? What caveats are there?
When does a developer have to demonstrate that their proposed pump upgrades will not cause issues for the sewer line?

AGENCY COMMENTS:

Tim, there are no sewer issues for the increased density from D1 to D3 for these localized lots you have provided. The large CBJ Parcels with large development potential that abut these lots would overtax the local small diameter pressure sewer system as this system was only sized to serve this isolated group of properties adjacent to Auke lake along the south side of Glacier Hwy.

The small diameter sewer system is where each property owner has a pump station that pumps into the sewer forcemain using a progressive cavity pump. The energy from each individual pump station pushes the sewer along the small diameter sewer main into the collection manhole which is near the entrance to Chapel by the Lake. The sizing of the pumps would be totally based upon the dwelling units feeding the pump station.

The existing stations that people are using should not need any upgrade modification to maintain their single family use unless they were not properly designed or installed- if the density /# dwelling units increases, so would the sewer discharge for that parcel, which could / would potentially merit an increase in capacity of the parcel's sewer pump station.



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155 S. Seward Street • Juneau, AK 99801

COMMUNITY & OPMENT & PARTMENT - R QU ST FOR AG NCY COMMENT &

PARTM&NT: & DOT PF

STAFF P RSON/TIT :

AT :

APP ICANT: & CBJ

TYP OF APP ICATION: Zoning Upgrade of D1(T)D3 to D3

PROJ CT SCRIPTIION:

Zoning upgrade for twelve transitional zone lots, 10825 thru 10965 Glacier Highway &

GA SCRIPTIION: & USS 2741 LT 4; USS 2741 LT 3; USS 2741 LT 2; USS 3274 LT 57; USS 3274 LT 56; USS 3274 LT 55; USS 3274 LT 55; USS 2386 LT L TR 1; USS 2386 LT L
R-1155 2386 LT L R-1155 2386 LT K PAR 1-1155 2386 LT K PAR 2

PARC NUMB R(S): 4B2301000110, 4B2301000100, 4B2301000090, 4B2301000080, 4B2301000070, 4B2301000060, 4B2301000050, 4B2301000040,
4B2301000030 4B2301000020 4B2301000010 4B2301000000

PHYSICA A R SS: 10825 thru 10965 Glacier Highway (12 lots total)

SP CIFIC QU STIONS FROM P ANN R:

Are there any concerns regarding access related to a potential increase in the number of dwelling units?

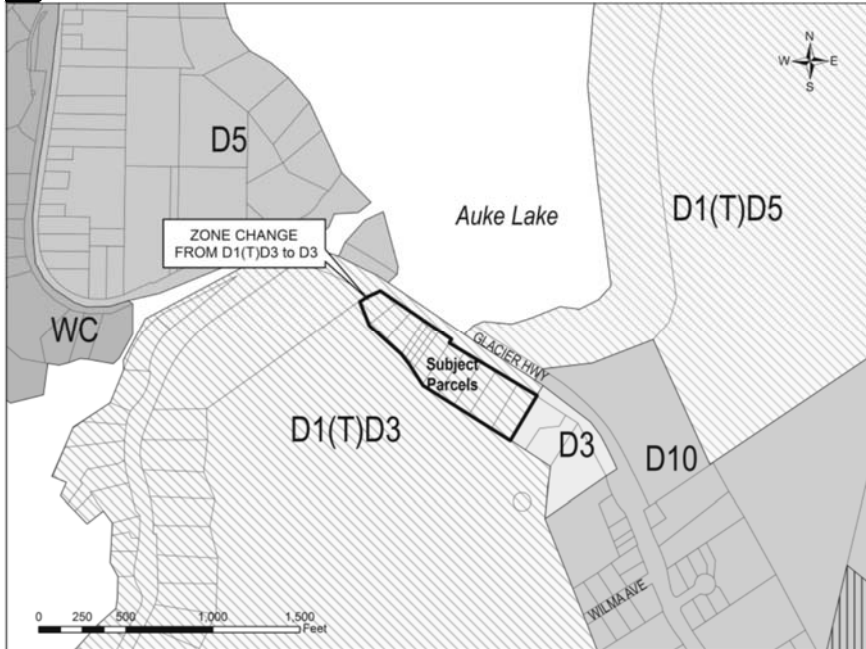
Are there sight distance or other road conditions that are of concern on this stretch of road?

AG NCY COMMENTS:

There could very well be sight distance issues toward the east end of the proposed rezone area - it is in a curve in a 50 mph speed zone. &

Invitation to Comment

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



COMMUNITY DEVELOPMENT

155 S. Seward Street Juneau, Alaska 99801

TO:

A request has been submitted for consideration and public hearing by the Planning Commission for a **zoning upgrade for twelve (12) D1(T)D3 transitional zone lots at 10825 through 10965 Glacier Highway**. If approved, the CBJ Zoning Map will be changed.

TIMELINE

Staff Report expected to be posted Monday, September 16, 2019 at <https://beta.juneau.org/assembly/assembly-minutes-and-agendas>
Find hearing results, meeting minutes and more here as well.

Now through September 2, 2019

Comments received during this period will be sent to the Planner, **Tim Felstead**, to be included in the staff report.

Sept. 3 through 12 noon, Sept. 20

Comments received during this period will be sent directly to Commissioners to read over the weekend in preparation for the hearing.

HEARING DATE & TIME

7:00 pm, September 24, 2019

You may testify and bring up to 2 pages of written material (15 copies) in City Hall's Assembly Chambers, 155 S. Seward St., Juneau.

September 25

The results of the hearing will be posted online.

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

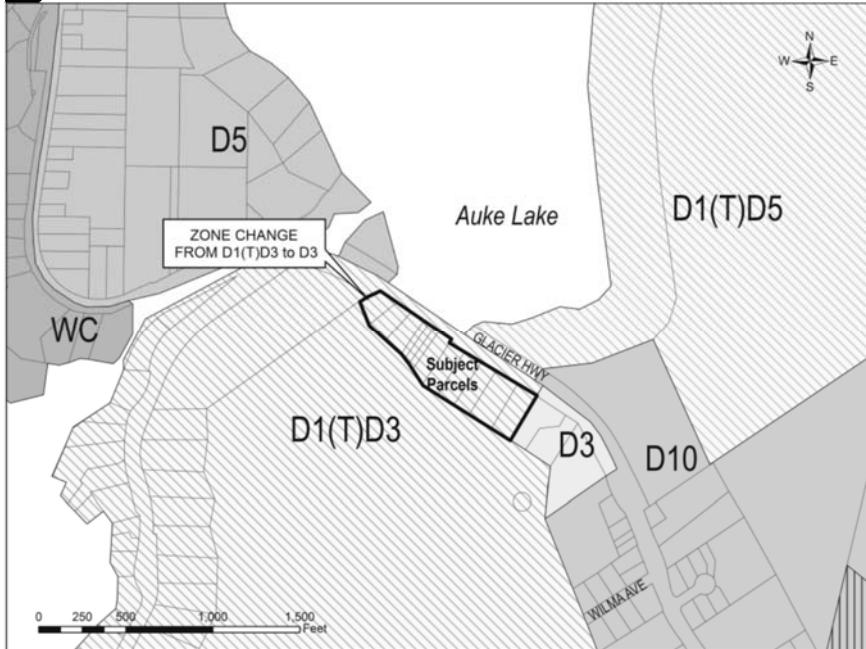
Case No.: AME2019 0009

Parcel No.: 4B2201070120-4B2301000110

CBJ Parcel Viewer: <http://epv.juneau.org>

Revised Notice

Re: Zoning upgrade for twelve D1(T)D3 transitional zone lots
Hearing Rescheduled



155 S. Seward Street Juneau, Alaska 99801

TO:

POSTPONED

You are receiving this notice regarding an application being heard by the Planning Commission for a rezone of twelve (12) lots, currently zoned transitional D1(T)D3, at 10825 through 10965 Glacier Highway. Originally, the hearing was set for September 24, 2019.

The hearing has been rescheduled for October 15, 2019.

TIMELINE

Staff Report expected to be posted Monday, October 7, 2019 at <https://beta.juneau.org/assembly/assembly-minutes-and-agendas>
Find hearing results, meeting minutes and more here as well.

Now through September 23, 2019

Comments received during this period will be sent to the Planner, **Tim Felstead**, to be included in the staff report.

Sept. 24 through 12 noon, Oct. 11

Comments received during this period will be sent directly to Commissioners to read over the weekend in preparation for the hearing.

HEARING DATE & TIME
7:00 pm, October 15, 2019

You may testify and bring up to 2 pages of written material (15 copies) in City Hall's Assembly Chambers, 155 S. Seward St., Juneau.

October 16

The results of the hearing will be posted online.

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

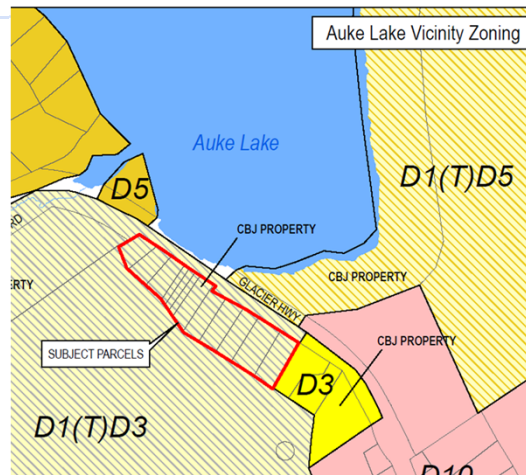
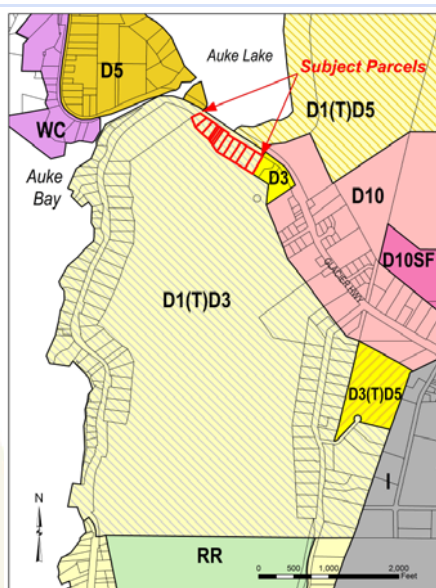
Case No.: AME2019 0009
Parcel No.: 4B2201070120-4B2301000110
CBJ Parcel Viewer: <http://epv.juneau.org>

A zoning upgrade of 12 transitionally zoned lots – D1(T)D3

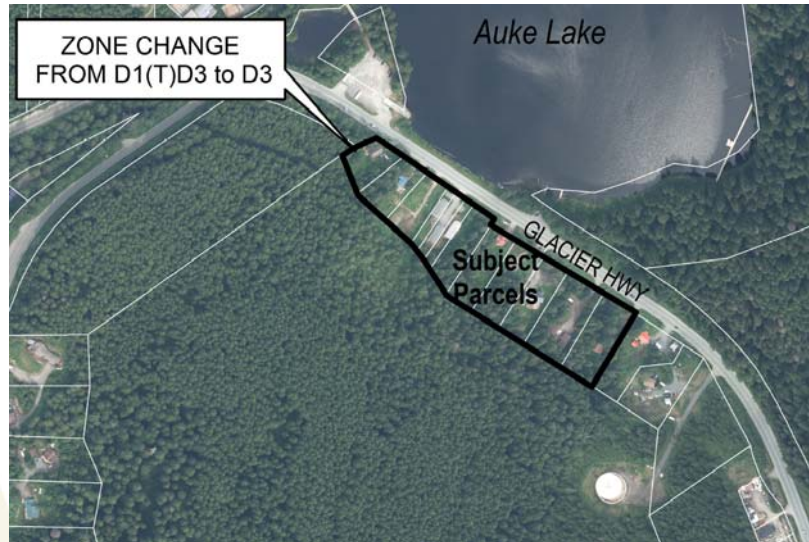
Planning Commission Meeting
October 15, 2019



Vicinity Map



Aerial Photo



Upgrade decision

- Decision should be based on sewer and water provision, and other required public improvements.
- *Lot size* - 10 lots currently undersized for D1. Three would remain undersized if D3.
- *Uses* - Having D3 zoning in the urban service area is appropriate in the context of the slightly limited sewer, the setting of Auke Lake, and desire to limit the number of access points. Little difference in allowed uses – if anything more restrictive in uses that require large lots.
- *Dwellings* - Cottage housing allowed in D3 the number of cottage units would be relatively modest given lot sizes and other cottage housing design requirements. Would also require Commission review. Based on individual lot size, 6 additional primary dwelling units would be possible above what is possible with D1 – 18 dwelling units total. 15 could have an accessory apartment without a Conditional Use permit



Zoning upgrade –substandard lots



Zoning upgrade – lots suitable for 2 dwellings per lot



Each primary dwelling unit could have an accessory apartment associated with it

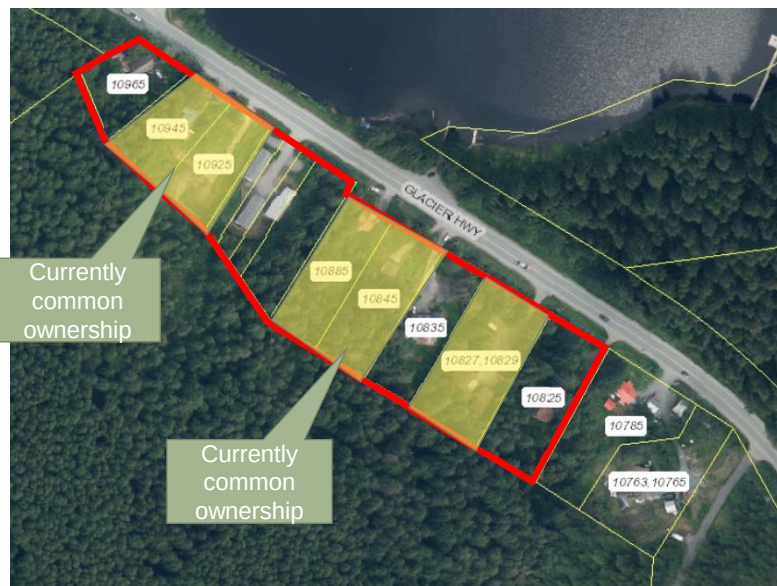


Upgrade decision

- **Subdivision** – CBJ road designation of 'major arterial' limits subdivisions to either D1 size lots, or if a frontage road or street is provided. Potential to subdivide adding additional dwellings is limited.
- **Sewer** – Forced sewer main. CBJ Engineering and Public Works has no problem with an upgrade of these lots. Some capacity is available – private sewer pumps would have to be adequately sized for any new development which would be checked during building permit review.
- **Traffic** – DOT&PF have indicated there could be some sight distance issues at the top of the hill. Given the limited extra traffic due limited development not subject to Commission review this is not a concern.



Zoning upgrade – lots suitable for shared access subdivision



Currently on major arterial road which requires minimum lot size of 36,000 square feet unless public or private frontage road is provided. Shared access driveways meet this requirement.



Recommendation

- It is recommended that the Planning Commission adopt the Director's analysis and findings and **APPROVE** the zoning upgrade of the subject lots from D1(T)D3 to D3.



Zoning Upgrade - difference in Uses

	Current Zoning	Upgraded Zoning
	D-1	D-3
Heavy manufacturing	CUP	Not allowed
Storage of goods not related to sale or use on same lot - enclosed	CUP	Not allowed
Storage of goods not related to sale or use on same lot - outdoors	CUP	Not allowed
Snow storage	CUP	CUP every 5 yr
Parking or storage of equipment unless minor and incidental to use	CUP	Not allowed
Kennel	CUP	Not allowed
Zoos, aquaria, animal rehab with visitor component	CUP	Not allowed
Elementary and secondary schools	CUP	CUP
Horse back riding stables, dog team yards	CUP	Not allowed
Animal based commercial agriculture	CUP	Not allowed
Marijuana Cultivation less than 500 square feet	CUP	Not allowed
Siviculture/Timber harvesting	CUP	Not allowed
Transit center	Not allowed	CUP
Open air markets (farm, craft, flea, and produce)	Dept or CUP	Not allowed
Resort, lodge/ campground/ visitor, cultural facilities related site	CUP	Not allowed

Cottage housing allowed in D3.

One cottage unit per 4,500 square feet. Cottage units limited to 1,200 square feet in net floor area

CBJ Assessors have confirmed that land portion of property tax would not go up if part due to upgrade from D1 to D3. Property values could still increase due to market changes.



CUP: Conditional Use Permit, Review by Planning Commission | DEPT: Review by CDD with Building Permit



Community Development

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

PLANNING COMMISSION

NOTICE OF DECISION

Date: October 17, 2019

File No.: AME2019 0009

City and Borough of Juneau
155 S. Seward Street
Juneau, AK 99801

Proposal: Zoning upgrade for twelve D1(T)D3 transitional zone lots

Property Address: 10825 thru 10965 Glacier Highway

Legal Description: USS 2741 LT 4; USS 2741 LT 3; USS 2741 LT 2; USS 3274 LT 57; USS 3274 LT 56; USS 3274 LT 55; USS 3274 LT 54; USS 2386 LT L TR 1; USS 2386 LT L FR; USS 2386 LT L FR; USS 2386 LT K PAR 1; USS 2386 LT K PAR 2

Parcel Code No.: 4B2301000110, 4B2301000100, 4B2301000090, 4B2301000080, 4B2301000070, 4B2301000060, 4B2301000050, 4B2301000040, 4B2301000030, 4B2301000020, 4B2301000010, 4B2201070120

Hearing Date: October 15, 2019

The Planning Commission, at a special public meeting, adopted the analysis and findings listed in the attached memorandum dated September 26, 2019, and approved a zoning upgrade for twelve D1(T)D3 transitional zone lots to D3.

Attachments: September 26, 2019 memorandum from Tim Felstead, Community Development, to the CBJ Planning Commission regarding AME2019 0009.

This Notice of Decision constitutes a final decision of the CBJ Planning Commission. Appeals must be brought to the CBJ Assembly in accordance with CBJ 01.50.030. Appeals must be filed by 4:30 P.M. on the day twenty days from the date the decision is filed with the City Clerk, pursuant to CBJ 01.50.030 (c).

Effective Date: The permit is effective upon approval by the Commission.

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

City and Borough of Juneau

File No.: AME2019 0009

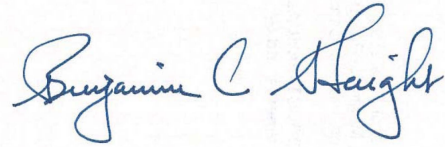
October 17, 2019

Page 2 of 2

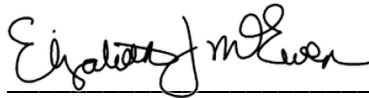
Project Planner:



Tim Felstead, Planner
Community Development Department



Benjamin Haight, Chair
Planning Commission



Filed With City Clerk

10/30/2019

Date

cc: Plan Review

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



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

DATE: October 4, 2019

TO: Planning Commission

FROM: Laurel Christian, Planner
Community Development Department

FILE NO.: AME2019 0010

PROPOSAL: A rezone of one parcel (8.45 acres) from D5 to D18 near Cordova Street and Pioneer Avenue

Laurel Christian

GENERAL INFORMATION

Applicant: Murray Walsh

Property Owner: Lonnie and Beverly Anderson Living Trust Anderson Lonnie Arthur; Anderson Beverly Ann Trustees (Andersons)

Property Address: Not Assigned

Legal Description: USMS 59 TR A Lucy Lode

Parcel Code No.: 1D0501000011

Site Size: 8.45 Acres

Zoning: D5

Utilities: None provided

Access: None provided

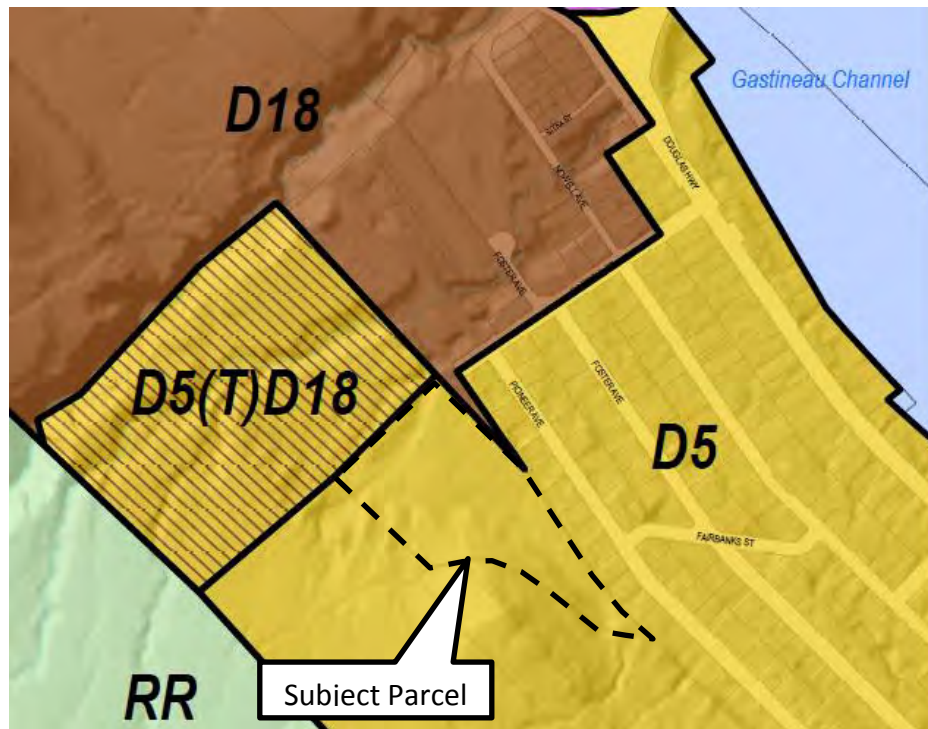
Existing Land Use: Vacant

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October 4, 2019
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Surrounding Land Use:

- North - D5 and D18 Zoning Districts
- South - D5 and RR Zoning Districts
- East - D5 and D18 Zoning Districts
- West - Rural Reserve Zoning District

Vicinity Map



ATTACHMENTS

Attachment A – Application
Attachment B – Maps, Including: Current Zoning Map; Comprehensive Plan Future Land Use Designation Map, Slope map
Attachment C – Agency Comments
Attachment D – Public Comments received through September 23, 2019

BACKGROUND

On July 25, 2019 the Community Development Department (CDD) accepted an application for a rezone request which would rezone two parcels totaling 29.45 acres. The parcel owned by the Anderson's is a proposed rezone from D5 to D18, and the parcel owned by Tlingit Haida Regional Housing Authority (THRHA) was a proposed transition zone upgrade from D5(T)D18 to D18. A small portion of the THRHA parcel is currently zoned D18.

On September 30, 2019, THRHA withdrew their portion of the rezone application. The review in this staff report will only cover the Anderson parcel.

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 October 4, 2019
 Page 3 of 14

PROPOSAL

The proposed rezone request would upzone 8.45 acres from D5 to D18. Current zoning maps can be found in Attachment B.

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

BACKGROUND

The subject parcel was platted twice in 1983, once under U.S. Mineral Survey 59 and again under the Island Hills Planned Unit Development (PUD) Subdivision. The latter took a small portion of the parcel, along Cordova Street, and dedicated it to the Island Hills PUD. This subdivision removed the access from the subject parcel, as shown on the above vicinity map. Prior to 1987, the parcel was zoned R7. Since the 1987 Title 49 rewrite, the subject parcel has been zoned D5. The subject parcel presently has no access and no public water or sewer.

The Dan Moller Trail runs along the southwestern property line of the subject parcel within an easement. The U.S. Forest Service was invited to comment on this proposed rezone; they have stated that they have no concerns with the proposed rezone action.

CBJ 49.75.100 REZONE PROCEDURE

The Title 49 Land Use Code establishes the following procedures for rezones:

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

CBJ 49.75.120 - *Restrictions on rezonings. Rezoning requests covering less than two acres shall not be considered unless the rezoning constitutes an expansion of an existing zone. Rezoning requests which are substantially the same as a rezoning request rejected within the previous 12 months shall not be considered. A rezoning shall only be approved upon a finding that the proposed zoning district and the uses allowed therein are in substantial conformance with the land use maps of the comprehensive plan.*

49.75.130 - *Procedure. A rezoning shall follow the procedure for a major development permit except for the following:*

(a) The commission shall make a recommendation to the assembly to approve, approve with modifications, or deny a rezoning request. The commission shall prepare written findings in support of its recommendation. The commission's notice of recommendation shall be posted on the department's website within ten days of the public hearing on the proposed rezone. If the

Planning Commission
 File No.: AME2019 0010
 October 4, 2019
 Page 4 of 14

commission recommends approval of the rezoning request or approval with modifications, the director shall forward the commission's written recommendation to the assembly with an ordinance to amend the official zoning map in accordance with the recommendation. If the commission recommends denial, the amendment shall be deemed disapproved unless the applicant files a notice of protest in accordance with CBJ 49.75.130(b).

(b) Protests.

(1) An applicant may protest the commission's recommendation to deny the rezoning by filing written statement with the municipal clerk within 20 days of the commission's written notice of recommendation for denial, requesting that an ordinance amending the zoning map as set out in the application be submitted for action by the assembly. The director shall, within 30 days of the filing of the protest with the municipal clerk, prepare draft ordinance to be appended to the notice of recommendation for consideration by the assembly.

(2) Any person may protest the commission's recommendation to approve a rezoning request or approve a rezoning request with modification by filing a written protest with the municipal clerk within 20 days of the commission's written notice of recommendation.

(3) In the case of a timely filed protest and after introduction of the proposed ordinance at a regularly scheduled assembly meeting, the assembly shall hold a public hearing on the proposed rezoning. At the close of the hearing, the assembly shall approve the zoning map amendment as recommended by the commission, approve the zoning map amendment with modifications, or deny the zoning map amendment.

(c) All rezonings shall be adopted by ordinance, and any conditions thereon shall be contained in the ordinance. Upon adoption of any such ordinance, the director shall cause the official zoning map to be amended in accordance with the adopted ordinance.

ANALYSIS

Title 49 Land Use Code -

Current Zoning and Surrounding Uses – The subject parcel is currently zoned D5; the rezone request is D18. According to CBJ 49.25.210 the intent of the D5, D10, and D18 zoning districts is:

The D5, residential district, is intended to accommodate primarily single-family and duplex residential development at a density of five dwelling units per acre. D5 zoned lands are located in the urban service boundary and are served or can be served by public water and sewer.

The D18, residential district, is intended to accommodate primarily multifamily development at a density of 18 dwelling units per acre. This is a high-density multifamily zoning district intended to accommodate midrise-type development.

The D10 and D15, residential districts, are intended to accommodate primarily multifamily residential development at ten and 15 units per acre respectively. These are relatively low-density multifamily districts.

CBJ 49.25.400 Table of Dimensional Standards Excerpts:

	Current Zoning	Proposed Zoning	Alternative
Table of Dimensional Standards Rezone request: 8.45 Acres	D5 (5 du/acre)	D18 (18 du/acre)	D10 (10 du/acre)
Maximum Number of Dwelling Units **	53	152	85
Maximum Height Limit	35 feet	35 feet	35 feet
Maximum Lot Coverage	50%	50%	50%
Vegetative Cover	20%	30%	30%
Minimum Lot Size	7,000 sq. ft.	5,000 sq. ft.	6,000 sq. ft.
Minimum Lot Width	70 feet	50 feet	50 feet
Minimum Lot Depth	85 feet	80 feet	85 feet
Minimum Front Yard Setback	20 feet	20 feet	20 feet
Minimum Street Side Yard Setback	13 feet	13 feet	13 feet
Minimum Side Yard Setback	5 feet	5 feet	5 feet
Minimum Rear Yard Setback	20 feet	10 feet	20 feet

**D5 density determined by minimum lot size. (43,560 square feet/7,000 square feet = 6.22 DUs per acre)

The subject parcel could accommodate up to 53 dwelling units under the current D5 density. Under the proposed D18 zone designation, the subject parcel could accommodate 152 dwelling units. Taking into consideration the land required for roads, setbacks, vegetative cover, and lot coverage maximums, it is not likely that the site could be developed to maximum density. Additionally, there are many portions of the parcel that exceed 37% slope. Development in these areas will be more challenging. A slope map has been provided in Attachment B. Areas with slopes exceeding 18% may need a hillside endorsement for development.

The rezone request would allow the development of the parcel to be clustered into the more developable areas, as discussed in the applicant's narrative (Attachment A). CBJ Title 49 currently provides for clustered developments, such as the PUD, or Alternative Residential Subdivision (ARS), which are allowed in D5 and D18. The PUD and ARS allow for density bonuses in both D5 and D18 zoning districts. In the D5 zoning district, a PUD could allow for up to a 15% density bonus and the ARS could allow for up to a 50% density bonus. In the D18 zoning district, a PUD could allow for up to a 15% density bonus and the ARS could allow for up to a 25% density bonus.

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All density bonuses must be approved by the Planning Commission through the review of the PUD plan or ARS plan.

Additionally, CBJ 49.60 also provides for density bonuses for major developments that provide non-vehicular transportation, traffic mitigation, certain public services and facilities, and design features. These bonuses may also be used in both D5 and D18 zoning districts for major development, if approved by the Planning Commission through the review of a Conditional Use Permit.

CBJ 49.25.300 Table of Permissible Uses Excerpts:

	Current Zoning	Proposed Zoning	Alternative
	D5	D18	D10
Single-family residential, duplexes	Dept.	Dept.	Dept.
Multifamily	Not allowed	Dept./CUP	Dept./CUP
Bed & Breakfasts, Rooming Houses	CUP	Dept./CUP	Dept./CUP
Hotels, Motels	Not allowed	Not allowed	Not Allowed
Offices not greater than 1,000 sq. ft.	CUP	CUP	CUP
Offices greater than 1,000 sq. ft. but not more than 2,500 sq. ft.	Not allowed	CUP	CUP
Offices greater than 2,500 sq. ft.	Not allowed	Not allowed	Not Allowed
Light manufacturing	Not allowed	CUP	Not Allowed
Medium Manufacturing	Not allowed	Not allowed	Not Allowed
Churches, synagogues, temples	CUP	CUP	CUP
Social, fraternal halls, union halls	Not allowed	Not allowed	Not Allowed
Health care clinic	Not allowed	CUP	Not Allowed
Child care center	CUP	CUP	CUP

The above table is not an all-inclusive list of the uses allowed in the D5 and D18 zoning districts; rather it is intended to provide a sense of the differences between the existing and proposed zoning designations. The significant differences between D5 and D18 are that multi-family development is allowed in D18, and generally, D18 allows some commercial activities.

Items listed in the above table as “CUP” would require a Conditional Use Permit to be issued by the Planning Commission. If listed as “Dept./CUP” the use may be allowed with a Department review, or CUP, based on if the proposed use is minor or major development. Minor development

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is defined below; major development is anything that is not minor development according to CBJ 49.25.300:

Single-family residential districts: A residential development containing two or fewer dwelling units, two or fewer bedrooms leased on a daily or weekly basis, or a nonresidential building totaling less than 5,000 square feet or using less than 10,000 square feet of land in total.

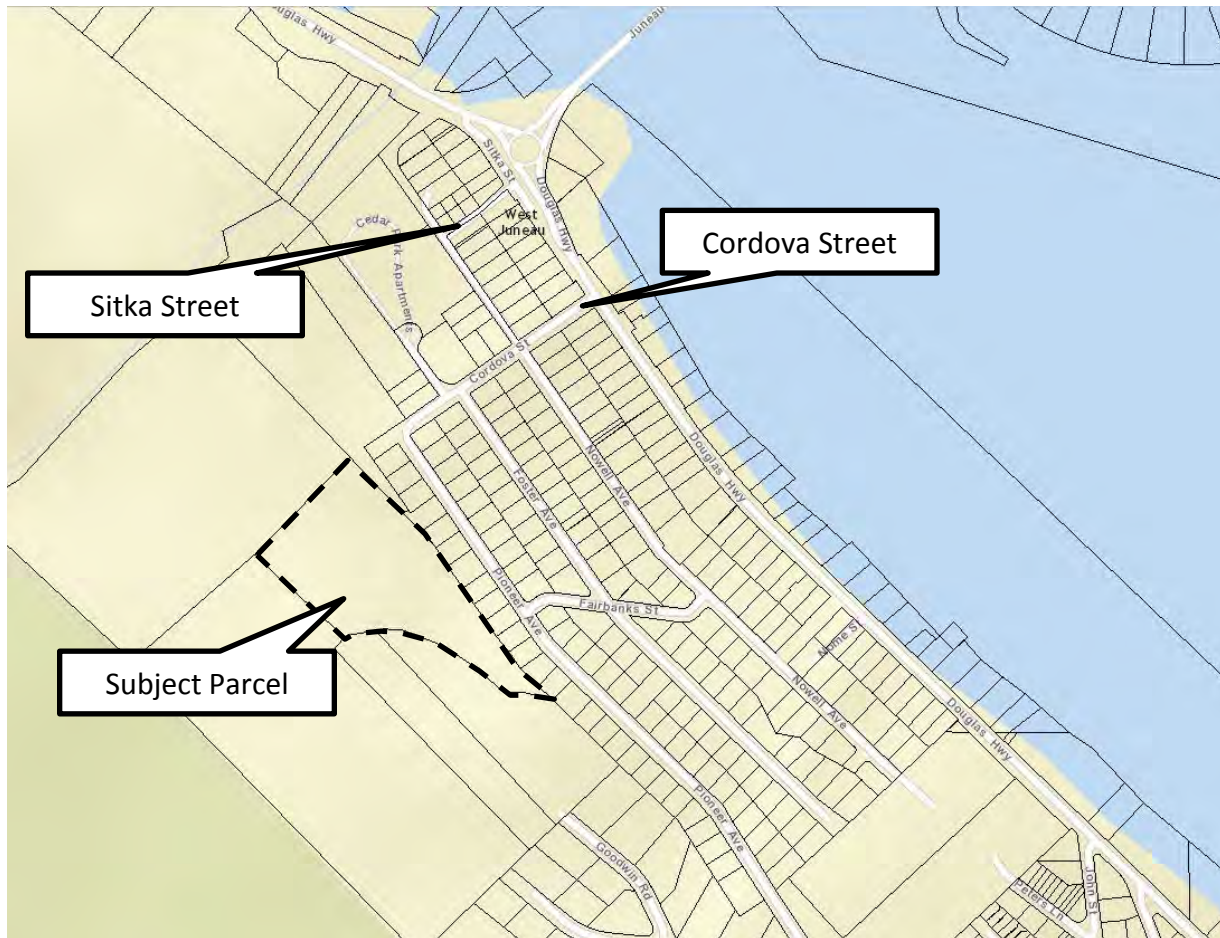
Multifamily residential districts: A residential development containing eight or fewer dwelling units, eight or fewer bedrooms leased on a daily or weekly basis, or a nonresidential building totaling less than 5,000 square feet or using less than 10,000 square feet of land in total.

Surrounding uses include single-family and duplex in a D5 zone; high-density, multifamily development in a D18 zone; U.S. Forrest Service land containing the Dan Moller Trail zoned Rural Reserve; and a synagogue in a D18 zone. There are a number of large undeveloped parcels zoned D5 and D18 in the immediate area.

Public Services

As stated above, City sewer and water are not currently provided to the parcel; additionally, no access has been provided. The proposed access via an extension of Cordova Street crosses through private land and the applicant has not provided an access agreement with the landowner. CBJ Engineering indicates that there is no issue with the rezone request; however, at time of development, water pressure may be an issue. This would be addressed at the time a development proposal is received and the existing systems may need to be upgraded (Attachment C).

The applicant has stated in their project narrative that an extension of Cordova Street is the “only practical access for either parcel” (Attachment A). Cordova Street lies within a 60-foot right-of-way and has sidewalks on one side of the street. Cordova Street is also relatively steep and can present challenging driving conditions in the winter months. According to the Alaska Department of Transportation and Public Facilities (DOT), the intersection of Cordova Street and Douglas Highway is currently operating at a Level of Service D and E for the AM and PM peak hours; this Level of Service is nearing failure (Attachment C). The only alternative access to this neighborhood from Douglas Highway is through Sitka Street, which is a narrow and steep street towards the Douglas roundabout, as shown on the map below. The portion of Sitka Street that runs east to west lies within a 17-foot-wide right-of-way. The roadway is approximately 15 feet wide and paved. Sitka Street runs from Douglas Highway to Nowell Avenue, which then feeds onto Cordova Street.



According to CBJ 49.40.300, a traffic impact analysis (TIA) is required when a development is projected to generate more than 500 average daily trips (ADTs). CBJ definition of development does not include “rezone”, and so rezones do not trigger the need for a TIA. Eventual development may trigger one depending on estimated generated traffic. A TIA would consider impacts on affected intersections. It is already known that the Cordova Street intersection is operating at a near failing Level of Service.

Douglas Highway is a DOT right-of-way. DOT could also require a TIA and mitigation for development that may affect the intersection of Cordova Street and Douglas Highway. This would be reviewed by CBJ and DOT when a specific proposal is received.

Although rezones do not require a TIA, traffic at this intersection is an important consideration and a concern raised by many residents at the neighborhood meeting and in submitted written comments. The 1985 West Juneau Traffic Study identifies a need to route traffic to and from the north, utilizing a bridge over Kowee Creek. This would mitigate traffic impacts for additional development at the top of Cordova Street and facilitate development without further impacting

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the Cordova Street/Douglas Highway intersection, but would not likely solve the existing issues with the present, almost failing intersection.

Compliance with the Comprehensive Plan

The subject parcel has a Comprehensive Plan future land use designation of Urban Low Density Residential (ULDR) and Medium Density Residential (MDR) according to Map M of the Comprehensive Plan (Attachment B). These future land use designations are described in the Comprehensive Plan as follows:

Urban/Low Density Residential (ULDR). *These lands are characterized by urban or suburban residential lands with detached single-family units, duplex, cottage or bungalow housing, zero-lot-line dwelling units and manufactured homes on permanent foundations at densities of one to six units per acre. Any commercial development should be of a scale consistent with a single-family residential neighborhood, as regulated in the Table of Permissible Uses (CBJ 49.25.300).* (Emphasis added)

Medium Density Residential (MDR). *These lands are characterized by urban residential lands for multifamily dwelling units at densities ranging from 5 to 20 units per acre. Any commercial development should be of a scale consistent with a residential neighborhood, as regulated in the Table of Permissible Uses (CBJ 49.25.300).* (Emphasis added)

The proposed rezone of the subject parcel from D5 to D18 would not be in conformance with the Comprehensive Plan future land use designations maps for the portion of the parcel that is designated as ULDR.

The subject parcel is located within *Subarea 9: Douglas & West Juneau* of the Comprehensive Plan. The community form of this subarea is designated as *Urban in downtown Douglas and West Juneau*. The Comprehensive Plan provides guidelines and considerations for this subarea that apply specifically to this rezone request:

1. Provide for additional medium- to high-density residential development in areas with access to arterials and served by municipal sewer and water and adequate road and intersection capacity (to Level of Service D or better).

8. Future development in North Douglas, West Juneau or downtown Douglas will require improvements to the Tenth Street and Egan Drive intersection and may require additional traffic capacity on the Juneau-Douglas Bridge. These two congestion points limit additional residential development on Douglas Island and impede the CBJ's progress in promoting and facilitating the construction of affordable housing. The Cordova Street and Douglas Highway intersection has been the subject of many studies. These studies have documented the obvious: A problem currently exists during the weekday morning peak travel period for motorists seeking to turn left onto Douglas Highway from Cordova Street. The traffic problem is likely to get worse as West Juneau is further developed. The Juneau-

Douglas Bridge has limited capacity for a number of reasons. A traffic circle was installed at the North Douglas Highway terminus of the Juneau-Douglas Bridge; this increased the capacity and lessened congestion from Cordova Street and southbound traffic from north of the Bridge area, however, the design capacity at the Tenth Street and Egan Drive intersection continues to function at unacceptable congested Levels of Service E and F in the peak week day morning periods. The CBJ should work with ADOT&PF to upgrade the Tenth Street and Egan Drive intersection as a top priority. (Emphasis added)

Guideline one above speaks to providing additional residential development in the area—when development is serviced by appropriate public facilities. The CBJ Roadway Classification Map identifies Cordova Street as a collector and Douglas Highway as a minor arterial.

As discussed above, the intersection of Cordova Street and Douglas Highway is currently operating at a Level of Service D and E for the AM and PM peak hours according to DOT (Attachment C). Additionally, public water and sewer have not been provided to this parcel. For these reasons, the proposed rezone from D5 to D18 would not be in general conformity with guideline one for Subarea 9.

Chapter 8 of the Comprehensive Plan also speaks to traffic and identifies transportation related problems, which includes:

1. *Key roadway intersections and bridge capacities are overburdened and inadequate to support increased development in the Mendenhall Valley and on Douglas Island. The signalized intersection of Egan Drive and Mendenhall Loop Road experiences the lowest and most congested Level of Service (LOS F) in the peak morning commute period (2003 ADOT&PF data) and 16 non-signalized intersections experience unacceptable levels of service (LOS D or worse) in the Mendenhall Valley, Glacier Highway and Egan Drive Corridors. Traffic congestion at Tenth Street and Egan Drive is at a LOS E and F during the peak morning commute period and Cordova Street and Douglas Highway is at LOS F in the peak morning period. **Motorists in areas with LOS D, E, or F experience significant delays in their commute times; those neighborhoods cannot accommodate additional peak hour single-occupancy vehicle traffic related to increased development without noticeable decreased livability and quality of life.** In those areas, staggered work hours for downtown workers, roadway and intersection improvements, and transit improvements are needed and should be analyzed, budgeted and included within the ADOT & PF Needs List for subsequent listing in the State Transportation Improvement Program (STIP) as soon as possible to await their turn in the STIP funding cycle. (Emphasis added)*

Note: The above is an excerpt from the 2013 Comprehensive Plan. The Cordova Street and Douglas Highway intersection is currently operating at a Level of Service D and E for the AM and PM peak hours; this Level of Service is nearing failure according to DOT (Attachment C).

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The Comprehensive Plan provides the following policies applicable Borough-wide, that are relevant to the proposed rezone request:

POLICY 3.1. TO BALANCE AVAILABILITY OF SUFFICIENT LAND WITHIN THE DESIGNATED URBAN SERVICE AREA BOUNDARY THAT IS SUITABLY LOCATED AND PROVIDED WITH THE APPROPRIATE PUBLIC SERVICES AND FACILITIES TO MEET THE COMMUNITY'S FUTURE GROWTH NEEDS AND THE PROTECTION OF NATURAL RESOURCES, FISH AND WILDLIFE HABITAT AND SCENIC CORRIDORS.

POLICY 3.2. TO PROMOTE COMPACT URBAN DEVELOPMENT WITHIN THE DESIGNATED URBAN SERVICE AREA TO ENSURE EFFICIENT UTILIZATION OF LAND RESOURCES AND TO FACILITATE COST EFFECTIVE PROVISION OF COMMUNITY SERVICES AND FACILITIES WHILE BALANCING PROTECTION OF NATURAL RESOURCES, FISH AND WILDLIFE HABITAT AND SCENIC CORRIDORS.

POLICY 4.2. TO FACILITATE THE PROVISION OF AN ADEQUATE SUPPLY OF VARIOUS HOUSING TYPES AND SIZES TO ACCOMMODATE PRESENT AND FUTURE HOUSING NEEDS FOR ALL ECONOMIC GROUPS.

4.2 – SOP 1 (Standard Operating Procedure) Designate on the Comprehensive Plan Land Use Maps adequate sites and supporting infrastructure within the Urban Service Area Boundary to accommodate a diversity of housing types, size, price and types of neighborhood scale and character to satisfy the desires of all residents.

POLICY 4.3. TO DESIGNATE ON LAND USE MAPS AN ADEQUATE SUPPLY OF BUILDABLE LAND WITHIN THE URBAN SERVICE AREA, AND PARTICULARLY ALONG TRANSIT CORRIDORS, FOR RESIDENTIAL USE AT DENSITIES THAT CAN PRODUCE HOUSING AFFORDABLE TO ALL ECONOMIC GROUPS.

POLICY 4.8. TO BALANCE THE PROTECTION AND PRESERVATION OF THE CHARACTER AND QUALITY OF LIFE OF EXISTING NEIGHBORHOODS WITHIN THE URBAN SERVICE AREA WHILE PROVIDING OPPORTUNITIES FOR A MIXTURE OF NEW HOUSING TYPES.

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

POLICY 10.4. TO MINIMIZE CONFLICTS BETWEEN RESIDENTIAL AREAS AND NEARBY RECREATIONAL, COMMERCIAL, OR INDUSTRIAL USES THAT WOULD GENERATE ADVERSE IMPACTS TO EXISTING RESIDENTIAL AREAS THROUGH APPROPRIATE LAND USE LOCATIONAL DECISIONS AND REGULATORY MEASURES.

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10.4 - IA1 Seek to reduce or eliminate conflicts between medium or high density residential uses in established low density residential neighborhoods by encouraging the design of higher density housing to be compatible in scale, massing and orientation with the adjacent, lower-density housing and to hide or screen the parking behind or within the structure(s).

The above listed policies of the Comprehensive Plan acknowledge the need for additional housing in Juneau, while balancing the need for adequate public infrastructure, including roads, water, and sewer. Additionally, the Plan identifies a need to facilitate varying densities while resolving conflicts between single-family neighborhoods and other types of development. Staff finds the following aspects of the rezone request are not consistent with the CBJ Comprehensive Plan:

- The parcel being reviewed under this request presently lacks public infrastructure.
- Cordova Street creates a clear, dividing line between higher and lower density development. Currently, Cordova Street and the streets that are accessed via Cordova Street, serve primarily single-family residential neighborhoods to the south and primarily multifamily residential neighborhoods to the north.
- Through this proposal, an extension of Cordova Street would serve higher density development on both sides of the existing divide.
- The proposed rezone from D5 to D18 would not be in harmony with the surrounding neighborhood on the south side of Cordova Street.

Zone Change Options and Alternatives

A number of zoning districts may be considered for the subject property. The applicant requests that the property be rezoned from D5 to D18. As stated in CBJ 49.75.130(a), the Commission may recommend approval, approval with modifications or denial of a rezone request. The Commission may recommend approval to the Assembly for different zoning districts than what is requested by the applicant or recommended by staff. Additionally, the Commission can determine the boundary of the area to be rezoned. This means that if the Commission wishes to do so, the zoning district boundary line may be moved from its current location, as long as it is found to be in substantial conformance with the Comprehensive Plan.

In the “Analysis” section of this report, staff compares permissible uses and dimensional standards for D10 as an alternative to this rezone request. The D10 zoning district would allow for multifamily development at a lesser density than the requested D18.

AGENCY COMMENT

The proposed rezone request was sent for review to Capital City Fire and Rescue; CBJ Building Division, Engineering and Public Works, Assessors Office, Parks and Recreation; DOT; U.S. Forest Service; and AEL&P. Comments received at the time of writing this report can be found in Attachment C, and are summarized below. AEL&P and the U.S. Forest Service both stated they had no concerns with the proposed rezone request.

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Capital City Fire and Rescue – Stated they had no issues with the proposed rezone. As there is limited access to this neighborhood through Cordova Street, sprinkler systems may be a requirement for any large development. This would be reviewed at the time of development.

Engineering & Public Works – Stated they had no issues with the proposed rezone. The existing water and sewer systems may need to be upgraded based on a proposed development. Additionally, achieving adequate water pressures may be challenging with higher elevation development. This would be reviewed at the time of development.

Alaska Department of Transportation – Stated they could not comment at this time as to whether or not the proposal would have an impact on DOT transportation infrastructure. A TIA would be required once a project is projected to generate more than 100 additional vehicle trips per hour. DOT also stated that vehicles turning left from Cordova Street experience a LOS D and E for the AM and PM peaks respectively.

Assessor's Office – The CBJ Assessors have stated that they would not anticipate a positive or negative effect on neighboring property values as the neighborhood currently consists of both D18 and D5 parcels.

PUBLIC COMMENT

CDD Staff held a neighborhood meeting on August 20, 2019 to inform the neighborhood that a rezone application had been received, to discuss the rezone process, and to solicit public comments. Approximately 40 residents attended the neighborhood meeting. Prior to the Planning Commission hearing, postcards were mailed to property owners within 500 feet of the subject parcels and two public notice signs were posted in the Cordova Street right-of-way. One sign was posted at the bottom of Cordova Street, prior to the turn-offs of Nowell Avenue and Foster Avenue. The second public notice sign was posted at the top of Cordova Street approximately where the applicant envisions the extension of Cordova Street. Two public notice signs were posted as a result of a request from the neighborhood meeting, in order to better notify the entire neighborhood.

Public comments received through September 23, 2019 can be found in Attachment D. Concerns raised by neighboring residents include the addition of traffic on an already challenging intersection, neighborhood harmony within an existing D5 neighborhood, access for emergency services, the potential for commercial activity in an established residential neighborhood, and additional burden on existing infrastructure.

HABITAT

There are no known habitat concerns on the subject parcel.

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FINDINGS

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

- 1. Was the rezone application filed timely and was adequate public notice provided in accordance with CBJ 49.75.110?**

Yes. The application was filed in July; Public notice of this project was provided in the October 4, 2019 and October 13, 2019 issues of the Juneau Empire's "Your Municipality" section, and a Notice of Public Hearing was mailed to all property owners within 500 feet of the subject parcel. Moreover, two Public Notice Signs were posted in the Cordova Street right-of-way.

- 2. Per CBJ 49.75.120 is this request for an area covering more than two acres, an expansion of an existing zoning district, and has no a similar request made within the previous 12 months?**

Yes. The parcel exceeds two acres and no rezone application has been filed for this parcel within the past 12 months.

- 3. Is the proposed zoning district and the uses allowed therein found to be in substantial conformance with the land use maps of the comprehensive plan; policies of the comprehensive plan, and Title 49, in accordance with CBJ 49.75.120?**

No. As discussed above the proposed rezone of the subject parcel from D5 to D18 is not found to be in substantial conformance with the land use maps of the Comprehensive Plan for the entire parcel. Additionally, the proposed rezone request violates some policies and guidelines of the Comprehensive Plan.

STAFF RECOMMENDATION

Based on the above analysis and findings, staff recommends that the Planning Commission **DENY** the proposed rezone of 8.45 acres from D5 to D18; further, staff recommends that the Planning Commission **DENY** alternative rezone options, such as an upzone to the D10 zoning district.



DEVELOPMENT PERMIT APPLICATION

NOTE: Development Permit Application forms must accompany all other Community Development Department land use applications.

To be completed by Applicant	PROPERTY LOCATION	
	Physical Address No street numbers assigned, above intersection of Cordova St. and Pioneer Ave.	
	Legal Description(s) (Subdivision, Survey, Block, Tract, Lot) USMS 1069 KOWEE LT 2 and USMS 59 TR A LUCY LODE	
	Parcel Number(s) 1D060L050010 and 1D0501000011	
	☐ This property located in the downtown historic district ☐ This property located in a mapped hazard area, if so, which _____	
	LANDOWNER/ LESSEE	
	Property Owner Tlingit Haida Regional Housing Authority (THRHA) & Lonnie/Beverly Anderson	Contact Person THRHA: Joyce Niven, Andersons: Murray Walsh
	Mailing Address THRHA, PO BOX 32237 JUNEAU AK 99803, Anderson PO BOX 32498 JUNEAU AK 99803	Phone Number(s) Niven: 780-3156, Walsh: 723-8444
	E-mail Address jniven@thrha.org murray@acsalaska.net	
	LANDOWNER/ LESSEE CONSENT Required for Planning Permits, not needed on Building/ Engineering Permits	
I am (we are) the owner(s) or lessee(s) of the property subject to this application and I (we) consent as follows: A. This application for a land use or activity review for development on my (our) property is made with my complete understanding and permission. B. I (we) grant permission for officials and employees of the City and Borough of Juneau to inspect my property as needed for purposes of this application.		
X <u><i>[Signature]</i></u> Landowner/Lessee Signature <u>7-8-19</u> Date X <u><i>[Signature]</i></u> Landowner/Lessee Signature <u>7/22/19</u> Date		
NOTICE: The City and Borough of Juneau staff may need access to the subject property during regular business hours and will attempt to contact the landowner in addition to the formal consent given above. Further, members of the Planning Commission may visit the property before the scheduled public hearing date.		
APPLICANT If the same as OWNER, write "SAME"		
Applicant THRHA & The Andersons	Contact Person Murray Walsh, Walsh Planning & Development Services (WPDS)	
Mailing Address 2974 Foster Ave, Juneau, AK 99801	Phone Number(s) WPDS: 723-8444	
E-mail Address murray@acsalaska.net		
X <u><i>[Signature]</i></u> Applicant's Signature <u>7-8-19</u> Date of Application <u>7-24-19</u>		

DEPARTMENT USE ONLY BELOW THIS LINE

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

INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED

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

Intake Initials ANE
Case Number AME 19-10.
Date Received 7/25/19



ZONE CHANGE APPLICATION

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

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

To be completed by Applicant

PROJECT SUMMARY

Rezone two parcels, 1D060L050010 (21 ac.) and 1D0501000011 (8.5 ac.) from the current D-5 status to D-18

IS THIS AN EXPANSION OF AN EXISTING ZONE?

☒ Yes ☐ No

Total Land Area of Proposed Change 29.5 acres

Comprehensive Plan Land Use Designation MDR/ULDR

Current Zone(s) Anderson: D-5, THRHA: D-5(T)D-18

Comprehensive Plan Map Letter Map M

New Zone Requested D-18

TYPE OF ZONE CHANGE REQUESTED

☐ Regular ☒ Transition

Has this or a similar zone change been requested in the previous 12 months? ☐ Yes Case # _____ ☒ No

UTILITIES AVAILABLE

WATER: ☒ Public ☐ On Site

SEWER: ☒ Public ☐ On Site

ALL REQUIRED MATERIALS ATTACHED

- ☒ Complete application
- ☒ Pre-Application Conference notes
- ☒ Narrative including:
 - ☒ Purpose of the requested zone change
 - ☒ Any potential impacts to public infrastructure (streets, water, & sewer)
 - ☒ How the requested zone change comply with the maps and policies of the Comprehensive Plan
- ☒ Site Plan and/or map of proposed zone change (details on reverse side)

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

ZONE CHANGE FEES	Fees	Check No.	Receipt	Date
Application Fees	\$ 450 <u>600.00</u>			
Admin. of Guarantee	\$ _____			
Adjustment	\$ _____			
Pub. Not. Sign Fee	\$ <u>50</u>			
Pub. Not. Sign Deposit	\$ <u>100</u>			
Total Fee	\$ <u>750</u>			

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

INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED

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

Case Number	Date Received
<u>AME19-10</u>	<u>7/25/19</u>

Attachment A - Application

Laurel Christian

From: Laurel Christian
Sent: Monday, September 30, 2019 8:25 AM
To: 'Jackie Pata'
Cc: Joyce Niven; Murray Walsh; Lonnie Anderson
Subject: RE: THRHA Withdrawal language

Hello Jackie,

I will begin the steps to withdraw the THRHA portion of the application (AME20190011).

Thank you,

Laurel Christian | Planner

Community Development Department | City & Borough of Juneau, AK

Location: 230 S. Franklin Street, 4th Floor Marine View Building

Office: 907.586.0761

Please note name change (Bruggeman to Christian) and new email: Laurel.christian@juneau.org



From: Jackie Pata <jpata@thrha.org>
Sent: Friday, September 27, 2019 4:04 PM
To: Laurel Christian <Laurel.Christian@juneau.org>
Cc: Joyce Niven <jniven@thrha.org>; Murray Walsh <murray@acsalaska.net>; Lonnie Anderson <doclonnie@hotmail.com>
Subject: THRHA Withdrawal language

EXTERNAL E-MAIL: BE CAUTIOUS WHEN OPENING FILES OR FOLLOWING LINKS

Hello Ms. Christian,

We have been advised that you are planning to recommend denial of our application to re-zone Parcel 1D060L050010 aka USMS 1069 KOWEE Lot 2. We are uncomfortable with proceeding with the re-zone process in view of this expectation and with this message we request that you suspend the process and take no further action on the matter. Please let me know if you need any more information from THRHA on this subject.

Sincerely,
Jackie

Jacqueline Kus.een Pata
President/CEO

Zone Change Application Information

Zone changes are outlined in CBJ 49.75 article I

Pre-Application Conference: A pre-application conference is encouraged prior to submitting an application. The applicant shall meet with City & Borough of Juneau (CBJ) staff to discuss the Zone Change process and analysis. To schedule a pre-application conference, please contact the Permit Center at 586-0770 or via email at Permits@juneau.org.

Application: An application for a Zone Change will not be accepted by the CBJ until it is determined to be complete. **Zone Change may only be applied for during January and July.** The items needed for a complete application are:

1. **Forms:** Completed Zone Change Application and Development Permit Application.
2. **Fees:** The fee for Zone Change Application is \$600.00. No work can be approved with a Zone Change. All fees are subject to change.
3. **Project Narrative:** A detailed narrative describing the purpose for the requested zone change.
4. **Plans:** A site plan showing the following information:
 - A. The boundaries of the existing and proposed zone change and proposed buffers;
 - B. The location of existing structures (i.e. buildings, fences, signs, parking areas, etc.); and
 - C. The location of existing physical features of the site (i.e. drainage, topography, eagle trees, hazard areas, salmon streams, wetlands, etc.).
5. A traffic study may be required for zone changes.

Document Format: All materials submitted as part of an application shall be submitted in either of the following formats:

1. Electronic copies in the following formats: .doc, .txt, .xls, .bmp, .pdf, .jpg, .gif, .xlm, .rtf (other formats may be preapproved by the Community Development Department).
2. Paper copies 11" X 17" or smaller (larger paper size may be preapproved by the Community Development Department).

Application Review & Hearing Procedure: Once the application is determined to be complete, the Community Development Department will initiate the review and scheduling of the application. This process includes:

Review: The Community Development Department will evaluate the application for consistency with all applicable City & Borough of Juneau codes and adopted plans. Depending on unique characteristics of the Zone Change request, the application may be required to be reviewed by other municipal boards and committees. During this review period, the Community Development Department will coordinate the review of this application by other agencies, as necessary. **Review comments may require the applicant to provide additional information, clarification, or submit modifications/alterations for the proposed Zone Change.**

Hearing: Once an application has been reviewed by all applicable parties the Community Development Department will schedule the zone change for the next appropriate Planning Commission meeting. All Zone Change Applications will be reviewed by the Planning Commission who will send a recommendation to the Assembly. Following a recommendation of approval by the Planning Commission, the Community Development Department will coordinate the zone change review by the Assembly. In order for zone changes to become effective, they must be adopted by ordinance by the CBJ Assembly.

Public Notice Responsibilities: All Zone Change requests must be given the following public notice as outlined in CBJ 49.15.230:

Community Development Department: Will give notice of the pending Planning Commission meeting and its agenda in the local newspaper a minimum of 10-days prior to the meeting. Furthermore, the department will mail notices to all property owners within 500-feet of the project site.

The Applicant will post a sign on the site at least 14 days prior to the meeting. The sign shall be visible from a public right-of-way or where determined appropriate by CDD. Signs may be produced by the Community Development Department for a preparation fee of \$50, and a \$100 deposit that will be refunded in full if the sign is returned within seven days of the scheduled hearing date. If the sign is returned between eight and 14 days of the scheduled hearing \$50 may be refunded. The Applicant may make and erect their own sign. Please contact the Community Development Department for more information.

INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED

Narrative for THRHA/Anderson Zone Change Application

Overview

Two parcels are proposed for re-zoning and are shown on the attached plat. The larger – 21 ac. – easterly parcel is owned by the Tlingit Haida Regional Housing Authority (THRHA, hereafter) and the smaller – 8.5 ac. is owned by Dr. Lonnie Anderson. Both are co-applicants for this application. The THRHA parcel is already zoned D-5 transitioning to D-18 and is classified ULDR in the Comprehensive Plan. The Anderson parcel is also classified ULDR on its easterly portion and MDR on the westerly side.

The key issue for both parcels is access. The *only* practical access for either parcel is an extension of Cordova Street. Such an extension, while short – about 300 feet – will be very expensive to build. The terrain is steep and there will probably have to be blasting in bedrock to build the road grade to required standards. This means that the development that would be served by this road extension has to be substantial enough to pay for the road as well as site preparation that will also be more expensive than typical because of the terrain. Single family or duplex development will not be enough. A financial work-up is shown below to illustrate this point further.

Finally, by way of overview, these properties are the last of their kind when comes to the potential of residential views and multi-family zoning will enable many more families to enjoy this amenity. The re-zone application instructions ask that three matters be addressed in a narrative like this:

1. Purpose of the requested zone change

To enable affordable multi-family development that adjoins natural areas, has proximity to downtown, and has excellent views of the city and countryside. THRHA is particularly interested in condo or townhouse-style development where occupants acquire ownership of their units and build equity thereby.

2. Any potential impacts to public infrastructure (streets, water, & sewer)

We understand that the utilities have been sized to accommodate much more than the current level of development. Any new development will add traffic to the existing streets but the all operate freely now. The only exception is the Cordova/

Douglas Highway intersection morning commute and this operates rather well because of the neighborly manners of Douglas drivers.

3. How the requested zone change complies with the maps and policies of the Comprehensive Plan

The current transition zoning for the THHRA parcel is a direct application of the underlying Comp Plan classification. As noted, the Anderson parcel is partially classified multi-family and partly D-5. As will become clear, the parcel cannot economically be developed in D-5 and a great deal of it cannot be developed at all because it is just too steep and because, as discussed below, a lot of land will be used only as buffers to protect the Dan Moller Trail and the D-5 development on Pioneer Avenue.

Site Plan and Profiles

A site plan, Sheet 1, is attached showing the two parcels and showing (or not including) these features

- The boundaries of the two are highlighted in orange and the developable area of the Anderson parcel is shown in cross-hatch highlight. Essentially, all the rest of the Anderson parcel would be buffer.
- No salmon streams or eagle trees are known to exist. The only wetlands would be small patches of forested wetlands. There are no hazardous areas.
- There are no existing structures, fences, signs, parking areas or other development.
- The topography, shown in ten-foot contours – data provided by the CDD LIDAR database – shows that both parcels have very steep sections but with the lower areas being reasonably sloped and thus usable for development.

Profile A is shown two ways. On Sheet 2 it is shown in two sections. On Sheet 4 it is shown in one section with annotations depicting the key points:

- The Goodwin Road Cul-de-Sac, elevation 375 is far above the Anderson parcel developable area at 228 feet. At first glance, it might be thought that the Anderson parcel could be served by an extension of Goodwin Road, but taking a look back at the plan view plat, it can be seen that the area south of the Dan Moller Trail is just too steep to enable a road *and* reasonable

development areas on either side of it. Such an extension would also impact the Trail if it actually went all the way to the Anderson parcel.

- The Trail, at 300 feet elevation where Profile A crosses it, is 72 feet higher than the Anderson Parcel developable area.

Profile B on Sheet 3 shows a 53-foot difference in height between Pioneer Avenue and the developable area. That difference plus a generous setback buffer will result in zero impacts on the Pioneer neighborhood.

Development Scenarios

It is mentioned above that the key to development of both parcels is road access and that the most likely option is to extend Cordova Street upwards. If the parcels are zoned D-18, such an extension would be about 200 feet of roadway ending in a 60-foot diameter cul-de-sac. If the parcels were developed in D-5 zoning, there would be 300 feet of roadway and then lateral roads running northwest onto the THRHA property and southeast on to the Anderson property. These lateral roads would provide the actual access to the houses laid out similar to Pioneer and Foster Avenues. The Cordova extension only provides access to the lateral roads and is an extra cost to the downstream homeowners.

A CBJ standard residential access road costs about \$2500 per lineal foot in rough terrain. The minimum lot width in D-5 is 70 feet. So, the road passing in front of a typical house would cost \$175,000. Assuming it serves a house on both sides, the cost of each lot would have to include \$87,500 plus the cost of the land itself. This seems like a high number but affordability depends in part on how much the developer paid for the land. The more important point here is that the homeowner will *also* have to pay the *pro rata* share of the Cordova extension

The Cordova extension, 300 feet of access road in even rougher terrain than the side streets, would probably cost \$3000 a lineal foot. That works out to \$900,000. Approximately 18 houses could be built on the THRHA side street and about 16 on the Anderson side for a total of 34. Thus, the *pro rata* share for each house would be about \$26,500 to be paid in addition to the actual frontage road.

Now, if the parcels are zoned D-18, the maximum development potential would be very different. The 21-acre THRHA parcel could legally host 378 units and

the 8.5-acre Anderson tract could host 153 for a total of 531. This, however, is very unlikely for a number of reasons and the most likely density is far less. The nearby multi-family developments of Cedar Park, phases 1 and 2, and the Coogan apartment complex collectively average 12 units per acre.

The combined development potential at 12 units per acre is 354. This too is ¹ an unreasonably high number. The combined areas of the three neighboring multi-family developments is 12.35 acres hosting a total of 155 units that began development in 1952. The Coogan complex was just completed.

There will certainly be market demand for townhouses with views but it is hard to imagine more than 150 units, in total if the developers are looking for build-out and sell-out in less than ten years, so using that number, the *pro rata* share of access road cost for each unit would be \$6,000 and that is why rezoning to multi-family status makes affordable housing possible in this location.

¹ To actually build these high numbers on these sites would require multi-story buildings made of steel and concrete and would require far more preparation of the sites for such heavy buildings. To be affordable in Juneau, a condo or townhouse style development has to be two or three stories at most and be built with wood and other materials typical of light residential development.



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

THRHA & Anderson Douglas Rezone

Case Number: PAC20190048

Applicant: Murray Walsh

Property Owner: Tlingit Haida Regional Housing Authority and Lonnie and Beverly Anderson Living Trust

Property Address: Not Assigned

Parcel Code Number: 1D060L050010 and 1D0501000011

Site Size: 21 acres and 8.45 Acres

Zoning: Two Zones on One Parcel (D5 (T) D18 and D18) and D5 (see attached)

Existing Land Use: Vacant

Conference Date: 07/03/2019

Report Issued: 07/10/2019

List of attendees

Note: Copies of the Pre-Application Conference Report will be emailed, instead of mailed, to participants who have provided their email address below.

Name	Title	Email address
Murray Walsh	Applicant	murray@acsalaska.net
Joyce Niven	Applicant	jniven@thrha.org
Laurel Christian	Planning	laurel.christian@juneau.org
Adrienne Scott	Permit Tech	adrienne.scott@juneau.org

Pre-Application Conference Final Report

Conference Summary

Questions/issues/agreements identified at the conference that weren't identified in the attached reports.

The following is a list of issues, comments and proposed actions, and requested technical submittal items that were discussed at the pre-application conference.

Planning Division:

1. Zoning

- a. THRHA Parcel – The THRHA parcel is zoned D5(T)D18 and a small portion of the parcel is zoned D18. A transition zone designation means that the underlying zoning is D5 and it will be transitioned (up-zoned) to D18 when public water, sewer, or other improvements are provided. Transition Zoning is described in CBJ 49.70.700. The THRHA parcel has a comprehensive plan future land use designation of Medium Density Residential.
 - b. Anderson Parcel - The Anderson parcel is currently zoned D5. The Anderson parcel has a two comprehensive plan future land use designations – medium density residential and urban low density residential.
 - c. Medium Density Residential: *These lands are characterized by urban residential lands for multifamily dwelling units at **densities ranging from 5 to 20 units per acre**. Any commercial development should be of a scale consistent with a residential neighborhood, as regulated in the Table of Permissible Uses (CBJ 49.25.300). (Pg. 147)*
 - d. Urban Low Density Residential: *These lands are characterized by urban or suburban residential lands with detached single-family units, duplex, cottage or bungalow housing, zero-lot-line dwelling units and manufactured homes on permanent foundations at **densities of one to six units per acre**. Any commercial development should be of a scale consistent with a single family residential neighborhood, as regulated in the Table of Permissible Uses (CBJ 49.25.300). (Pg. 147)*
 - e. Transition Zoning Upgrade Process (for the THRHA parcel) – a parcel with transition zoning can be rezoned in one of two ways according to CBJ 49.70.720. **Transition zone upgrades do not follow the standard rezone process, as they are contingent on public infrastructure.**
 - i. In conjunction with a major development permit. CBJ 49.70.720(1)(A) *The applicant for a major development permit in a transition zone may make a concurrent request for a zoning upgrade. The plans accompanying the development permit application shall be based upon the density requested. A request for a zoning upgrade shall include preliminary plans and a determination by a certified engineer that such improvements are feasible.*
 - ii. Planning commission initiation after public improvements are installed. CBJ 49.70.720(1)(B) *The planning commission may initiate a zoning upgrade if the public sewer, water, or other required improvements already exist or will be provided by the City and Borough.*
 - f. Transition Zoning Upgrade (for the THRHA parcel) – On CBJ zoning maps is a note reading “**NOTE: Conditions of this Transition Area include water, sewer, and the construction of a Kowee Creek bridge by the developer**” for the THRHA parcel. This note was placed on this parcel as a result of the 1986 West Juneau Traffic Impact Study. Staff needs to do more research to determine whether or not this condition would apply to the transitional rezone of the THRHA parcel. When an application is submitted, a determination can be made.
- ##### 2. Setbacks
- a. D5 Zoning District: 20 ft. front yard; 20 ft. rear yard; 5 ft. side yard; 13 ft. street side yard

Pre-Application Conference Final Report

- b. D18 Zoning District: 20 ft. front yard; 10 ft. rear yard; 5 ft. side yard; 13 ft. street side yard
- c. CBJ 49.25.400 TPU Note 3: *Where one district abuts another, the greater of the two setbacks is required for both uses on the common property line.* The THRHA parcel abuts a rural reserve zoning district and D5 zoning district. The Anderson parcel, if rezoned to D18, would abut a D5 zoning district. The greater setback would apply along the common property line.
- 3. **Height** - D5 Zoning District and D18 Zoning District: 35 ft. permissible uses, 25 ft. accessory uses
- 4. **Access** – Neither lot currently has direct access to a CBJ ROW. It is expected that access to the parcels would be provided through an extension of Cordova Street, however; this would require participation of an additional private land owner.
- 5. **Density**
 - a. THRHA Parcel – Currently zoned D5 the parcel could house (130) 7,000 square foot lots (minimum lot size for zoning district) not including areas needed for roads and infrastructure. Multifamily development is not allowed in D5. Under D18 zoning, the THRHA parcel could house (182) 5,000 square foot lots (minimum lot size for D18) or 378 dwelling units in a multifamily development, not including roads or infrastructure.
 - b. Anderson Parcel – Currently zoned D5 the parcel could house (52) 7,000 square foot lots (minimum lot size for zoning district) not including areas needed for roads and infrastructure. Multifamily development is not allowed in D5. Under D18 zoning, the Anderson parcel could house (73) 5,000 square foot lots (minimum lot size for the D18 zoning district) or 152 dwelling units in a multifamily development, not including roads or infrastructure.
- 6. **Parking & Circulation**– Will be reviewed at time of development
- 7. **Lot Coverage** - D5 and D18 Zoning District: 50% permissible uses; 50% conditional uses
- 8. **Vegetative Coverage**
 - a. D5 Zoning District: 20% vegetative cover required
 - b. D18 Zoning District: 30% vegetative cover required
- 9. **Lighting** – Will be reviewed at time of development
- 10. **Noise** – Will be reviewed at time of development
- 11. **Flood** – NA
- 12. **Hazard/Mass Wasting/Avalanche/Hillside Endorsement** – A hillside endorsement may be required at time of development. Slopes on both properties exceed 17% (see attached slope map). This will be reviewed at time of development.
- 13. **Wetlands** – No known at this time.
- 14. **Habitat** – Kowee Creek, an anadromous waterbody, runs along the northwestern property line of the THRHA parcel.
- 15. **Plat or Covenant Restrictions**
 - a. Anderson Lot – There is an existing easement for the Dan Moller trail on the property, see Book 266, Page 214 filed with the Juneau Records office. This should be shown on future development plans.
- 16. **Traffic** – Will be reviewed at time of development.

Building Division:

Pre-Application Conference Final Report

17. **Building** – N/A

18. **Outstanding Permits** - None

General Engineering/Public Works:

19. **Engineering** – N/A

20. **Drainage** – N/A

21. **Utilities** – (water, power, sewer, etc.) N/A

Fire Marshal:

22. **Fire Items/Access** – N/A

Other Applicable Agency Review:

23. Comments should be requested from DOT at time of rezone review.

Next Steps:

24. Submit application to CDD (Rezone applications are only accepted in July or January)

25. CDD will schedule a neighborhood meeting to inform the public of the proposal and the rezone process. The applicant or the applicant's representative is strongly encouraged to attend.

26. CDD will schedule the case for review by the Planning Commission.

List of required applications

Based upon the information submitted for pre-application review, the following list of applications must be submitted in order for the project to receive a thorough and speedy review.

1. Rezone Application - http://www.juneau.org/cddftp/documents/AME-Zone-Change_Application-.pdf

a. **Rezone applications must be received in July or January**

2. Development Permit Application: <http://www.juneau.org/cddftp/documents/DPA.pdf>

a. Please ensure both property owners have signed a Development permit application

Additional submittal requirements:

Submittal of additional information, given the specifics of the development proposal and site, are listed below. These items will be required in order for the application to be determined Counter Complete.

1. A copy of this pre-application conference report.

2. Narrative including:

a. Purpose of the requested zone change

b. Any potential impacts to public infrastructure (streets, water, & sewer)

c. How the requested zone change comply with the maps and policies of the Comprehensive Plan

3. Site plan and/or map of proposed zone change

Exceptions to submittal requirements:

Submittal requirements staff has determined **not** to be applicable or **not** required, given the specifics of the development proposal, are listed below. These items will **not** be required in order for the application to be reviewed.

1. (Add any items required with the forms that are not applicable)

Pre-Application Conference Final Report

Fee estimates

The preliminary plan review fees listed below can be found in the CBJ code section 49.85.

Based upon the project plan submitted for pre-application review, staff has attempted to provide an accurate estimate for the permits and permit fees which will be triggered by your proposal.

1. Sign fee (\$50.00) and refundable deposit (\$100.00) - \$150.00 total
2. Rezone application fee \$600.00

For informational handouts with submittal requirements for development applications, please visit our website at www.juneau.org/cdd.

Submit your completed application

You must submit your application(s) in person with payment to:

City/Borough of Juneau
Permit Center
230 S. Franklin Street,
Fourth Floor Marine View Center
Juneau, AK 99801

Phone: (907) 586-0715
Fax: (907) 586-4529
Web: www.juneau.org/cdd

LEGEND

BOUNDARY LINE
PROPOSED DEVELOPMENT AREA

VICINITY MAP
SOURCE: C.B.J. BASEMAP SERIES - SCALE: 1" = 400'

100' 0 200'
Scale in feet

PLAT OF
CORDOVA STREET REZONE
WITHIN CITY & BOROUGH OF JUNEAU
JUNEAU RECORDING DISTRICT

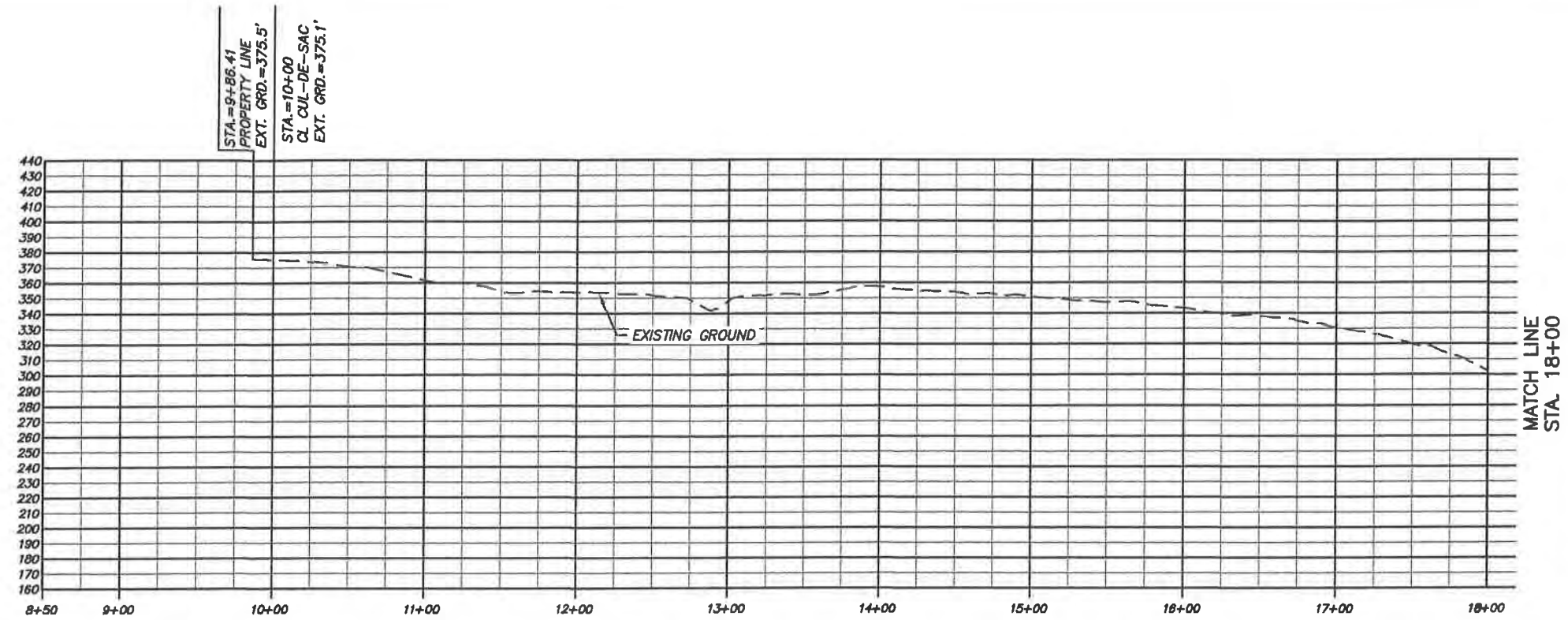
OWNERS:
X
PO BOX
JUNEAU, ALASKA 99801

SHEET 1 OF 4
SCALE: 1"=100' DATE: 7-11-2019

CCM Graphics (907) 788-5798

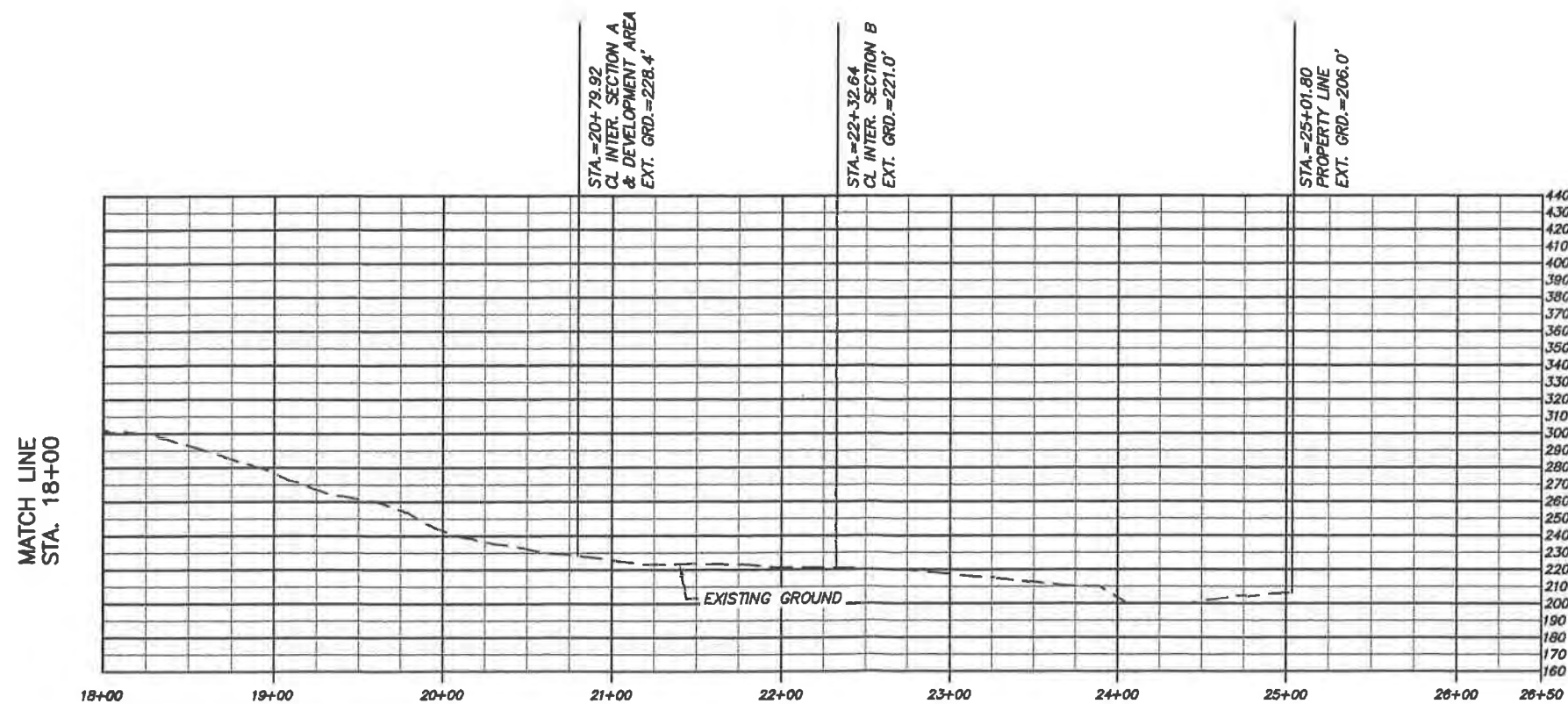
7/19/2019 12:23:15 PM AST

ENGDAVAL SHANDERS-ANDERSON-REZONE.DWG



SECTION-A
SCALE: HORZ. 1"=100'
VERT. 1"=100'

SECTION-A



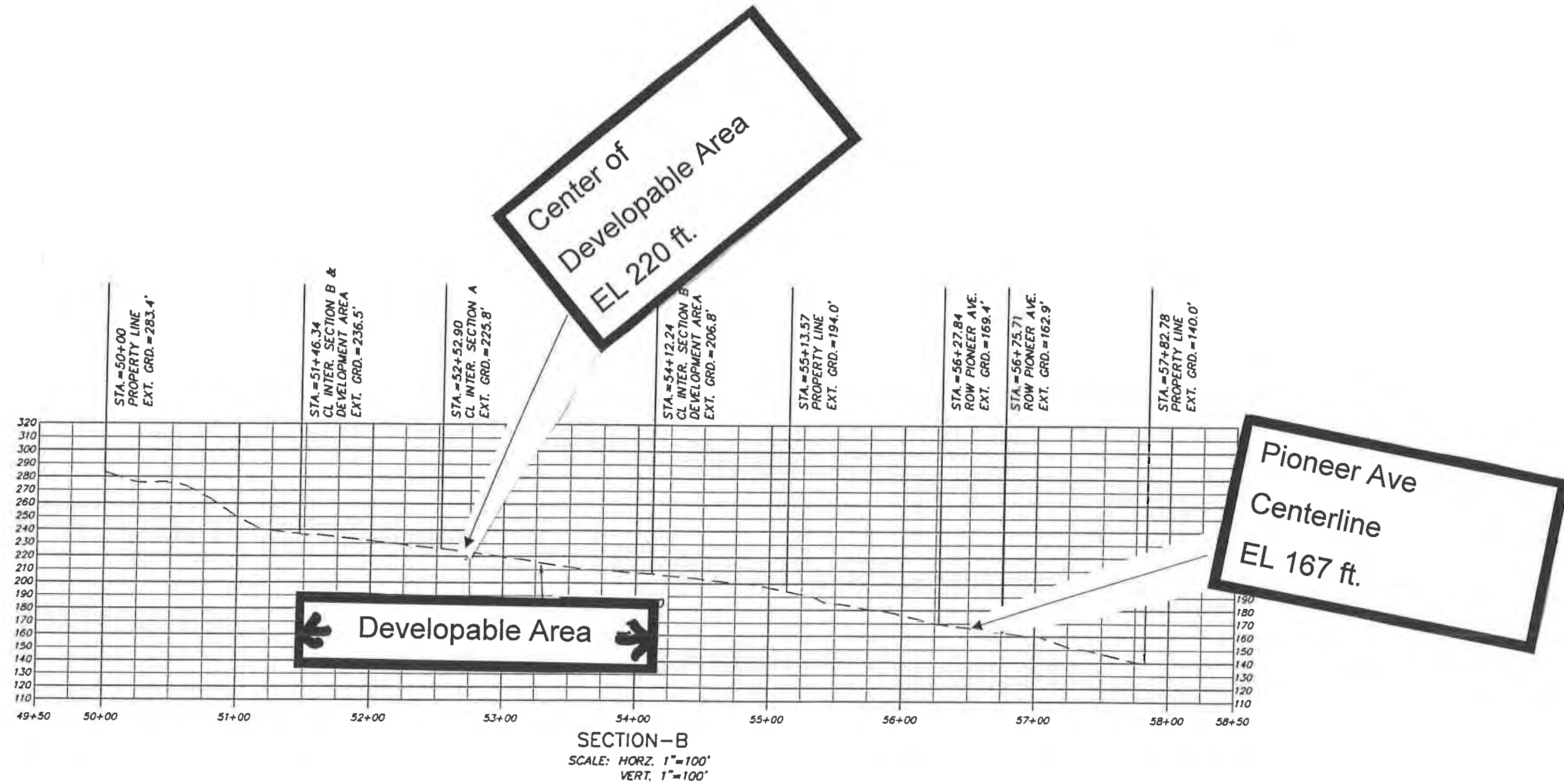
SECTION-A
SCALE: HORZ. 1"=100'
VERT. 1"=100'

PROFILE OF
ANDERSON REZONING
A RESUBDIVISION OF
TONGASS PARK SUBDIVISION

WITHIN CITY & BOROUGH OF JUNEAU
JUNEAU RECORDING DISTRICT

OWNERS:
X
PO BOX
JUNEAU, ALASKA 99801

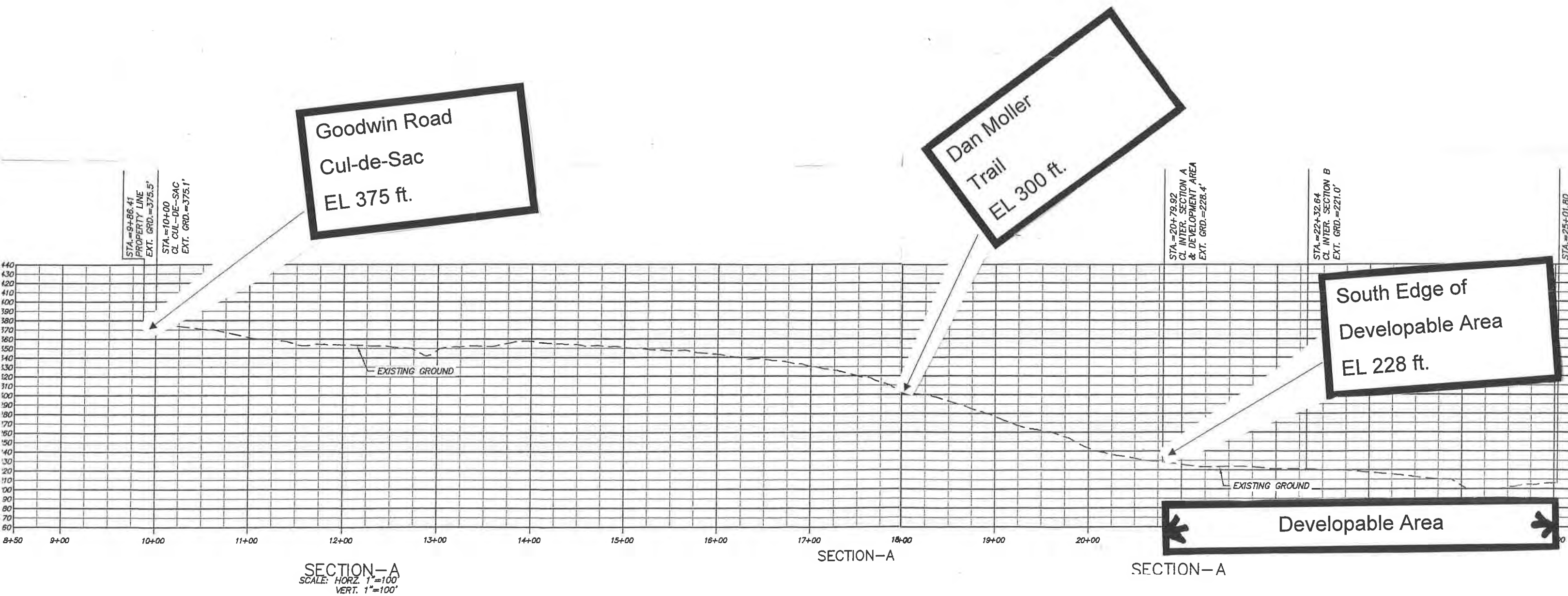
SHEET 2 OF 4
SCALE: 1"=50' DATE: 7-20-2019

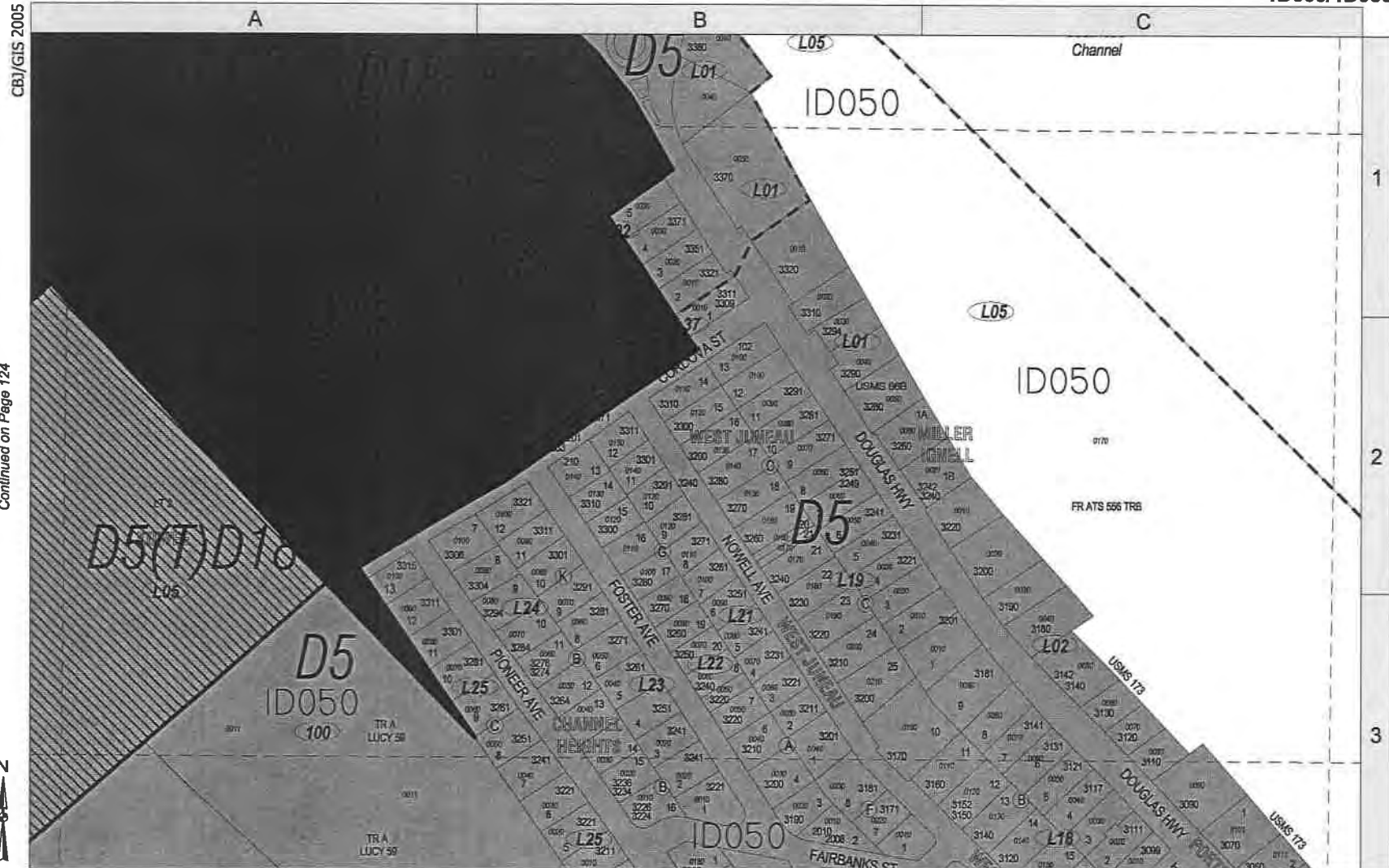


PROFILE OF
CORDOVA STREET REZONE
 WITHIN CITY & BOROUGH OF JUNEAU
 JUNEAU RECORDING DISTRICT

OWNERS:
 X
 PO. BOX
 JUNEAU, ALASKA 99801

SHEET 3 OF 4
 SCALE: 1"=100' DATE: 7-10-2019





200 0 200 Feet

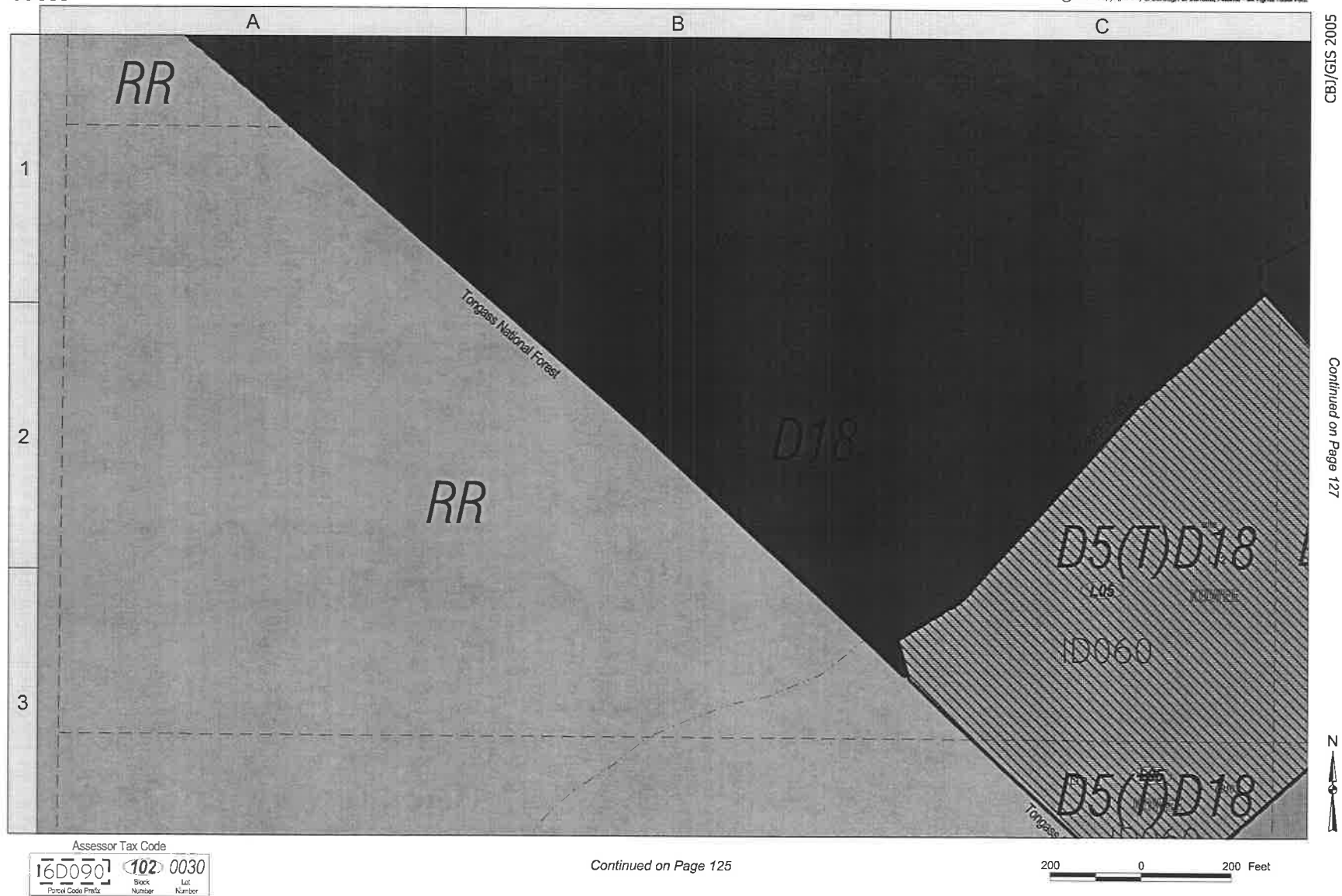
Continued on Page 128

Assessor Tax Code
16D090 102 0030
Parcel Code Prefix Block Number Lot Number

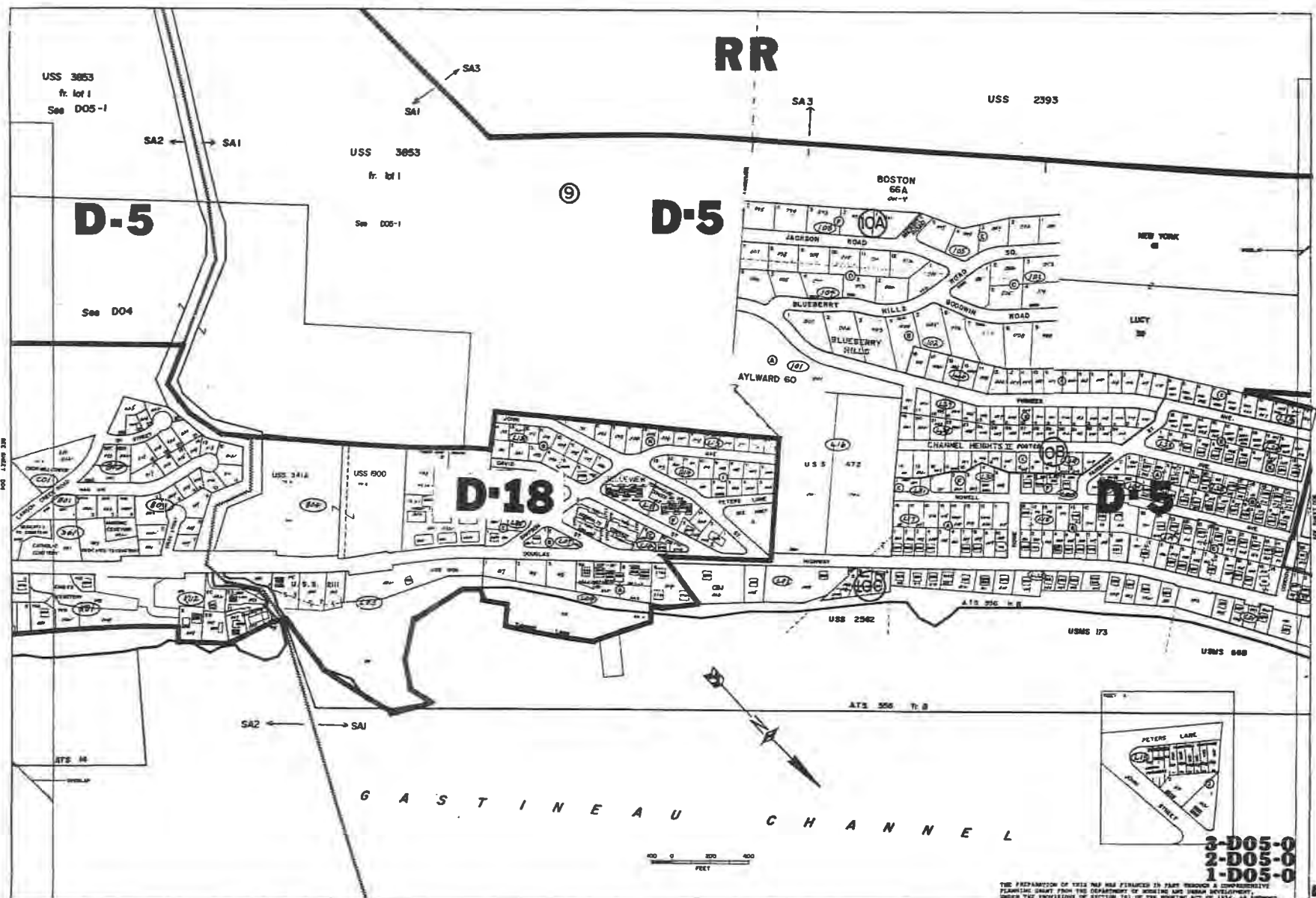
6D060

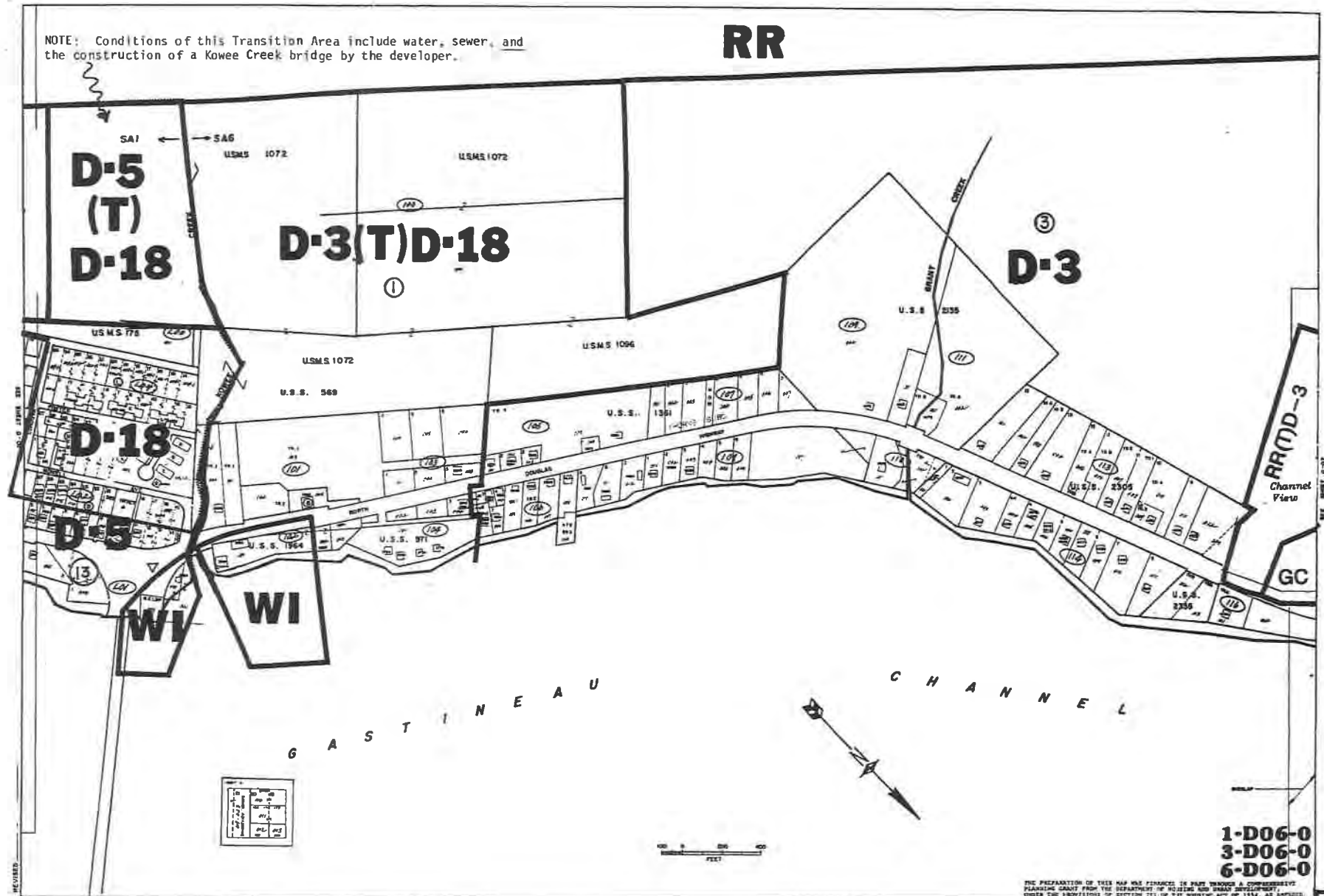
Continued on Page 123

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Attachment A - Application



Slopes



ARTICLE VII. - TRANSITION ZONES

49.70.700 - Transition zones, generally.

- (a) *Purpose.* A transition zone is an overlay zone district for certain lands located in the urban service boundary that are set aside for higher density development after public water and sewer have been provided. Transition zones shall be identified as such by the designator "T" on the official zoning maps adopted pursuant to section 49.25.110. The overlay district specifies the current lower density zoning classification as well as the proposed increase. The increase in density will take place at the time public services are provided.
- (b) *Applicability.* All properties in transition zones shall comply with the provisions of this article.

(Serial No. 87-49, § 2, 1987)

49.70.710 - Subdivisions in transition zones shadow platting.

- (a) *Contents of application.* When a plat is submitted under chapter 49.15, article IV for a subdivision of five or more lots in a transition zone, the application shall include a shadow plat of the property. The shadow plat shall be a sketch plat overlay of the actual lot layout proposed. This overlay shall reflect as nearly as possible the future resubdivision of the parcels into smaller lots, based upon the density and lot size allowed after public sewer and water are provided.
- (b) *Decision.* The director for minor subdivisions and the commission for major subdivisions shall review and approve the application based on how well the proposed lot layout will lend itself to future resubdivision as well as other requirements of this title.

(Serial No. 87-49, § 2, 1987; Serial No. 2015-03(c)(am), § 56, 8-31-2015)

49.70.720 - Zoning upgrade.

For lands located within a transition zone, the zoning will be upgraded to the higher density classification at the time public water, sewer or other required improvements are provided according to the following procedures:

- (1) *Procedure.* A zoning upgrade in a transition zone may be initiated by either of

two different procedures:

- A. The applicant for a major development permit in a transition zone may make a concurrent request for a zoning upgrade. The plans accompanying the development permit application shall be based upon the density requested. A request for a zoning upgrade shall include preliminary plans and a determination by a certified engineer that such improvements are feasible.
- B. The planning commission may initiate a zoning upgrade if the public sewer, water, or other required improvements already exist or will be provided by the City and Borough.

(2) *Hearing and decision.*

- A. *Hearing.* The commission shall consider the upgrade at a hearing upon notice provided in accordance with section 49.15.230. The commission shall base its decision to grant the upgrade on the determination of the feasibility of providing public water, sewer, and other required improvements. The staff report to the commission shall include a review of the plans and a feasibility report by the City and Borough engineer. The feasibility of providing public services shall consider the ability of the existing sewer and water system to handle the increased demand created by the proposed development.
- B. *Decision.*
 - (a) The commission may grant a zoning upgrade only to the classification indicated by the prefix (T) on the official zoning maps. A change to any other classification shall be considered pursuant to section 49.75.130.
 - (b) The commission shall determine the boundary of the area to be upgraded.
 - (c) If the public water, sewer or other required improvements are not constructed or bonded, the commission may grant only conditional approval to the zoning upgrade request. The effective date of the zoning upgrade will be the date of final acceptance or bonding of the improvements.

(Serial No. 87-49, § 2, 1987; Serial No. 93-45, § 2, 1993)

Chapter 49.75 - REZONINGS, SPECIAL STANDARDS, REGULATIONS AND TEXT AMENDMENTS

ARTICLE I. - REZONINGS

49.75.110 - Initiation.

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

(Serial No. 87-49, § 2, 1987)

49.75.120 - Restrictions on rezonings.

Rezoning requests covering less than two acres shall not be considered unless the rezoning constitutes an expansion of an existing zone. Rezoning requests which are substantially the same as a rezoning request rejected within the previous 12 months shall not be considered. A rezoning shall only be approved upon a finding that the proposed zoning district and the uses allowed therein are in substantial conformance with the land use maps of the comprehensive plan.

(Serial No. 87-49, § 2, 1987; Serial No. 2012-31(b), § 2, 8-27-2012)

49.75.130 - Procedure.

A rezoning shall follow the procedure for a major development permit except for the following:

- (a) The commission shall make a recommendation to the assembly to approve, approve with modifications, or deny a rezoning request. The commission shall prepare written findings in support of its recommendation. The commission's notice of recommendation shall be posted on the department's website within ten days of the public hearing on the proposed rezone. If the commission recommends approval of the rezoning request or approval with modifications, the director shall forward the commission's written recommendation to the assembly with an ordinance to amend the official

zoning map in accordance with the recommendation. If the commission recommends denial, the amendment shall be deemed disapproved unless the applicant files a notice of protest in accordance with CBJ 49.75.130(b).

(b) Protests.

- (1) An applicant may protest the commission's recommendation to deny the rezoning by filing a written statement with the municipal clerk within 20 days of the commission's written notice of recommendation for denial, requesting that an ordinance amending the zoning map as set out in the application be submitted for action by the assembly. The director shall, within 30 days of the filing of the protest with the municipal clerk, prepare a draft ordinance to be appended to the notice of recommendation for consideration by the assembly.
 - (2) Any person may protest the commission's recommendation to approve a rezoning request or approve a rezoning request with modification by filing a written protest with the municipal clerk within 20 days of the commission's written notice of recommendation.
 - (3) In the case of a timely filed protest and after introduction of the proposed ordinance at a regularly scheduled assembly meeting, the assembly shall hold a public hearing on the proposed rezoning. At the close of the hearing, the assembly shall approve the zoning map amendment as recommended by the commission, approve the zoning map amendment with modifications, or deny the zoning map amendment.
- (c) All rezonings shall be adopted by ordinance, and any conditions thereon shall be contained in the ordinance. Upon adoption of any such ordinance, the director shall cause the official zoning map to be amended in accordance with the adopted ordinance.

(Serial No. 87-49, § 2, 1987; Serial No. 2012-11, § 2, 4-2-2012; Serial No. 2014-14(c)am, § 2, 4-6-2015, eff. 5-7-2015; Serial No. 2015-03(c)(am), § 57, 8-31-2015)

ARTICLE II. - SPECIAL STANDARDS

49.75.210 - Bonus standards and criteria.

The commission may adopt regulations under chapter 01.60, establishing standards and criteria for awarding bonuses.

(Serial No. 87-49, § 2, 1987; Serial No. 96-41, § 18, 1996)

49.75.220 - Historic district design review standards.

- (a) The commission may adopt and enforce regulations under chapter 01.60, establishing standards for the historic district.
- (b) Such standards may include criteria relating to:
 - (1) The relationship of structures to the site and to each other;
 - (2) The relationship of structures to adjoining sites and structures;
 - (3) Landscaping and site treatment;
 - (4) Building and structure design, including:
 - (A) Architectural style;
 - (B) Use of color, including exterior structure lighting;
 - (C) Location and visibility of mechanical equipment;
 - (D) Exterior site lighting; and
 - (E) Variations in multi-structure developments.
 - (5) Design features, arrangement, location, color, illumination and similar features of signs not otherwise regulated by this title;
 - (6) Design and aesthetic standards for outside furniture and miscellaneous structures; and
 - (7) Such other matters as may be appropriate and which will help provide consistency in agency decisions and guidance to property owners in making site development plan applications.

(Serial No. 87-49, § 2, 1987; Serial No. 96-41, § 19, 1996; Serial No. 99-22, § 14, 1999)

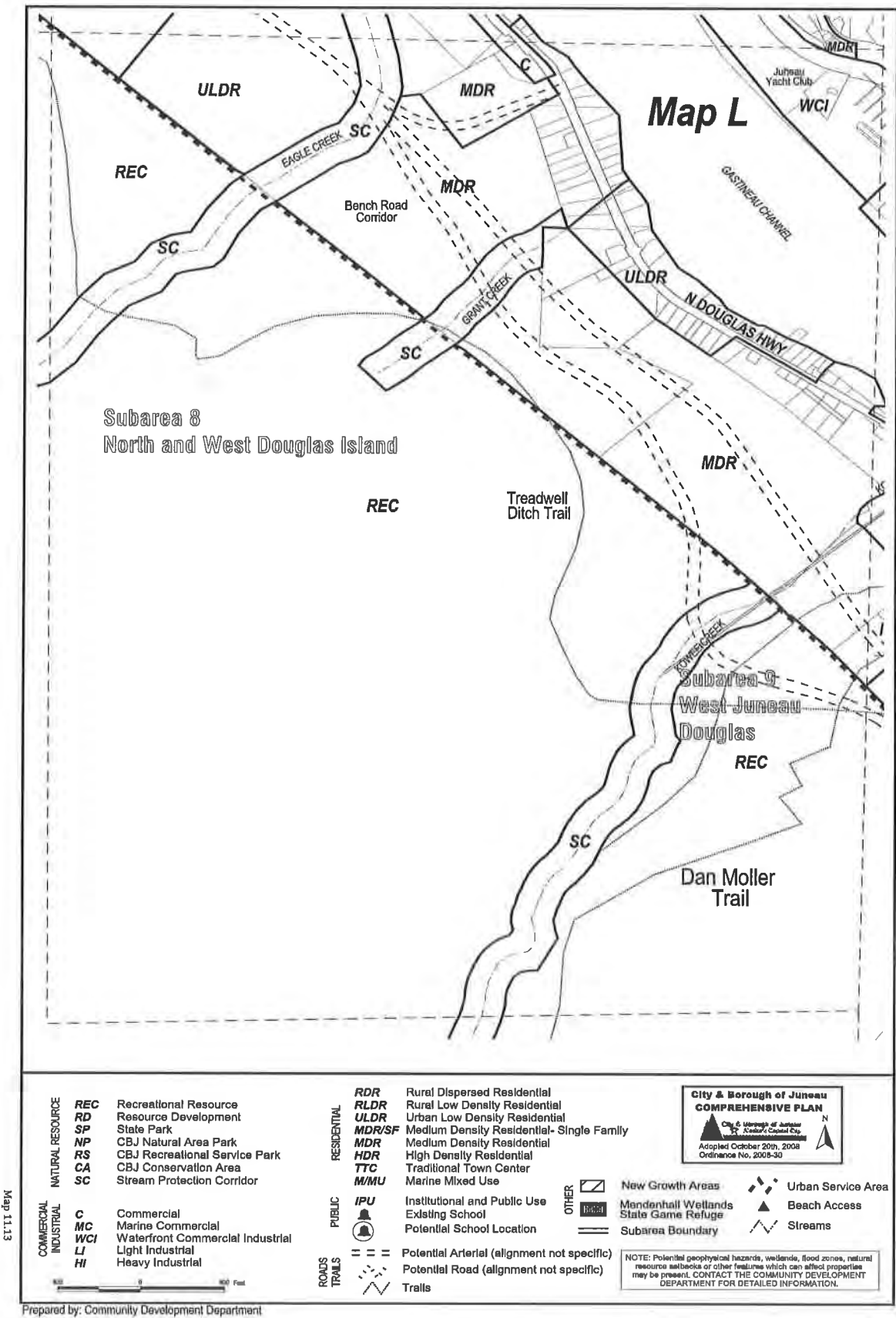
Administrative Code of Regulations cross references— *Design review district standards, Part IV, § 04 CBJAC 060.010 et seq.; historic district standards, Part IV, § 04 CBJAC 080.010 et seq.*

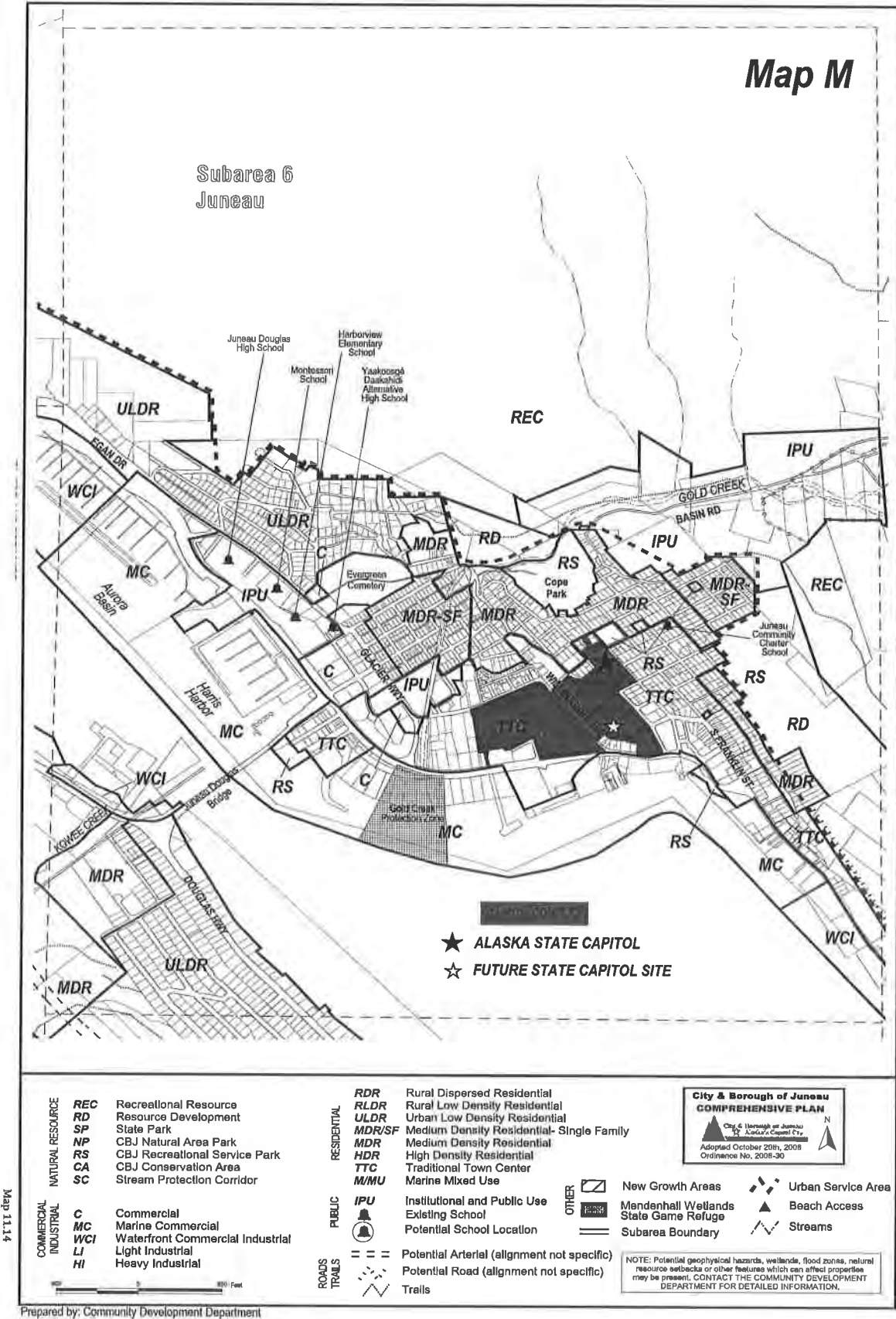
ARTICLE IV. - TEXT AMENDMENTS

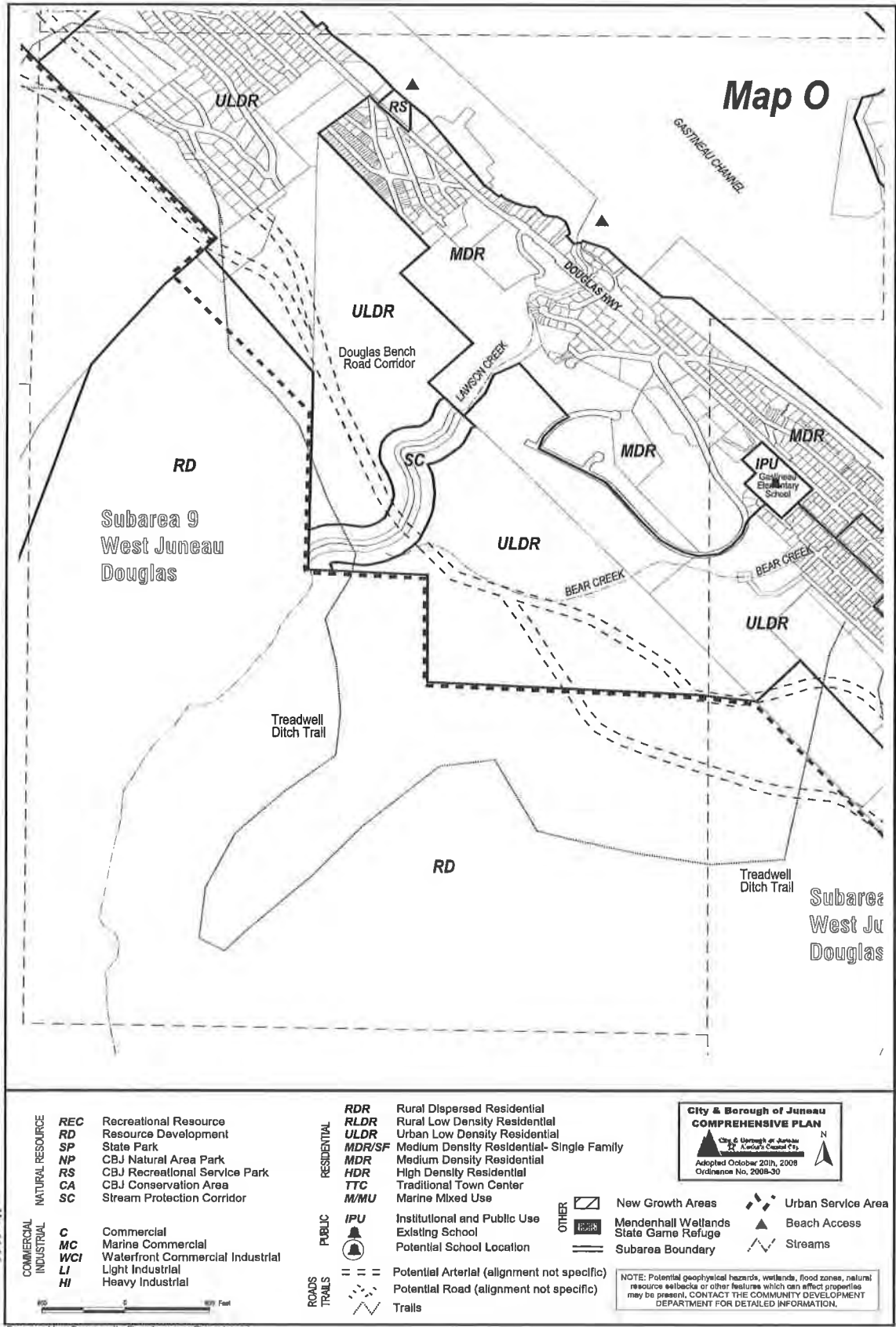
49.75.410 - Text amendments.

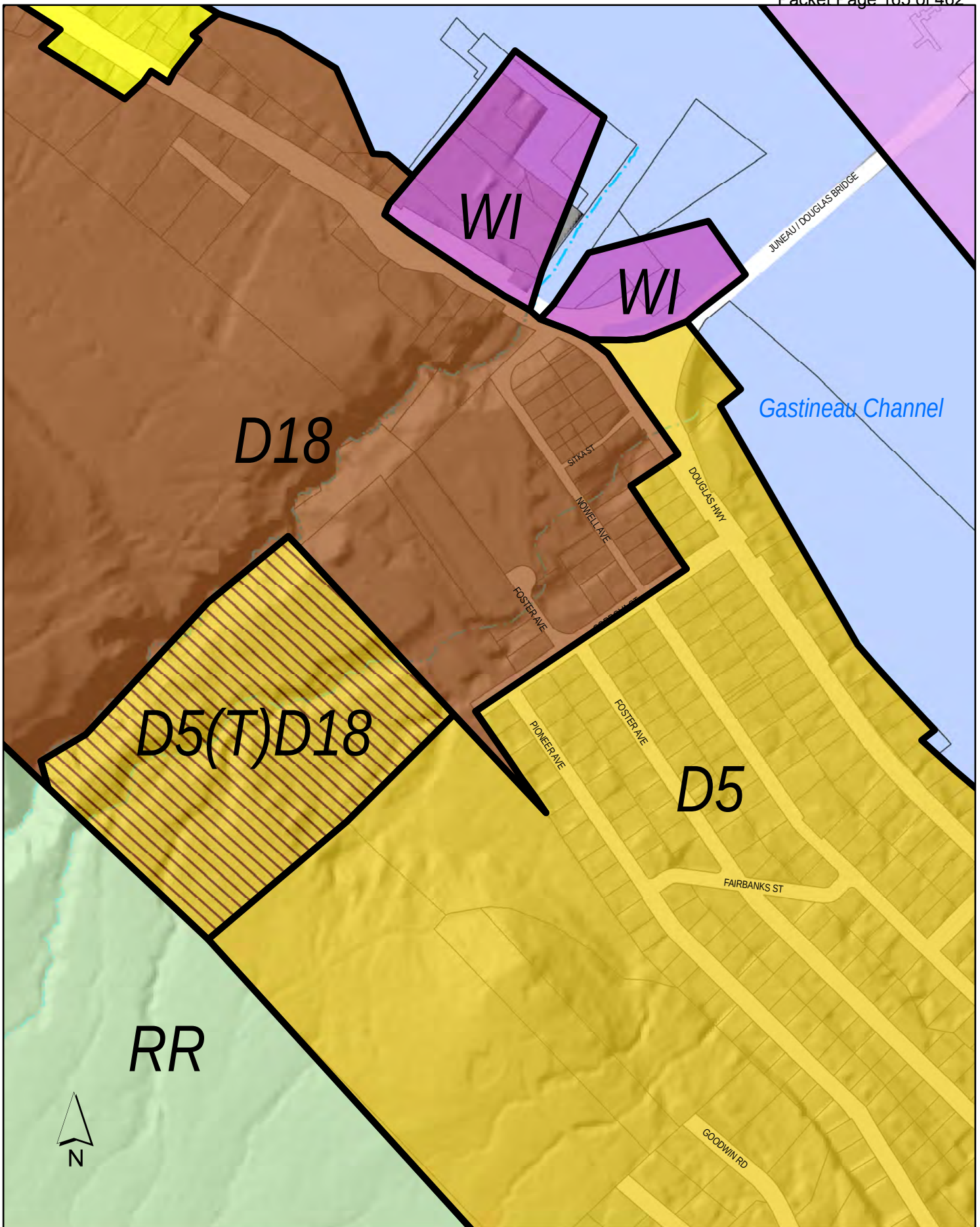
- (a) *Commission initiated.* The commission shall initiate an amendment to this title by holding a public hearing to consider whether it should recommend such amendment to the assembly. The director shall provide at least ten days public notice of the hearing.
- (b) *Assembly initiated.* The assembly shall initiate an amendment to this title by referring such amendment to the commission for proceeding in accordance with subsection (a) of this section.

(Serial No. 87-49, § 2, 1987)



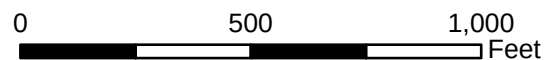


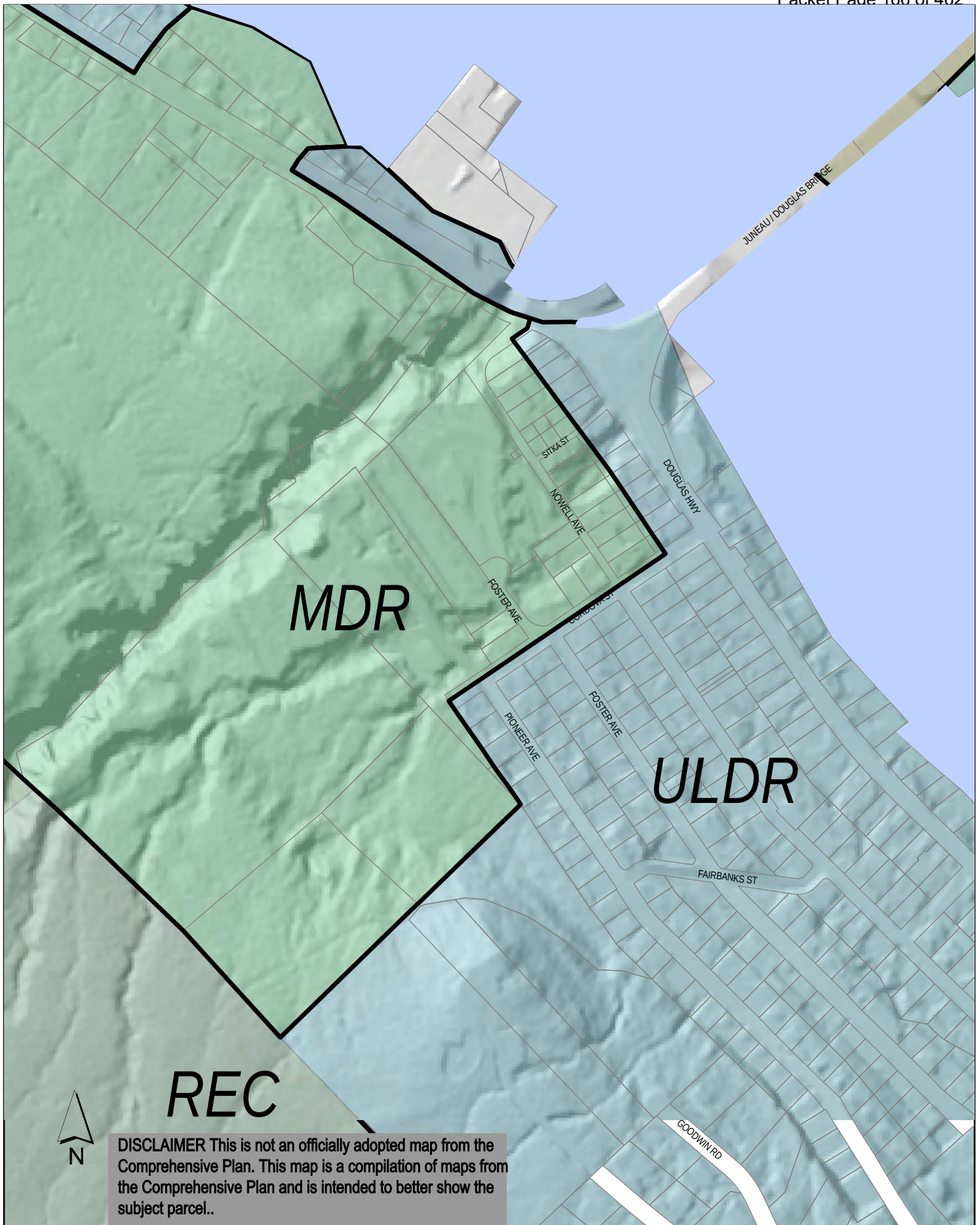




ZONING

Attachment B - Maps

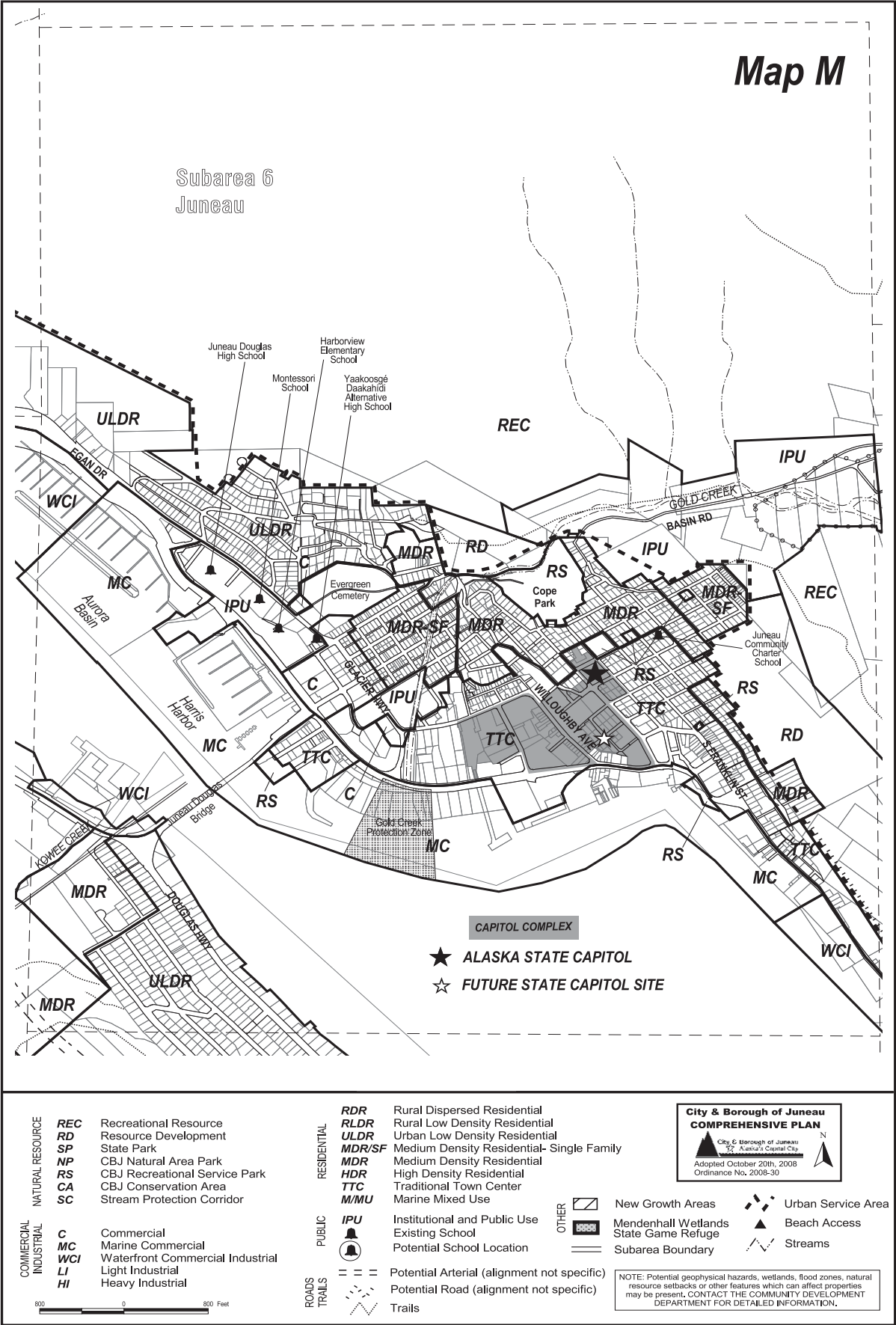


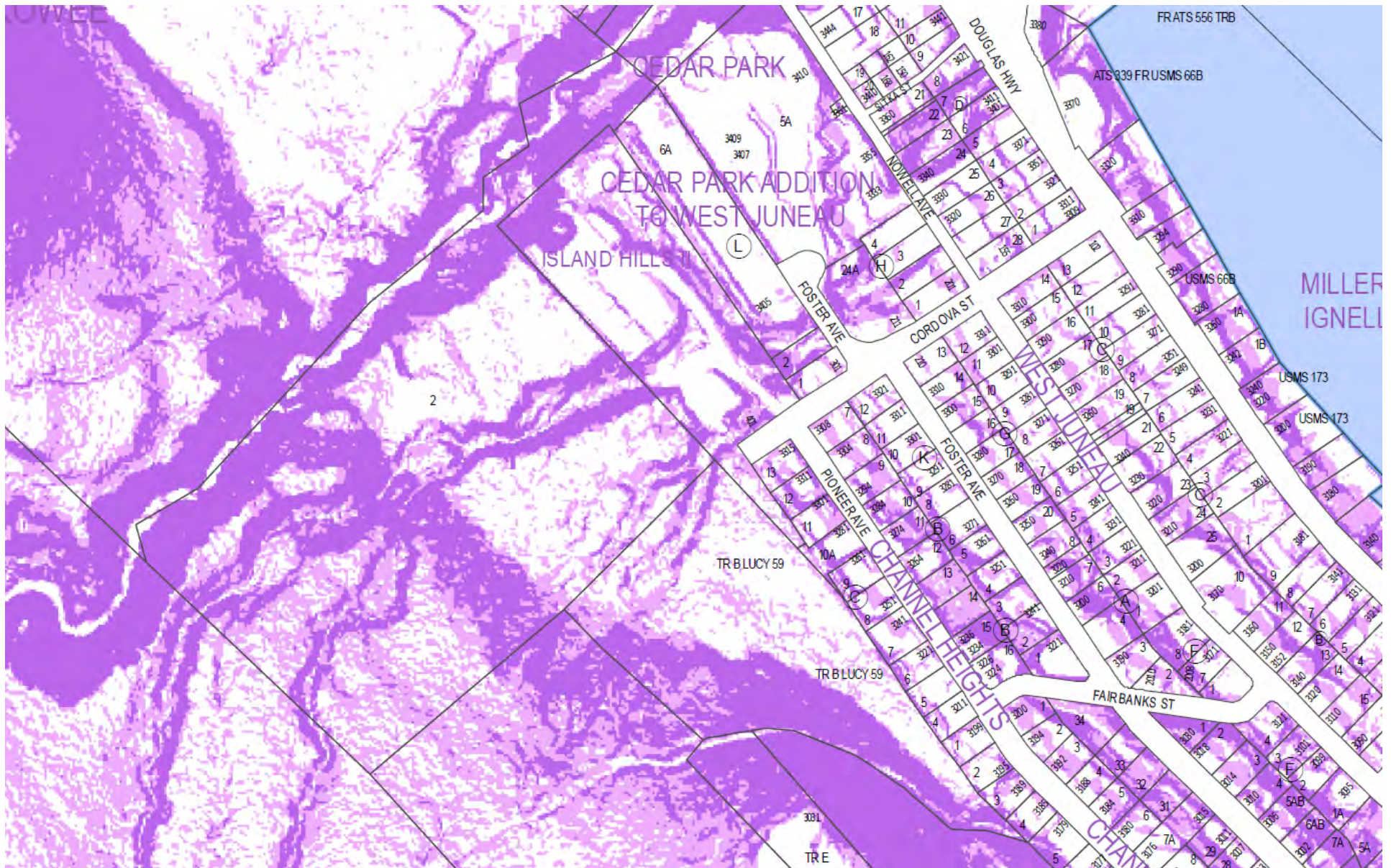


Comprehensive Plan Boundaries

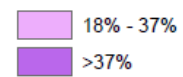
Attachment B - Maps

0 500 1,000 Feet





Slopes





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

COMMUNITY DEVELOPMENT DEPARTMENT - REQUEST FOR AGENCY COMMENT

DEPARTMENT: AELP
STAFF PERSON/TITLE: Darrell Wetherall
DATE: August 1, 2019
APPLICANT: Tlingit Haida Regional Housing Authority and Murray Walsh
TYPE OF APPLICATION: Rezone Request

PROJECT DESCRIPTION:

Proposed rezone request for two parcels totaling 29.45 acres. Parcel 1D060L050010 proposed rezone from D5 transition (T) to D18; and parcel 1D0501000011 proposed rezone from D5 to D18.

LEGAL DESCRIPTION: USMS 1069 Kowee Lot 2 & USMS 59 TR A Lucy Lode
PARCEL NUMBER(S): 1D060L050010 and 1D0501000011
PHYSICAL ADDRESS: Not Assigned

SPECIFIC QUESTIONS FROM PLANNER:

We have received an application to rezone almost 30 acres on Douglas from D5 to D18. The D18 zoning district allows for single-family and multi-family development at a density of 18 units per acre. For more information regarding the varying uses allowed in D5 versus D18, you can find the Table of Permissible uses here: https://library.municode.com/ak/juneau/codes/code_of_ordinances?nodeId=PTIICOOR_TIT49LAUS_CH49.25ZODI_ARTII
ITAPEUS_49.25.300DEUS

Please see the attached application and provide your comments to me by Friday, August 16, 2019. CDD has began utilizing a standard form for receiving comments that will be sent to the Planning Commission – also attached. If you need further information, please do not hesitate to ask.

AGENCY COMMENTS:

Not seeing anything of concern on our end.

Darrell A. Wetherall, PE
Alaska Electric Light & Power Co.
5601 Tonsgard Court
Juneau, AK 99801
(907) 463-6316 Office
(907) 723-2602 Cell



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

COMMUNITY DEVELOPMENT DEPARTMENT - REQUEST FOR AGENCY COMMENT

DEPARTMENT: Finance / Assessor
STAFF PERSON/TITLE: Mary Grant, Assessor
DATE: September 9, 2019
APPLICANT: Tlingit Haida Regional Housing Authority and Murray Walsh
TYPE OF APPLICATION: Rezone Request

PROJECT DESCRIPTION:

Proposed rezone request for two parcels totaling 29.45 acres. Parcel 1D060L050010 proposed rezone from D5 transition (T) to D18; and parcel 1D0501000011 proposed rezone from D5 to D18.

LEGAL DESCRIPTION: USMS 1069 Kowee Lot 2 & USMS 59 TR A Lucy Lode
PARCEL NUMBER(S): 1D060L050010 and 1D0501000011
PHYSICAL ADDRESS: Not Assigned

SPECIFIC QUESTIONS FROM PLANNER:

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Please see the attached application and provide your comments to me by Friday, August 16, 2019. CDD has begun utilizing a standard form for receiving comments that will be sent to the Planning Commission – also attached. If you need further information, please do not hesitate to ask.

Can the assessors office comment on the proposed rezone request in relation to property value? Would there be an anticipated effect on neighboring properties?

AGENCY COMMENTS:

The neighborhood currently consists of both D18 and D5 parcels. The assessor office does not anticipate a positive or negative effect on neighboring parcel values if this rezoning request is approved.



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

COMMUNITY DEVELOPMENT DEPARTMENT - REQUEST FOR AGENCY COMMENT

DEPARTMENT: Capital City Fire and Rescue
STAFF PERSON/TITLE: Sven Pearson, Deputy Fire Marshal
DATE: August 22, 2019
APPLICANT: Tlingit Haida Regional Housing Authority and Murray Walsh
TYPE OF APPLICATION: Rezone Request

PROJECT DESCRIPTION:

Proposed rezone request for two parcels totaling 29.45 acres. Parcel 1D060L050010 proposed rezone from D5 transition (T) to D18; and parcel 1D0501000011 proposed rezone from D5 to D18.

LEGAL DESCRIPTION: USMS 1069 Kowee Lot 2 & USMS 59 TR A Lucy Lode
PARCEL NUMBER(S): 1D060L050010 and 1D0501000011
PHYSICAL ADDRESS: Not Assigned

SPECIFIC QUESTIONS FROM PLANNER:

We have received an application to rezone almost 30 acres on Douglas from D5 to D18. The D18 zoning district allows for single-family and multi-family development at a density of 18 units per acre. For more information regarding the varying uses allowed in D5 versus D18, you can find the Table of Permissible uses here: https://library.municode.com/ak/juneau/codes/code_of_ordinances?nodeId=PTIICOOR_TIT49LAUS_CH49.25ZODI_ARTII
ITAPEUS_49.25.300DEUS

Please see the attached application and provide your comments to me by Friday, August 16, 2019. CDD has began utilizing a standard form for receiving comments that will be sent to the Planning Commission – also attached. If you need further information, please do not hesitate to ask.

AGENCY COMMENTS:

We have no issues with the rezone.

As for the emergency response and limited access point, at this time there are a number of structures that have sprinkler systems such as the Coogan properties and Cedar Park. Sprinkler systems are part of the equation we look at and would definitely be part of any additional large developments in the neighborhood.

Sven J. Pearson, CFEI
Deputy Fire Marshal
Capital City Fire/Rescue
820 Glacier Avenue
Juneau, Alaska 99801
(907) 586-0642 (Office)
(907) 586-8323 (Fax)
Visit us on the web at: <http://www.juneau.org/ccfr/firemarshalsoffice>



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

COMMUNITY DEVELOPMENT DEPARTMENT - REQUEST FOR AGENCY COMMENT

DEPARTMENT: Alaska Department of Transportation and Public Facilities
STAFF PERSON/TITLE: Joanne Schmidt, Planner III
DATE: August 19, 2019
APPLICANT: Tlingit Haida Regional Housing Authority and Murray Walsh
TYPE OF APPLICATION: Rezone Request

PROJECT DESCRIPTION:

Proposed rezone request for two parcels totaling 29.45 acres. Parcel 1D060L050010 proposed rezone from D5 transition (T) to D18; and parcel 1D0501000011 proposed rezone from D5 to D18.

LEGAL DESCRIPTION: USMS 1069 Kowee Lot 2 & USMS 59 TR A Lucy Lode
PARCEL NUMBER(S): 1D060L050010 and 1D0501000011
PHYSICAL ADDRESS: Not Assigned

SPECIFIC QUESTIONS FROM PLANNER:

We have received an application to rezone almost 30 acres on Douglas from D5 to D18. The D18 zoning district allows for single-family and multi-family development at a density of 18 units per acre. For more information regarding the varying uses allowed in D5 versus D18, you can find the Table of Permissible uses here: https://library.municode.com/ak/juneau/codes/code_of_ordinances?nodeId=PTIICOOR_TIT49LAUS_CH49.25ZODI_ARTII
ITAPEUS_49.25.300DEUS

Please see the attached application and provide your comments to me by Friday, August 16, 2019. CDD has began utilizing a standard form for receiving comments that will be sent to the Planning Commission – also attached. If you need further information, please do not hesitate to ask.

AGENCY COMMENTS:

Good afternoon, Laurel:

The DOT&PF, Southcoast Region cannot comment at this time as to whether the proposed development will have an impact upon DOT transportation infrastructure.

However, the Level of Service (LOS) Evaluation completed recently by Traffic and Safety staff indicates that vehicles turning left from Cordova St experience a LOS D and E for the AM and PM peaks respectively. All other movements operate with relatively little delay. Additionally, "If the new or changed property is projected to generate more than 100 additional vehicle trips per hour during any hour of the day or when DOT&PF determines it may detract from road safety, a Traffic Impact Analysis (TIA) is required."

AGENCY COMMENTS (CONTINUED):

LOS Methodology

Six Levels of Service are prescribed by the Highway Capacity Manual (HCM) and are given the letter designations A to F, with LOS A representing the best case, and LOS F the worst. LOS is defined in terms of delay which is a measure of driver discomfort and frustration, fuel consumption, and lost travel time. LOS ratings are defined for signalized intersections in Table 3.1, below.

Table 3.1 LOS Definitions

Table 3.1 LOS Definitions

<i>Level of Service (LOS)</i>	<i>Average stopped delay per vehicle (seconds)</i>	<i>Effect</i>
A	≤ 10.0	Most vehicles are not stopped
B	10.1 to 20.0	Low delay
C	20.1 to 35.0	Significant number of stopped vehicles
D	35.1 to 55.0	Noticeable congestion, occasional cycle failure
E	55.1 to 80.0	Limit of acceptable delay, frequent cycle failure
F	> 80.0	Unacceptable delay

(Please see <http://www.dot.state.ak.us/stwddes/dcstraffic/tia/index.shtml> for more information).

Joanne M. Schmidt, Planner III
 Alaska DOT&PF, Southcoast Region
 Statewide Planning, Juneau Field Office
 PO Box 112506
 Juneau, AK 99811-2506
 Office: (907) 465-1776

Laurel Christian

From: Epstein, David B (DOT) <david.epstein@alaska.gov>
Sent: Friday, September 6, 2019 2:47 PM
To: Laurel Christian
Cc: Alexandra Pierce
Subject: RE: Request for traffic impact analysis for the Cordova Avenue-Douglas Highway intersection

Follow Up Flag: Follow up
Flag Status: Flagged

EXTERNAL E-MAIL: BE CAUTIOUS WHEN OPENING FILES OR FOLLOWING LINKS

Laurel,

It will be when the plans have come into sharper focus. Reading the documentation that accompanied the application, there is no certainty at this time whether there will be 531 units, or 350, or 150. Although it is stated that it will more than likely tend toward 150. Realistically, a TIA is off the table until you get the development plan. I regret the confusion.

Even at that, a 150-unit development will generate approx. 100 trips in an afternoon peak hour. So it would seem that our threshold will be breached.

Bottom line, based on what I've seen so far, is that there is a TIA in the offing. And if there is no new route diversity between now and when the development plan is submitted, traffic generated by the development will still have only one way in and out – Cordova Street, which connects with Douglas Highway. We will be interested in traffic mitigation measures the developer's engineer suggests to deal with the increased loading.

Hope this helps

DE

From: Laurel Christian <Laurel.Christian@juneau.org>
Sent: Friday, September 6, 2019 2:02 PM
To: Epstein, David B (DOT) <david.epstein@alaska.gov>
Cc: Alexandra Pierce <Alexandra.Pierce@juneau.org>
Subject: RE: Request for traffic impact analysis for the Cordova Avenue-Douglas Highway intersection

Hi David,

Thank you for your input on the proposed rezone and the traffic concerns. Your email indicates that the it will be the developers responsibility to conduct a TIA in accordance with Chapter 1190.4(10) of the Alaska Highway Preconstruction Manual. As you know, CBJ has a similar requirement in CBJ 49.40.300. A rezone does not trigger the need for a TIA by CBJ, because we need more specific development plans for the parcel to evaluate the traffic. In the past, DOT has shared that position. I requested comments from DOT regarding this rezone, and DOT declined to comment at this time as to whether or not the proposed development would have an impact on DOT ROWs (see attached).

My questions for you is, is DOT now stating they would like the TIA completed now, or would that be required when a development plan is received by CBJ, likely through the Conditional Use Permit process or Subdivision process?

Thank you for your help on this,

Laurel Christian | Planner

Community Development Department | City & Borough of Juneau, AK

Location: 230 S. Franklin Street, 4th Floor Marine View Building

Office: 907.586.0761

Please note name change (Bruggeman to Christian) and new email: Laurel.christian@juneau.org



From: Epstein, David B (DOT) <david.epstein@alaska.gov>

Sent: Friday, August 30, 2019 9:00 AM

To: Linda Kruger <lindalaska2003@gmail.com>

Cc: PC_Comments <PC_Comments@juneau.org>; Laurel Christian <Laurel.Christian@juneau.org>

Subject: RE: Request for traffic impact analysis for the Cordova Avenue-Douglas Highway intersection

EXTERNAL E-MAIL: BE CAUTIOUS WHEN OPENING FILES OR FOLLOWING LINKS

Dear Ms. Kruger and Mr. Gnass,

Thank you for your email regarding the intersection of Cordova Street and Douglas Highway.

DOT&PF is aware of the rezoning request currently under consideration by the City and Borough of Juneau (CBJ) Planning Commission. I share your concern that additional housing development on the scale proposed will generate a significant amount of traffic.

In your email, you recommend that Cordova Street be considered for a traffic impact analysis (TIA) and suggest that construction of a traffic signal at the Cordova Street – Douglas Highway intersection may not be appropriate given the proximity of the Douglas Island roundabout.

The DOT&PF position moving forward will be that it is the developer's responsibility to perform a traffic impact analysis. The study will need to identify alternative remedial measures to mitigate the impact of increased traffic upon state right-of-way (i.e., Douglas Highway). The study will need to be performed by a competent licensed professional engineer. CBJ imposes a like requirement. We will review the TIA and ensure it meets DOT&PF standards. Presumably, CBJ will want to know how the developer plans to mitigate impacts to Cordova Street and the adjacent municipal road system. I expect that if a TIA is needed, it will be a team effort involving all three parties.

DOT&PF and CBJ have similar criteria for requiring a TIA. Per Chapter 49.40.300 of the CBJ code, a TIA shall be required when " ... a development (is) projected to generate 500 or more average daily trips (ADT)." Chapter 1190.4(10) of the Alaska Highway Preconstruction Manual requires the proponent to undertake a TIA "(w)hen the volume of traffic (generated by a development) is expected to exceed 100 vehicles during the peak hour." 500 housing units will likely create a situation that requires a TIA per both guidelines.

To be clear, DOT&PF's TIA criteria pertains to driveways, not streets or highways. However, given that Cordova Street is (1) the only current access point to/from the proposed development and (2) it intersects Douglas Highway, it stands to

reason that most of the generated traffic will travel through the intersection. In essence, Cordova Street functions as a driveway connecting Douglas Highway with the development.

I expect that the TIA will consider a traffic signal as one option. As you point out, the resultant short distance between a signal and the Douglas Island roundabout may preclude its effectiveness as a mitigating measure. I am confident that the study will come to a definitive conclusion on the matter.

I appreciate the time you took to advise me of your concern. Do not hesitate to contact me if you have further questions. I look forward to working with the community and CBJ toward a satisfactory conclusion.

Best regards,

David B. Epstein, P.E.

Regional Traffic and Safety Engineer
Alaska DOT&PF – Southcoast Region
(907) 465-4483 desk // (907) 209-7995 cell
Email: david.epstein@alaska.gov
Error! Filename not specified.

From: Linda Kruger <lindalaska2003@gmail.com>

Sent: Thursday, August 29, 2019 4:01 PM

To: Epstein, David B (DOT) <david.epstein@alaska.gov>

Cc: pc_comments@juneau.org; Laurel.Christian@juneau.org

Subject: Request for traffic impact analysis for the Cordova Avenue-Douglas Highway intersection

Attached are our comments regarding traffic at the intersection of Cordova Avenue and Douglas Highway.

Linda Kruger



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

COMMUNITY DEVELOPMENT DEPARTMENT - REQUEST FOR AGENCY COMMENT

DEPARTMENT: Engineering and Public Works
STAFF PERSON/TITLE: John Bohan, CBJ Chief CIP Engineer & Water Superintendent
DATE: August 5, 2019
APPLICANT: Tlingit Haida Regional Housing Authority and Murray Walsh
TYPE OF APPLICATION: Rezone Request

PROJECT DESCRIPTION:

Proposed rezone request for two parcels totaling 29.45 acres. Parcel 1D060L050010 proposed rezone from D5 transition (T) to D18; and parcel 1D0501000011 proposed rezone from D5 to D18.

LEGAL DESCRIPTION: USMS 1069 Kowee Lot 2 & USMS 59 TR A Lucy Lode

PARCEL NUMBER(S): 1D060L050010 and 1D0501000011

PHYSICAL ADDRESS: Not Assigned

SPECIFIC QUESTIONS FROM PLANNER:

We have received an application to rezone almost 30 acres on Douglas from D5 to D18. The D18 zoning district allows for single-family and multi-family development at a density of 18 units per acre. For more information regarding the varying uses allowed in D5 versus D18, you can find the Table of Permissible uses here: https://library.municode.com/ak/juneau/codes/code_of_ordinances?nodeId=PTIICOOR_TIT49LAUS_CH49.25ZODI_ARTII
ITAPEUS_49.25.300DEUS

Please see the attached application and provide your comments to me by Friday, August 16, 2019. CDD has began utilizing a standard form for receiving comments that will be sent to the Planning Commission – also attached. If you need further information, please do not hesitate to ask.

AGENCY COMMENTS:

No issues with the rezone - utilities will be future problem with the higher elevations of the potential development probably being at the limit of available water pressure.

Assume everyone is already aware of the limitation of the single bottlenecked access to Douglas Highway at Cordova.

Thanks

John Bohan, PE
CBJ Chief CIP Engineer & Water Superintendent
155 S. Seward St
Juneau AK 99801
(907)586-0876 fax 463-2606



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

COMMUNITY DEVELOPMENT DEPARTMENT - REQUEST FOR AGENCY COMMENT

DEPARTMENT: Engineering and Public Works
STAFF PERSON/TITLE: Autumn Sapp, Business Manager
DATE: August 1, 2019
APPLICANT: Tlingit Haida Regional Housing Authority and Murray Walsh
TYPE OF APPLICATION: Rezone Request

PROJECT DESCRIPTION:

Proposed rezone request for two parcels totaling 29.45 acres. Parcel 1D060L050010 proposed rezone from D5 transition (T) to D18; and parcel 1D0501000011 proposed rezone from D5 to D18.

LEGAL DESCRIPTION: USMS 1069 Kowee Lot 2 & USMS 59 TR A Lucy Lode
PARCEL NUMBER(S): 1D060L050010 and 1D0501000011
PHYSICAL ADDRESS: Not Assigned

SPECIFIC QUESTIONS FROM PLANNER:

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Please see the attached application and provide your comments to me by Friday, August 16, 2019. CDD has began utilizing a standard form for receiving comments that will be sent to the Planning Commission – also attached. If you need further information, please do not hesitate to ask.

AGENCY COMMENTS:

General Engineering has no code issues with the rezone. But as far as utilities and drainage go, like all developments they may need to upgrade the existing systems depending on what they propose. This determination of what that would entail will need to be made from a developer hired engineer.

I've included John on the email as I'm not sure if he has more to input.

Thanks,

Autumn Sapp
City and Borough of Juneau
Engineering & Public Works
Business Manager
907-586-0917



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

COMMUNITY DEVELOPMENT DEPARTMENT - REQUEST FOR AGENCY COMMENT

DEPARTMENT: United States Forest Service
STAFF PERSON/TITLE: Mike Dilger, Recreation Resources Planner
DATE: August 5, 2019
APPLICANT: Tlingit Haida Regional Housing Authority and Murray Walsh
TYPE OF APPLICATION: Rezone Request

PROJECT DESCRIPTION:

Proposed rezone request for two parcels totaling 29.45 acres. Parcel 1D060L050010 proposed rezone from D5 transition (T) to D18; and parcel 1D0501000011 proposed rezone from D5 to D18.

LEGAL DESCRIPTION: USMS 1069 Kowee Lot 2 & USMS 59 TR A Lucy Lode
PARCEL NUMBER(S): 1D060L050010 and 1D0501000011
PHYSICAL ADDRESS: Not Assigned

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Please see the attached application and provide your comments to me by Friday, August 16, 2019. CDD has began utilizing a standard form for receiving comments that will be sent to the Planning Commission – also attached. If you need further information, please do not hesitate to ask.

AGENCY COMMENTS:

Hi Laurel, thank you for including us as a neighboring land manager for agency comments. As a recreation manager for the Forest Service, I don't have any concerns, however, I've also forwarded this to our folks in Lands and also for Special Uses. If they have any concerns they will respond to you.

Mike Dilger
Recreation Resources Planner
Forest Service
Tongass National Forest
p: 907-789-6228
f: 907-586-8795
mike.dilger@usda.gov
8510 Mendenhall Loop Road
Juneau, AK 99801



COMMENT CARD

Too much traffic for Douglas Hwy + Cordova St —
No real plans for development but to leave wide
open for more units — this has happened around the
Crest Cordova on Viste Dr. + low cost housing units
keep multiplying.

Have a plan + stick to it.

Shirley Carlson
Viste Dr.
Juneau, AK



COMMENT CARD

Cordova Street/Pioneer St. Rezoning

I will preface my concerns by stating I support the development of multi-dwelling housing in our community. My primary concern is the serious and significant impact on not only Cordova Street, but more potentially damaging, to more Douglas residents, is the impact on Douglas Highway from Douglas to the roundabout. From approximately 7:15 am to 8:30 am I have seen traffic backed up on weekdays from the roundabout, south, past Budget Insurance to almost John Street. I haven't counted the actual number of cars, but it's too many for what used to be a "normal" flow of traffic which has increased very significantly with the addition of a number of multi-dwelling housing units on the South Side of Douglas Bridge. Unless a road could be built that exits on the North Side of the roundabout where morning traffic flows far more easily, I object to these

**Kathy and Doug Blanc
3003 Foster Avenue
Juneau, Alaska 99801**

September 2, 2019

To: Juneau Planning Commission Laurel Christian, Planner, and Alexandra Pierce, Planning Manager

Re: Comments on Anderson/THRHA Zone Change Application Case #AME2019-0010

Thank you for the opportunity to comment on this rezone. We are opposed to this zone change application.

The requested zoning changes would grant authority to build up to 530 new units. The current owner/applicant Anderson is attempting to sell his property pending a D-18 designation that would make it more valuable. However, any new owner would not be bound by any previous development plan, so the CBJ must base its analysis on the impact of the total units allowed under the D-18 designation.

A "D-18" designation could more than double the number of existing housing units currently accessed by Cordova Street and potentially add 1,000 additional drivers **using Cordova as the only access.**

Our family has lived on Foster Avenue for 17 years. We have commuted to work and school by car, bike, motor scooter and on foot. The Cordova/Douglas Highway intersection is currently challenging for both pedestrians and drivers. It would be completely congested and unsafe if the number of drivers on the street were to double.

If a driver is entering Douglas Highway from Cordova, line of sight to the south is partially blocked by an electrical-line pole. The intersection has inadequate crosswalk controls (orange flags). A city bus stop and Juneau Public Schools bus stop are directly across the Douglas Highway intersection, as is the entryway to a highly-trafficked business (Breeze Inn). The steep grade of Cordova street makes it hazardous in winter when its surface is snowy and/or icy. All of these factors make for difficult driving with traffic at current levels.

The Cordova/Douglas intersection has been proven hazardous to pedestrians. Pedestrians holding orange flags are not enough to stop drivers traveling on Douglas Highway. This crossing is very high use, particularly by families with small children accessing bus stops and the Breeze Inn.

While the Cordova/Douglas Hwy intersection is dangerous for adults who are seated in 3,000-pound cars, it is REALLY dangerous for children who have to cross the street in bad weather to reach the school bus stop. School buses do not go up Cordova Street. Children must walk down Cordova and cross the intersection. Increased traffic on Cordova will only make this school bus stop crossing more perilous. If the size of our neighborhood were doubled by adding hundreds of units at the top of Cordova, it would certainly be a completely unsafe crossing for children.

For the reasons listed above, **an analysis of access and traffic impacts on the neighborhood down to Douglas Highway and Douglas Highway** should be done as part of this application process. The fire department should make a determination of **how emergency services would be impacted**.

CBJ should consider Douglas Island infrastructure as a whole before approving rezoning for additional large developments.

With a current rental vacancy rate of 6%, a number of multi-family housing projects in the pipeline, and a stagnant population, there is no good reason to rezone this land for multifamily housing.

We request that the Planning Commission deny this joint rezone application and confirm the CBJ Comprehensive Plan's designation of the neighborhood east of Cordova St toward Douglas as a D-5 neighborhood.

Additionally, this joint application and other recent developments suggests that it is time for CBJ to consider the carrying capacity of Douglas Island as a whole, including a comprehensive analysis of access and public safety, before this rezoning application or any other developments are approved.

Sincerely,

Kathy and Doug Blanc

Laurel Christian

From: Christopher Bourque <ebcb@acsalaska.net>
Sent: Friday, August 30, 2019 1:16 PM
To: Laurel Christian
Subject: Rezoning of Cordova properties

Follow Up Flag: Follow up
Flag Status: Flagged

EXTERNAL E-MAIL: BE CAUTIOUS WHEN OPENING FILES OR FOLLOWING LINKS

We, Christopher and Estela Bourque, would like to submit the following comments regarding the proposed rezoning of the Cordova properties:

1. Traffic congestion at the Cordova/Douglas Highway intersection. The addition of 100 to 300 properties, plus the Merritt properties that are currently being developed above Jackson, would increase the volume of traffic significantly with only one access road available to Douglas Highway. This issue would be particularly critical if there was ever any kind of emergency that required some kind of evacuation process in a limited amount of time. The morning traffic congestion is already a difficult process, as is trying to leave the neighborhood during the evening rush hour.

Another factor that needs to be considered is the amount of construction related traffic. We have already endured several years of constant traffic during the summer as the water infrastructure was upgraded in addition to other projects.

At a minimum, the density amount of further development should be considered a factor with regards to the traffic issue. However we think that given the increase in density of population, there should be at least two access points in and out of the neighborhood.

2. Our other major concern is how the development of these projects, especially the Anderson parcel, would impact the topography and movement of the land. We live just beyond the edge of the Anderson property and are aware of past exploratory mining shafts along the hillside. From our house and further up on Pioneer Ave. there have been landslides which caused some flooding on the street and backyards due to heavy rains in conjunction with the old drainage shafts rupturing. In addition, the previous Goodwin and Merritt projects seemed to change the flow of water down the hill. So it seems that this particular issue also needs to be taken into account.

Given the extent and potential impact of these developments, the entire neighborhood should have been contacted because of the traffic issue and the fact that these developments will have a significant effect on everyone living here.

After attending the meeting, we agree with others that rezoning properties before all the mitigating factors are taken into consideration, does not seem like the best approach to city planning. A more comprehensive approach that takes into account the various mitigating factors (density, traffic issues, emergency exits and services, and topography) prior to redetermining the zoning status would be more effective.

Thank you for allowing us to submit these comments for your consideration.

ALISON E. BROWNE

P. O. Box 20589 Juneau, AK 99802-0589
(907) 463-3126 (907) 723-6037
forr2@gci.net

August 30, 2019

Juneau City & Borough Assembly
Juneau Planning Commission
CBJ Community Development Office
155 S. Seward Street
Juneau, AK 99801



Re: Proposed West Juneau Rezoning/Development

Dear Assembly Members, Planning Commissioners, and Community Development Staff,

I am a single-family homeowner (3051 Douglas Highway) whose driveway fronts on the uphill side of Douglas Highway, approximately ½ mile from the roundabout and Cordova Street.

The Planning Commission will soon consider a request to rezone two parcels of West Juneau land totaling 29.45 acres above Cordova Street. Cordova Street will be extended by the landowners and/or developers to access and develop the parcels.

Once the Planning Commission approves the rezoning, that residential district has the potential of 18 dwelling units per acre (although the smaller lot's terrain provides less developable land than the acreage might indicate) – which could mean a potential increase of 500 units of housing, and perhaps as many as 1,000 new West Juneau residents and vehicles. The larger tract is intended to accommodate development of probable “midrise-type” housing. The requested zoning change to D-18 can potentially allow clinics, churches, light industrial, as well as multi-family housing. A clinic or church could attract non-West Juneau residents to their services, increasing even further the daily flow of traffic on the bridge, roundabout, Douglas Highway, and Cordova Street.

According to CBJ Community Development, neither the Planning Commission nor the Assembly intend to consider at this time the traffic implications of what will eventually be a significant population increase in the area. When a traffic study is done, it will be conducted by the Alaska Department of Transportation.

There are times during morning rush hour when traffic from Douglas Island to Juneau is at a standstill in front of my house -- or at best -- a crawl. Thanks to some very courteous drivers, I have -- after a usual wait-time of approximately 5 minutes -- been given space to join

the line. There have been many mornings when traffic is not moving at all. High density, multi-family housing on John Street, Vista Drive, David Street, Crow Hill Drive, and several other areas above Douglas Highway all feed down to Douglas Highway and must cross the highway to get in line. At those times, I've had to drive as far as the Wyndham condominiums (at the Douglas city limits) to turn around and join the line of stopped cars who are heading to Juneau -- eventually. This has been happening for a few years, so the current water main project along Douglas Highway only exacerbates the traffic issue but is temporary.

Morning and evening traffic volume at the intersection of Douglas Highway and Cordova Street results in typical slowdowns and stops as drivers from every direction courteously "take turns," but they also have to accommodate foot traffic from Cordova Street, crossing to the Breeze-In side. Most pedestrians never use the fluorescent orange flags provided to cross, and in some cases, children running down the Cordova Street sidewalk will suddenly dart across the street without looking either way. Another slow-down (and sometimes complete stop) occurs as South Douglas and West Juneau drivers yield to North Douglas traffic entering the roundabout. For drivers who wish to turn from the south side of Douglas Highways onto Cordova Street – that's even harder! Once a car has completed the roundabout and is on the bridge, another standstill is very often right ahead because of traffic lights on the Juneau side of the bridge.

I can't imagine the impact of an additional 1,000 West Juneau residents having to use that intersection. In the meantime, I respectfully request that CBJ and the Department of Transportation reconsider waiting 3, 4, or 5 years until the next traffic study. It should begin now.

One final point: When driving across the bridge from Juneau to Douglas, one can see the clear-cut scar (approximately 6 acres) on the uphill side of North Douglas Highway. It is zoned D-18. If the non-resident owners' intentions are to construct multi-family housing units on the property, traffic backup on the round-about, the bridge, 10th and Egan, and Glacier Avenue will exacerbate the already too-frustrating traffic situation even further.

Sincerely,


Alison E. Browne

cc: Laurel Christian, Planner, City Development, CBJ
David Epstein, Traffic & Safety Engineer, Alaska Dept. of Transportation
John MacKinnon, Commissioner, Alaska Department of Transportation

From: Dick Callahan <harborsealpress@gmail.com>
Sent: Tuesday, September 03, 2019 4:42 PM
To: PC_Comments
Subject: comment on proposal to change 30 acres above Cordova from D-5 to D-18

EXTERNAL E-MAIL: BE CAUTIOUS WHEN OPENING FILES OR FOLLOWING LINKS

To the Planning Commission,
 Attention: Laurel Christian

Dick Callahan here. Juneauite since 1982. Have lived on the corner of Foster and Cordova since 1999. Thank-you for providing information and for this opportunity for comment on rezoning about 30 acres above Cordova Avenue.

Count me among those who strongly condemn this proposed change to increase density from D-5 to D-18.

The present owners of these two parcels bought the lands knowing they are zoned D-5. Well and good. They are allowed to build up to 147 units on the combined two lots. But now they want a zoning change that would allow them to build 530 units. We in the neighborhood are being asked to comment on that rezoning requested by owners who claim to have no firm building plans and who could, if the change were approved, turn around and sell their parcels to someone planning to build the maximum density.

Look at it this way,

If I were to go to the city to request a building permit, they'd ask to see my plans. If I said, "I don't have any. Just give me a permit and I'll figure it out." I would expect to be laughed out the door. Now here's a proposal to build hundreds of units above a single street that drains multiple high density complexes like Cedar Park, and several apartment complexes, plus Nowell, Foster, Cordova, and Pioneer Avenues. As things stand now, cars do 30-40 mph on the hill and at the bottom it's challenging to get out of Cordova onto Douglas highway, especially in winter when the road is icy and it's dark. There is no traffic light. Several people have been hit at that intersection trying to cross and, a few years ago, a woman was tragically run over and killed there.

If City Planning approves 500 or 600 or 700 more cars on Cordova every day, plus construction, garbage trucks, snowplows, and all, without providing an alternative route and naming other plans like speed bumps, to control all the extra traffic, more injuries and perhaps fatalities, will result and the city will deservedly be named in ensuing lawsuits.

Before any rezoning is even considered, the owners of these parcels should sign an agreement, and provide security, to bear the cost of an access road down the north side of Kowee Creek to relieve pressure rezoning will cause.

Sincerely,

Dick Callahan, 3321 Foster Ave. Juneau, 99801

From: Kathryn Callahan <kacallahan85@gmail.com>
Sent: Tuesday, September 03, 2019 4:43 PM
To: PC_Comments
Subject: Re: D5 to D18

EXTERNAL E-MAIL: BE CAUTIOUS WHEN OPENING FILES OR FOLLOWING LINKS

I am a resident living at 3321 Foster Ave, Juneau AK and am responding to the proposed change of the land owned by Lonnie Anderson and Tlingit and Haida Housing Authority. I attended the informational meeting at the Douglas Library. It is my opinion that the change from D5 to D18 in both of these properties would have a negative impact on the neighboring areas. My greatest concern for this is that there was no plan developed and presented by either property owner for the use of the property but they would like the opportunity to develop at greater concentration. I object to the concept that we would be asked to weigh in on the impact of a proposed use without a firm plan. I would ask the Planning Department to defer the approval of this until the property owners present a plan that can be reviewed to truly assess the impact to the neighboring areas as it relates to health, safety and most importantly traffic access on Cordova St.

Sincerely, Kathryn Callahan

From: greg capito <gregcapito@hotmail.com>
Sent: Tuesday, August 20, 2019 2:42 PM
To: PC_Comments
Subject: Rezoning West Juneau

EXTERNAL E-MAIL: BE CAUTIOUS WHEN OPENING FILES OR FOLLOWING LINKS

Sent from [Mail](#) for Windows 10

The proposed zoning change of land above Cordova and Foster streets in West Juneau is a bad idea. I have lived for 40 years on Nowell Ave and watched the CBJ approve housing projects without consideration of their impact on traffic volumes and flow where Cordova meets the Douglas Highway.

As a result of these oversights, the traffic congestion at this intersection has increased to the point where public safety is an issue. Especially at this time of year, many school kids make their way down Cordova Street to catch their buses. The intersection is now more dangerous than ever for these kids and other pedestrians.

This proposed zoning change and subsequent high density development will make this problem even worse. So stop this project in its tracks and say no to the zoning change because public safety is at risk.

3211 Pioneer Avenue
Juneau, AK 99801
August 31, 2019

To: Juneau Planning Commission and CBJ Planning Staff

Subject: Comments on Anderson/THRHA Zone Change Application: Case #AME2019-0010

Dear Commissioners and Staff:

We are owners of the residence at 3211 Pioneer Avenue located on Lot 4 Block C, Channel Heights Subdivision. We built our house in 1982 and were the second house to be built in the subdivision. This was 37 years ago. Since building we have seen approximately 75 houses constructed along Pioneer Avenue and in the Blueberry Hills area. The neighborhood has undergone an orderly progression and represents the results of good planning and foresight.

The approval of zone changes by the Anderson/THRHA Application #AME2019-0010 will negate what to date has been an orderly process of construction in the neighborhood. If the zone change application is approved there is a potential for over 530 additional units to be built in the 29.45 acres of the application area. This would mean up to 378 new multi-family units in the (THRHA) 21-acre parcel to the west of Cordova Street., and up to 152 new, multi-family units in the 8.5 acres behind Pioneer Avenue (Anderson parcel).

Regarding the Anderson parcel, this would entirely change the character of our Pioneer Avenue (and streets above) neighborhood, which has been established since 1982, and earlier than that as an extension of the Foster Avenue and Nowell Avenue neighborhood. We feel that it is wrong to destroy the character of a neighborhood in this way when there is alternative ample space in Juneau to build multi-family housing neighborhoods. This disruption of the single-family home zoning is not compatible with the existing homes and should not be approved by the Commission.

Presently all of West Juneau area (including the proposed Anderson/THRHA zoning change area) accesses the Juneau-Douglas highway via Cordova Street. This single access point has created a traffic nightmare. During key traffic times excessive waiting times occur for those attempting to exit Cordova Street via a left-hand turn. The addition of a significant number of cars from the proposed 530 units without adding alternate access streets in the area, is not in the best interest of the area residents and creates a safety hazard. The additional traffic added to the area is a reason alone to disapprove the proposed zoning change.

At the general information meeting on the zoning change held August 20, 2019, the Anderson representative acknowledged to the group that there was a problem with the single access outlet of Cordova Street and stated that in the future there might need to be a stop light installed at the intersection. On Friday, August 30, 2019 a temporary traffic light

was installed by the construction company working on the Douglas Highway replacement of underground utilities. Attached is a copy of a picture taken at 4:47 PM on that date at the Cordova intersection while the light was stopping traffic movement. The photo reveals that after just 10 cars are halted, there is blockage of the round-about turning circle and thus total stoppage of all traffic, including North Douglas vehicles attempting to enter the round-about and vehicles crossing the bridge en-route to the round-about. This readily shows that the solution for the Cordova Street intersection is not a stop light.

In conclusion, the commission should disapprove the applicants' request for zoning changes. The zoning changes are not compatible with already constructed single-family homes on Pioneer Avenue and the adjacent neighborhood. Further, the applicants should be directed to provide a traffic impact study for their proposed projects before the Commission considers any zoning change. Additionally, since the zoning changes are to allow for high-density units, the maximum number of units allowable in the 29.45 acres should be used in this study. Maximum number of units that can be constructed in the area should be The standard, since once any zoning change is made, the applicants or future owners of the parcels can build up to the maximum units allowed.

Respectfully submitted,

/s/ Robert D. Carnes

/s/ Patricia A. Carnes

Robert D. Carnes

Patricia A. Carnes

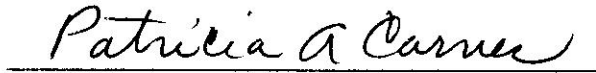
Attachment 1: Picture of temporary traffic light at Cordova Street (8/30/2019)

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In conclusion, the commission should disapprove the applicants' request for zoning changes. The zoning changes are not compatible with already constructed single-family homes on Pioneer Avenue and the adjacent neighborhood. Further, the applicants should be directed to provide a traffic impact study for their proposed projects before the Commission considers any zoning change. Additionally, since the zoning changes are to allow for high-density units, the maximum number of units allowable in the 29.45 acres should be used in this study. Maximum number of units that can be constructed in the area should be The standard, since once any zoning change is made, the applicants or future owners of the parcels can build up to the maximum units allowed.

Respectfully submitted,


Robert D. Carnes


Patricia A. Carnes

Attachment 1: Picture of temporary traffic light at Cordova Street (8/30/2019)



September 2, 2019

To: Juneau Planning Commission
Laurel Christian, Planner
Alexandra Pierce, Planning Manager

From: Ray and Carol Collins
3251 Pioneer Avenue
(907) 723-3769 Ray (907) 723-9474 Carol
rcollins@gci.net cjcollins77@yahoo.com

Re: Comments on Anderson/THRHA Zone Change Application
Case #AME2019-0010

This co-application by the Tlingit Haida Regional Housing Authority (THRHA) and Lonnie Anderson seeks to increase the number of housing units on a total of 29.45 acres from its current zoning of D5 (Anderson) and D5 T D18 (THRHA) to D 18 multi-family from single-family dwelling. The CBJ Planning Commission should **deny the application** and maintain the existing D-5 zoning.

Points of Concern:

Following the August 20, 2019, presentation by CBJ Community Development staff detailing the application and process, there was a summary given by the co-applicants. Comments by the applicants, coupled with the narrative of their zone change application, leads us to draw the following conclusion: An individual owner/developer (Mr. Anderson) desires to increase population density, Cordova street traffic, and alter the character of a neighborhood for purpose of thwarting challenging and expensive development of single family residences wherein **he would be unable to make a profit.**

This is evidenced by Paragraph 2 of the Application narrative in which it is stated, "This means that the development that would be served by this road extension has to be substantial enough to pay for the road as well as site preparation that

will also be more expensive than typical because of terrain. Single family or duplex development will not be enough.”

THRHA stated they **have no current plans** for development; however, a cost share of costly extension of Cordova Street was of financial interest.

Of particular interest is the understanding of a desire of Mr. Anderson to **sell his property pending a D-18 designation** whereby increasing its value.

- **Zoning Change inconsistent with CBJ Comprehensive Plan**

If approved, the rezoning would increase the number of housing units on the two parcels owned by THRHA and Anderson from 147 (D-5 level) to 530 (D-18 level). Single family residence would change to multi-family and other designated uses including, but not limited to, ‘light’ manufacturing.

The urban ‘low’ density zoning (D5) which covers the entire West Juneau area was a prime consideration for many whom undertook substantial financial investment in either purchasing lots for construction or buying existing homes in the area.

The effects of the zoning change being proposed would be inconsistent with the CBJ’s existing Comprehensive Plan which noted the need to protect the character of existing neighborhoods. This ‘protection’ is to include minimizing intrusion of heavy traffic on streets, parking congestion, noise, loss of privacy to name but a few factors. Several of these elements will occur with approval of the THRHA/Anderson rezoning application.

- **Traffic increase and safety**

The applicants identified that the “key to development of both parcels is road access and that the most likely option is to extend Cordova Street upwards”. No other options were noted as being considered yet the CBJ zoning maps for the THRHA parcel includes a ‘condition’ for the transition to include water, sewer and the construction of a Kowee Creek bridge by the developer. (1986 West Juneau Traffic Impact Study)

The applicant also noted that, “Any new development will add traffic to the existing streets but they all operate freely now. The only exception is the Cordova/Douglas Highway intersection morning commute and this operates rather well because of the neighborly manners of Douglas drivers.”

Relying on good mannered neighbors is an optimistic presumption and a poor method for a city to meet a core responsibility to manage traffic for safety and streets for access. Cordova Street currently carries traffic from a number of streets (Blueberry, Pioneer, Foster, Nowell, Coogan Complex, Cedar Park Complex) and increased development in the area has exacerbated both the volume and speed of traffic. The grade of steepness of the street has been complicit in a number of accidents as it terminates on a highly trafficked highway. The proposal submitted by the applicants to extend the grade of Cordova approximately 200 feet upwards would further worsen the situation.

- **CBJ should comprehensively examine infrastructure needs prior to any rezoning**

Comments during the August 20, 2019, community meeting generated a great deal of concern regarding the impact to traffic both on Douglas Highway and Cordova Street. A co-applicant’s representative observed that a traffic signal at the bottom of Cordova street may be necessary. The CBJ and DOTPF should comprehensively examine possible infrastructure needs. Specifically, how traffic signals on Douglas Highway will effect traffic flow on the roundabout and Douglas bridge based on guidelines contained in the Manual on Uniform Traffic Control Devices.

Altering existing low density zoning classifications, and waiting until ‘development stage’ to identify any needed infrastructure, would be out of sequence. One should occur before the other and before approval of the THRHA/Anderson application as well as other requests for D18 zoning in the area.

- **Engineering should be required prior to rezoning**

Applicants have included in their development scenarios mention of the “rough terrain”, “steep terrain”, and “too steep” terrain. There have been numerous incidences of CBJ approved developments which have resulted in bordering

property being effected by erosion and other water drainage issues. All residents, particularly downhill residents, have a rightful concern that engineering of a housing or commercial development in their neighborhood be performed PRIOR to approval.

Summary

No justification to change existing zoning

The CBJ Planning Commission has previously considered and identified the Douglas Bench Road Corridor as Urban **Low Density** Residential. The acreage in consideration for rezoning is currently zoned D5. Although the stated purpose of the joint applicants is laudable to enable affordable multi-family development; there is no justifiable reason to change this zoning. Inability of a property owner to make a profit from a property that is difficult to develop should not be a factor the CBJ utilizes to change thoughtful, deliberative community planning and established neighborhoods.

Multi-family housing need is currently being met by permitted or under construction development and there is adequate D18 zoned area

According to the Spring 2018 CBJ Community Development Permit Center News, “Juneau has recently experienced a spurt of multi-family development growth, likened to that occurring in the mid-90’s. Over the past 5 years, Juneau has added 473 condos and apartments to its housing stock. This development has been a healthy mix of senior living, market rate, and affordable rate units.” According to the CJB Lands and Resources Department, there have been a total of 540 multi-family units permitted in the past nine years

There appears to be a healthy level of multi-family housing currently permitted or underway considering that the U.S. Census Bureau estimates “expected slow growth” for the Juneau area.

A comprehensive analysis of housing density and traffic should occur prior to any further rezoning

A comprehensive examination of the effects of increasing population and housing density along Douglas Highway south of the bridge and West Juneau should occur prior to approval of applications for high density expansion. The State Department of Transportation and Public Facilities should be a partner in this examination **before** any approval for future development.

Thank you for your consideration of these comments and concerns.

September 1, 2019

To: Juneau Planning Commission
Laurel Christian, Planner
Alexandra Pierce, Planning Manager

From: Lin Davis
3099 Nowell Ave
Juneau, AK 99801
molin@gci.net
907-586-4111

Re: Comments on Anderson/THRHA Zone Change Application
Case #AME2019-0010

I have been a Nowell Avenue homeowner since 1995. I love this quiet friendly neighborhood. And I love walking to town and leaving our car at home. I have 4 concerns about the re-zone application.

1. I wonder about the traffic impact and safety diminishment for drivers and pedestrians if 500 or up to 1000 more drivers have to use Cordova Street to exit our area.

After 23 years of being a daily driver and also a pedestrian at the Cordova Street/Douglas Highway intersection, I think a rezone to D-18 will add unsafe and unfeasible traffic loads to Cordova. As a driver, it is often very difficult to pull out safely onto Douglas Highway, left or right, and not just at commute times. I often find I have to pull a fast one to ever get out.

The drivers coming out of the roundabout accelerate through the Cordova intersection, and we have friends who have had life-changing collisions trying to pull out. Because of the acceleration, it is hard to judge how fast cars are coming.

A lot of drivers turn right at the bottom of Cordova. Unfortunately they block the view for those turning left toward the bridge. Many right-turn drivers unfortunately do not let left-turners go first before pulling up to scan the Doug Highway traffic. Left-turners are doubly delayed. Pressure builds.

With the exception of morning commute, and despite a 30mph slow-down sign, drivers coming both directions on Douglas Highway tend to speed up at the Cordova intersection. This adds to pressure and danger for those pulling out of Cordova.

The line of traffic coming from downtown Douglas in the morning stretches farther than I can ever see. Having to feather in 300 or 500 or 1000 more vehicles seems unworkable.

Additionally, given the high volume of pedestrian traffic, the Cordova/Douglas Hwy is currently a very dangerous intersection. Adding many more adult and child pedestrians will also impact this intersection and its safety.

Several types of pedestrian lights have been tried at the Cordova crosswalk. Sadly we still had a young mother killed a few years ago. Many walkers don't use the flags, Many do not purchase reflective bright clothing for visibility.

And it is not safe to cross Douglas Hwy at the roundabout. As a pedestrian I have barely missed being hit many times in the roundabout. Drivers merging into the roundabout are not really watching for peds. Very often the brakes of several cars squeal as the car in front notices me waiting at the roundabout crosswalk and stops suddenly. Unfortunately cars behind are enjoying a successful merge and centrifugal force and appear not alert for peds.

I will no longer cross at the roundabout and am forced to use Cordova crosswalk.

2. Second, winter snow and ice bring additional traffic and safety concerns to Cordova Street.

Our area is a special icy zone and road conditions get super slick as the cold air moves down the neighborhood slope. Nowell and lower Cordova become exceptionally icy. Cordova is often closed to the city bus. And school buses. CBJ valiantly scrapes and chemically treats Cordova but I often worry about my 4WD with studs safely getting up the hill to make a left hand turn onto Nowell. If I have to stop my uphill motion for downhill traffic, I have become stuck. Cars without 4WD or studs easily spin out and get stuck, blocking everyone. Emergency vehicles get blocked.

Adding 500 more cars coming downhill on ice, means more stuck and sideways vehicles, and harder left turns onto Nowell and Foster.

Adding 500 or 1000 more drivers to this icy street seems unsafe and unwise. I notice that many residents in multifamily housing do not have 4WD/studs.

Many Cordova area residents, including school kids, walk down the equally icy sidewalk to catch buses on Douglas Highway. For many years I have taken the bus to work and fallen on that sidewalk despite wearing spikes. Not all kinds of grippers are really able to handle the extremely icy downhill surface. CBJ has improved the Cordova sidewalk scraping but it still remains a

dangerous descent. I and other walkers have had to walk in the street to safely get down to the busses. We become a hazard to all drivers, especially those without 4WD/studs.

The applicant acknowledged that their “new development will add traffic to the existing streets but (said all streets) operate freely now.” I strongly disagree based on my 24 years of experience as a Cordova driver and pedestrian.

The 8/30/19 letter from David Epstein, a DOT Regional Traffic and Safety Engineer, to CBJ expresses concern about the D-18 rezone and “additional housing development...generating significant amounts of traffic.”

From my lay perspective I would say the applicant has not adequately analyzed the traffic and safety impact of their rezone on Cordova Street and its drivers and pedestrians.

3. **My third concern: given Douglas winds and the history of Douglas fires, I worry about our current ability to evacuate our neighborhood or parts of it in the event of an emergency.**

Clearly, the impact of adding 500-1000 more drivers to our Cordova Street does not seem to have been adequately analyzed by the applicant.

4. **I agree with neighbors who advocate for CBJ Planning Commission to reject D-18 for the Anderson parcel.**

Retaining D-5 for the Anderson lands will protect the long-standing character of our neighborhood. Many of us walk out of our homes and daily head up the Dan Moller trail. Sounds like Anderson will change this but retention of D-5 is very important.

Hopefully a traffic study and comprehensive review of Douglas Island and its living spaces and safe road access will be performed before a hasty for-profit land development project takes over our neighborhood. As longtime residents we definitely feel some glare from Dr. Anderson’s profit motif.

I think THRHA’s D-18 project will need a new access road from some part of Douglas Highway.

Thank you for considering these points.

Lin G. Davis

molin@gci.net
586-4111

August 31, 19

To: Juneau Planning Commission
Laurel Christian, Planner
Alexandra Pierce, Planning Manager

From: Nancy and John DeCherney
3195 Pioneer Avenue
nancydecherney@mac.com
907 723-8283

Re: Comments on Anderson/THRHA Zone Change Application
Case #AME2019-0010

Changing the zoning as requested in this application is not a good idea at this time. We recommend against approval until serious issues regarding access and long range planning for Douglas Island are resolved.

- 1) Already it is concerning to see the number of multiplex housing units being built along Douglas Highway and up Cordova, with a single bridge and a two-lane road as the only access to and from the island.
- 2) Cordova is the only road out of the Blueberry Hills/West Juneau area now and it can be pretty challenging. It is steep, can be icy (several near misses nearly sliding through the intersection even in low gear and with good tires) and has a fairly unprotected intersection with Douglas Highway. There are often children on the hill (just had a little guy come streaking down on the sidewalk on his bike – he did stop in time – but it scared me, in any case. What if he hadn't?), in the winter people walk in the street because the sidewalk is full of snow and on more than one occasion I've seen people slip and fall flat. It, as it exists, is probably not up to the challenge of doubled population using it regularly – and although Mr. Walsh assured us that it is unlikely that the full number of allowed units would or even could be built, there remains that potential for that to be the case.
 - In fact – if some of the land is unbuildable, as the bit right behind our property seems, why rezone it to an unrealistic level?

Providing additional access to the area seems necessary before adding population, more than just extending Cordova.

Is it time to look again at a second bridge?

- 3) We have concerns about drainage and slope stability, probably unfounded, but when the Pioneer area was starting to be built up, homes on Nowell flooded. Ensuring that drainage for the area is adequate needs to be ensured before significant development takes place.

- 4) West Juneau is a charming neighborhood as it exists with D-5 zoning. It is close to town, has great views, is walkable, usually quiet, and overall a wonderful part of the community. Increasing the density, if not carefully thought out, will change the neighborhood significantly. Hopefully, amenities such as parks or playgrounds would be included, along with increased access to and from the area.

While ordinarily, we favor people being able to do what they need to do with their property, until the area has improved access that can sustain the potential increase in population, we ask that this application be denied.

It is time for a much larger conversation about the vision for Douglas Island and the infrastructure needed to sustain the growth safely.

Thank you.

John and Nancy DeCherney

From: Epstein, David B (DOT) <david.epstein@alaska.gov>
Sent: Friday, August 30, 2019 9:00 AM
To: Linda Kruger
Cc: PC_Comments; Laurel Christian
Subject: RE: Request for traffic impact analysis for the Cordova Avenue-Douglas Highway intersection

EXTERNAL E-MAIL: BE CAUTIOUS WHEN OPENING FILES OR FOLLOWING LINKS

Dear Ms. Kruger and Mr. Gnass,

Thank you for your email regarding the intersection of Cordova Street and Douglas Highway.

DOT&PF is aware of the rezoning request currently under consideration by the City and Borough of Juneau (CBJ) Planning Commission. I share your concern that additional housing development on the scale proposed will generate a significant amount of traffic.

In your email, you recommend that Cordova Street be considered for a traffic impact analysis (TIA) and suggest that construction of a traffic signal at the Cordova Street – Douglas Highway intersection may not be appropriate given the proximity of the Douglas Island roundabout.

The DOT&PF position moving forward will be that it is the developer's responsibility to perform a traffic impact analysis. The study will need to identify alternative remedial measures to mitigate the impact of increased traffic upon state right-of-way (i.e., Douglas Highway). The study will need to be performed by a competent licensed professional engineer. CBJ imposes a like requirement. We will review the TIA and ensure it meets DOT&PF standards. Presumably, CBJ will want to know how the developer plans to mitigate impacts to Cordova Street and the adjacent municipal road system. I expect that if a TIA is needed, it will be a team effort involving all three parties.

DOT&PF and CBJ have similar criteria for requiring a TIA. Per Chapter 49.40.300 of the CBJ code, a TIA shall be required when " ... a development (is) projected to generate 500 or more average daily trips (ADT)." Chapter 1190.4(10) of the Alaska Highway Preconstruction Manual requires the proponent to undertake a TIA "(w)hen the volume of traffic (generated by a development) is expected to exceed 100 vehicles during the peak hour." 500 housing units will likely create a situation that requires a TIA per both guidelines.

To be clear, DOT&PF's TIA criteria pertains to driveways, not streets or highways. However, given that Cordova Street is (1) the only current access point to/from the proposed development and (2) it intersects Douglas Highway, it stands to reason that most of the generated traffic will travel through the intersection. In essence, Cordova Street functions as a driveway connecting Douglas Highway with the development.

I expect that the TIA will consider a traffic signal as one option. As you point out, the resultant short distance between a signal and the Douglas Island roundabout may preclude its effectiveness as a mitigating measure. I am confident that the study will come to a definitive conclusion on the matter.

I appreciate the time you took to advise me of your concern. Do not hesitate to contact me if you have further questions. I look forward to working with the community and CBJ toward a satisfactory conclusion.

Best regards,

David B. Epstein, P.E.

Regional Traffic and Safety Engineer

Alaska DOT&PF – Southcoast Region

(907) 465-4483 desk // (907) 209-7995 cell

Email: david.epstein@alaska.gov

Error! Filename not specified.

From: Linda Kruger <lindalaska2003@gmail.com>

Sent: Thursday, August 29, 2019 4:01 PM

To: Epstein, David B (DOT) <david.epstein@alaska.gov>

Cc: pc_comments@juneau.org; Laurel.Christian@juneau.org

Subject: Request for traffic impact analysis for the Cordova Avenue-Douglas Highway intersection

Attached are our comments regarding traffic at the intersection of Cordova Avenue and Douglas Highway.

Linda Kruger

From: Epstein, David B (DOT) <david.epstein@alaska.gov>
Sent: Friday, August 30, 2019 8:55 AM
To: stanandamy@aol.com
Cc: PC_Comments; Laurel Christian
Subject: RE: Request for Traffic Impact Analysis - Cordova/Douglas Highway

EXTERNAL E-MAIL: BE CAUTIOUS WHEN OPENING FILES OR FOLLOWING LINKS

Dear Mr. and Mrs. Lujan,

Thank you for your recent email regarding the intersection of Cordova Street and Douglas Highway.

DOT&PF is aware of the rezoning request currently under consideration by the City and Borough of Juneau (CBJ) Planning Commission. I share your concern that additional housing development on the scale proposed will generate a significant amount of traffic.

The Cordova Street - Douglas Highway intersection is currently operating at reduced levels of service (LOS) during morning and afternoon peak hours. LOS is measured in terms of seconds of delay per vehicle, on a scale from LOS A (minimal delay, an average of 10 seconds or less per vehicle) to LOS F (unacceptable delay exceeding an average of 50 seconds per vehicle). I modeled the intersection using the most recent traffic volume data available. The left turn movement from Cordova Street onto Douglas Highway was determined to be operating at LOS D in the morning (average 25.5 seconds of delay) and LOS E in the afternoon (average 36.6 seconds of delay). Absent modifications/improvements to the adjacent road system, additional traffic loading will cause higher delay.

In your email, you specifically request that DOT&PF comment on the proposed rezone and initiate a traffic impact analysis for your neighborhood.

We have provided input to CBJ on the matter and will continue to do so as it progresses through their review process.

The DOT&PF position moving forward will be that it is the developer's responsibility to perform a traffic impact analysis (TIA). The study will need to identify alternative remedial measures to mitigate the impact of increased traffic upon state right-of-way (i.e., Douglas Highway). The study will need to be performed by a competent licensed professional engineer. CBJ imposes a like requirement. We will review the TIA and ensure it meets DOT&PF standards. Presumably, CBJ will want to know how the developer plans to mitigate impacts to Cordova Street and the adjacent municipal road system. I expect that if a TIA is needed, it will be a team effort involving all three parties.

DOT&PF and CBJ have similar criteria for requiring a TIA. Per Chapter 49.40.300 of the CBJ code, a TIA shall be required when " ... a development (is) projected to generate 500 or more average daily trips (ADT)." Chapter 1190.4(10) of the Alaska Highway Preconstruction Manual requires the proponent to undertake a TIA "(w)hen the volume of traffic (generated by a development) is expected to exceed 100 vehicles during the peak hour." 500 housing units will likely create a situation that requires a TIA per both guidelines.

To be clear, DOT&PF's TIA criteria pertains to driveways, not streets or highways. However, given that Cordova Street is (1) the only current access point to/from the proposed development and (2) it intersects Douglas Highway, it stands to reason that most of the generated traffic will travel through the intersection. In essence, Cordova Street functions as a driveway connecting Douglas Highway with the development.

I appreciate the time you took to advise me of your concern. Do not hesitate to contact me if you have further questions. I look forward to working with the community and CBJ toward a satisfactory conclusion.

Best regards,

David B. Epstein, P.E.

Regional Traffic and Safety Engineer
Alaska DOT&PF – Southcoast Region
(907) 465-4483 desk // (907) 209-7995 cell
Email: david.epstein@alaska.gov



From: stanandamy@aol.com <stanandamy@aol.com>
Sent: Wednesday, August 28, 2019 10:14 AM
To: Epstein, David B (DOT) <david.epstein@alaska.gov>
Cc: pc_comments@juneau.org; Laurel.Christian@juneau.org
Subject: Request for Traffic Impact Analysis - Cordova/Douglas Highway

Mr. Epstein,

We are writing to express concern about traffic safety at the intersection of Cordova Street and Douglas Highway. This intersection has been hazardous since we moved to the west Juneau neighborhood 11 years ago. Hazards have increased with the recent multi-family development at the top of Cordova Street.

Now, a further rezone has been requested, which could more than double the load on Cordova Street (Anderson and Tlingit Haida parcels, to be considered by the CBJ Planning Commission on September 24). Your office has been asked to comment on the proposed rezone.

We urge you to comment on the proposed rezone and to initiate a traffic impact analysis for our neighborhood before additional fatalities result.

Specific Concerns About Traffic Safety on Cordova Street

Cordova Street is steep and becomes very slippery during the winter, so much so that city buses are redirected during the winter months and school buses do not come up Cordova Street at all. On several occasions, we have slipped onto the highway from Cordova Street and have frequently observed other cars slipping due to icy conditions. We have good tires but not all drivers do!

The sidewalk on Cordova is poorly maintained in the winter, creating hazards for pedestrians which include kids walking to the school bus stop across the highway. The result is that kids and adults frequently walk on the icy road, often with poor footwear. We have seen and stopped to help pedestrians who've fallen on the street. At the highway intersection, a driver on Cordova looking right to assess traffic (around a large utility post) when it is dark outside, can easily miss seeing pedestrians, including kids crossing the highway. Many do not bother to use the orange flags.

Conditions at the Cordova/Highway intersection become particularly hazardous at 7:30 AM, during Juneau's morning commute. At that time, drivers coming from Cordova can only access the highway when friendly bridge-bound drivers waive them in. This neighborly situation is less likely to suffice if additional multi-family housing (with the potential for over 500 units, more than doubling the current load) results in a large increase in the number of cars! Also, the dangers of the icy road and the potential hazard pedestrians accessing the bus stop will be compounded.

Thank you for your consideration,

Stan and Amy Lujan
3145 Pioneer Avenue
907-209-9713

Laurel Christian

From: normafleek@gmail.com
Sent: Saturday, August 24, 2019 8:09 AM
To: Laurel Christian; PC_Comments; david.epstein@alaska.gov
Subject: RE: AME2019 0010 Neighborhood Meeting Follow-Up & Further D18 Development on Douglas Island

Follow Up Flag: Follow up
Flag Status: Flagged

EXTERNAL E-MAIL: BE CAUTIOUS WHEN OPENING FILES OR FOLLOWING LINKS

Good Morning Laurel –

Thank you for the presentation of understanding held on Tuesday, August 20, 2019 by the City Planning representatives. It was very helpful and raised many challenges for the Island. My family has lived on Douglas Island since 1960 and we have been privileged to watch the Island grow throughout this time. Growth and multi-family dwellings now put the Island at risk as we have only the Douglas Highway and the Bridge for daily travel and exiting the Island. This puts a hardship on all those commuting to and from Juneau, and is of considerable danger when there are emergencies.

When the regional zoning was put into play we had at the time Douglas Highway and the bridge. That has not changed. Yet, the density has changed on the Island as you all are aware. The consideration of a second crossing placed further north on the Island will not eliminate or reduce the density of traffic south of the bridge, nor north of the bridge to a certain point. The funnel is backing up at critical hours of the day and becoming even more of a challenge when exiting Cordova Street. Any plan to move the exiting further north to Douglas Highway would not be a complete solution when trying to exit the Island as all traffic will still go through the round about to the only exit in existence to the Island.

The challenge to be considered by the City at this time would be to remedy the density either by stopping the development of all D18 zoning or to widen Douglas Highway and either widen the bridge or add a second level where it now stands. This seems impossible considering the current city/state budget and the cost of pursuing either of those two solutions.

At this point in time it would be difficult, I believe, to approve further multi-family dwellings, industrial, or commercial progress on Douglas Island. Please feel free to contact me at any time. There are many more points of concern, however in an effort to keep this one response short, I will not address the other concerns. I am certain that many others will be contacting you regarding their outlook on this matter.

Thank you for your considering in this matter, we realize that “growing pains” can be difficult and that good solutions are needed now.

Norma Fleek
 3151 Pioneer Ave,
 Juneau, AK 99801
 209-2130

From: Laurel Christian <Laurel.Christian@juneau.org>
Sent: Thursday, August 22, 2019 9:08 AM
To: Laurel Christian <Laurel.Christian@juneau.org>

Cc: Irene Gallion <Irene.Gallion@juneau.org>; Alexandra Pierce <Alexandra.Pierce@juneau.org>

Subject: AME2019 0010 Neighborhood Meeting Follow-Up

Good morning,

Thank you for attending a neighborhood meeting this week regarding a proposed rezone above Cordova Street. I have attached my presentation from the meeting as well as our postcard mailer with information on how to comment on this proposal.

To see the information we have posted online so far regarding this case, please follow this link:

<https://beta.juneau.org/assembly/assembly-minutes-and-agendas>

From there, you will want to find the Planning Commission meeting for 9/24/19 and click on the icon under “online agenda”. We currently have the application and public notice posted for this case, and the staff report will be posted around September 16th.

As mentioned at the neighborhood meeting, below is a contact at the Alaska Department of Transportation:

David Epstein
Traffic & Safety Engineer
(907) 465-4483
david.epstein@alaska.gov

If you have any questions or would like additional information, please feel free to reach out to me.

Thank you,

Laurel Christian | Planner

Community Development Department | City & Borough of Juneau, AK

Location: 230 S. Franklin Street, 4th Floor Marine View Building

Office: 907.586.0761

Please note name change (Bruggeman to Christian) and new email: Laurel.christian@juneau.org



Laurel Christian

From: wayne fleek <juneauguy@rocketmail.com>
Sent: Sunday, August 25, 2019 4:59 PM
To: Laurel Christian; PC_Comments
Cc: Irene Gallion; Alexandra Pierce; david.epstein@alaska.gov
Subject: Re: AME2019 0010 Neighborhood Meeting Follow-Up

Follow Up Flag: Follow up
Flag Status: Flagged

EXTERNAL E-MAIL: BE CAUTIOUS WHEN OPENING FILES OR FOLLOWING LINKS

August 25, 2019

To:
 Juneau Planning Commissioners
 Laurel Christian, Planner
 Alexandra Pierce, Planning Manager

From:
 Wayne Fleek
 3151 Pioneer Ave. (resident here for 50 years, 20 of these at this address)
 (907)586-2285

RE: Comments on Proposed Rezoning Applications
 Case #AME2019-0010

1. These combined zoning changes could allow up to 530 new housing units if rezoned from D-5 to D-18 on 29.45 acres. If granted this would more than double the currently approved D-5 units (213) in the subdivisions now accessing the Douglas Highway by using Cordova Street. These current neighborhoods are largely single-family residences and would be adversely affected if the requested D-18 applications were approved by:

A. Further degrading Cordova Street usage by adding a minimum of 500 vehicles. Currently residents of the area have an EXTREME SAFETY ISSUE accessing Douglas Highway from Cordova Street during peak (7:30-8:30AM and 4:30-5:30PM) traffic hours. This intersection has obscured views from Cordova Street of Douglas Highway due to large power poles and fences to the Southeast, a pedestrian crosswalk (at least one fatality so far) to the Northwest. Drivers attempting entry from Cordova Street onto Douglas Highway frequently have school children and bus riders darting out onto the highway and when turning toward the J-D Bridge and round-about. This is further complicated by city and school bus stops on both sides of Douglas Highway immediately adjacent to the intersection, and by traffic turning into the Breeze-In parking lot just a couple of car lengths away. Safety issues are exacerbated during the hours of darkness and winter days when Cordova Street is "glare ice" and vehicles have little to no braking action on the hill. To allow 500+ more vehicles from the proposed rezoned parcels would greatly increase the probability of vehicle accidents and injury to pedestrians.

2. Applicants have stated that the only access would be by extending Cordova Street up a steep hill from the Pioneer Ave./ Cordova Street intersection. This would become an even steeper hill that would increase the likelihood of significant traffic accidents at that intersection and further down Cordova St. hill, especially when covered with snow and ice. Furthermore, stating that it would be the only access is NOT TRUE. If developed access could also be obtained by extending either Jackson or Goodwin Streets. However if either were constructed both would increase vehicle volume 500+ fold on Pioneer Ave., where current speed limits are 20 MPH and largely ignored by private and commercial vehicles, heavy trucks, vehicles towing snow machine trailers while transiting to the Jackson Street parking lot, as well as accessing residences on Blueberry and Jackson Streets.

If rezoning is approved the applicants should be required to construct new access to the North Douglas highway, North of the Round-about, rather than utilizing Pioneer Ave. and Cordova Street.

3. Only D-5 zoning should be allowed on the proposed parcels, any rezoning higher would destroy and be in conflict with existing residential D-5 neighborhood character . Changes would be in violation of the CBJ Comprehensive Plan, Chapter 10, page 131.

4. These proposed changes would also adversely affect all residents of Douglas Island, not just those of West Juneau, by exceeding traffic capacity already overtaxed on the Douglas Highway All residents would be faced with more delay at the current bottleneck funneling onto the J-D Bridge.

In short,

A) No rezoning of these parcels should be approve until a State D.O.T. traffic analysis is completed and implemented and changes constructed to improve traffic flow and safety issues resolved. Consideration of delays to and accessibility to emergency response vehicles should also be taken into account.

B) The current CBJ Comprehensive Plan should be followed rather than rezoning these parcels to increase values for developers.

I hereby request you not approve either of the applicants requests for rezoning for the reasons stated above.

On Thursday, August 22, 2019, 9:08:00 AM AKDT, Laurel Christian <Laurel.Christian@juneau.org> wrote:

Good morning,

Thank you for attending a neighborhood meeting this week regarding a proposed rezone above Cordova Street. I have attached my presentation from the meeting as well as our postcard mailer with information on how to comment on this proposal.

To see the information we have posted online so far regarding this case, please follow this link:

<https://beta.juneau.org/assembly/assembly-minutes-and-agendas>

From there, you will want to find the Planning Commission meeting for 9/24/19 and click on the icon under “online agenda”. We currently have the application and public notice posted for this case, and the staff report will be posted around September 16th.

As mentioned at the neighborhood meeting, below is a contact at the Alaska Department of Transportation:

David Epstein

Traffic & Safety Engineer

(907) 465-4483

david.epstein@alaska.gov

If you have any questions or would like additional information, please feel free to reach out to me.

Thank you,

Laurel Christian | Planner

Community Development Department | City & Borough of Juneau, AK

Location: 230 S. Franklin Street, 4th Floor Marine View Building

Office: 907.586.0761

Please note name change (Bruggeman to Christian) and new email: Laurel.christian@juneau.org



August 28, 2019

To: City Planners

Reference Case No. AME2019 0010

I am not in support of Rezone of two Parcels near Cordova Street and Pioneer Avenue.

Cordova and Sitka Streets are currently the only means of entering the neighborhood, and Sitka Street was never intended to be used as an access point. At high traffic times, Sitka Street has increased usage and at times has competing traffic both directions.

Rezoning and changing the designation of the Anderson parcel from D5 ULDR would impact the character of the neighborhood and property values. The THRHA parcel may warrant review for rezoning only if infrastructure and traffic safety concerns have been adequately addressed.

Thank you for your review.

Barbara Gabier

3221 Pioneer Ave



From: bgabier <bgabier@aol.com>
Sent: Wednesday, August 28, 2019 8:09 PM
To: PC_Comments
Subject: Case No.: AME2019 0010

EXTERNAL E-MAIL: BE CAUTIOUS WHEN OPENING FILES OR FOLLOWING LINKS

To City Planners: Reference: Case AME2019 0010
 pc_comments@juneau.org

I do not support rezone of two parcels near Cordova Street and Pioneer Avenue.

Allowing the applicants to combine their application to save costs on a possible access road is not an adequate reason to lump the request for rezoning as one. These are two separate entities and parcels, each with unique characteristics. Legally, it would seem important the two requests be considered separate as there are important differences.

First, combining the request appears to benefit applicant Anderson by masking the current property designation of ULDR to MDR (which is what the THRHA appears to already be). Second, Anderson is apparently requesting it for a purely financial gain at the expense of the character of the existing neighborhood directly adjacent to his property. Third, it appears Anderson could benefit by the political weight of the THRHA application.

I am not in support of changing the zoning designation of the Anderson property from D5. This property was zoned at the same time as the current/adjoining neighborhood development was zoned D5, and rezoning to anything other than D5 would definitely impact the character and property values of the existing neighborhood. The D5 zoning was the representation/understanding of the property at the time Anderson purchased the property—and it was also the representation/understanding of purchasers who purchased land near or adjoining the Anderson parcel. While the THRHA property may warrant review in the future--after adequate infrastructure concerns are addressed, it cannot be supported at this time.

Safety of drivers and pedestrians as well as neighborhood access in case of emergency needs to be addressed. Some of the current concerns with entering and exiting Cordova Street during high volume commute times has caused increased traffic on Sitka Street. Sitka Street is a narrow one lane artery not intended for high volume traffic—but has already begun to experience two-way traffic.

Given the number of units built in the last two years in the Juneau area, the necessity for high density zoning of these two parcels appears unnecessary. If high density units are needed, they should be placed in areas of Juneau already capable of adequate infrastructure.

As an aside, it appears the Anderson's have put their own residence in the neighborhood up for sale.

Thank you for your review.

Welles Gabier

3221 Pioneer Avenue

From: Cindy Tribuzio Gasper <sacanthias@gmail.com>
Sent: Monday, September 23, 2019 11:36 AM
To: PC_Comments
Subject: Rezoning in West Juneau

EXTERNAL E-MAIL: BE CAUTIOUS WHEN OPENING FILES OR FOLLOWING LINKS

Hello,

I am writing to file a public comment in regards to the proposed rezoning of two parcels in West Juneau. I do not support the proposed rezoning because of two concerns:

- 1) traffic congestion and safety
- 2) trail access

The proposed rezoning would allow for increased high density housing in the West Juneau neighborhood. Currently, there are two roads in/out of the neighborhood and traffic flow is high on the main roads. Pioneer Avenue is a hill and cars speed up/down to the upper reaches of the neighborhood, despite posted 20MPH signs. Exiting the neighborhood at the end of Cordova street is a traffic nightmare, along with a safety issue. Re-routing traffic to Sitka street is not a safe alternative either. I use that route currently to avoid the construction and it is a very narrow, steep street, that is not accesible in the winter. The CBJ can not rezone to increase the number of residences without considering alternative traffic routes in/out of the neighborhood, as well as assessing the safety of current traffic.

My second point is specific to the lower Dan Moller trailhead. That trail is the only non-motorized access to the trail in the winter. It provides access to safe places for people to enjoy our environment. When not snowing, it is a busy trail, used regularly by many people in the neighborhood. Rezoning that land could disrupt access to the trail, thus changing the entire nature of the neighborhood. Frankly, we purchased our house because of ease of access to that trail, and this is effectively a bait and switch.

Lastly, part of the value of West Juneau is that it is NOT crowded. Increasing housing will further degrade property values, especially if access to nature is also reduced/removed.

Thank-you

Cindy Tribuzio
3167 Pioneer Ave

From: Jason Gasper <jgasper0114@gmail.com>
Sent: Monday, September 23, 2019 11:56 AM
To: PC_Comments
Cc: Cindy Tribuzio - NOAA Federal
Subject: Comment: Rezoning Residential to Multi-Family -Pioneer Ave

EXTERNAL E-MAIL: BE CAUTIOUS WHEN OPENING FILES OR FOLLOWING LINKS

Greetings,

My name is Jason Gasper and I live at 3167 Pioneer Ave.

I want to express my strong concern about the proposed rezoning of land off Pioneer and Codova Street (see photo below). I believe the land belongs to the Lonnie Beverly Anderson Living Trust (see photo below).

I've lived in Juneau for 20+ years, and we moved to this neighborhood in 2013 because it was relatively quite (in terms of traffic and people), and was in close proximity to the Dan Moeller recreational area.

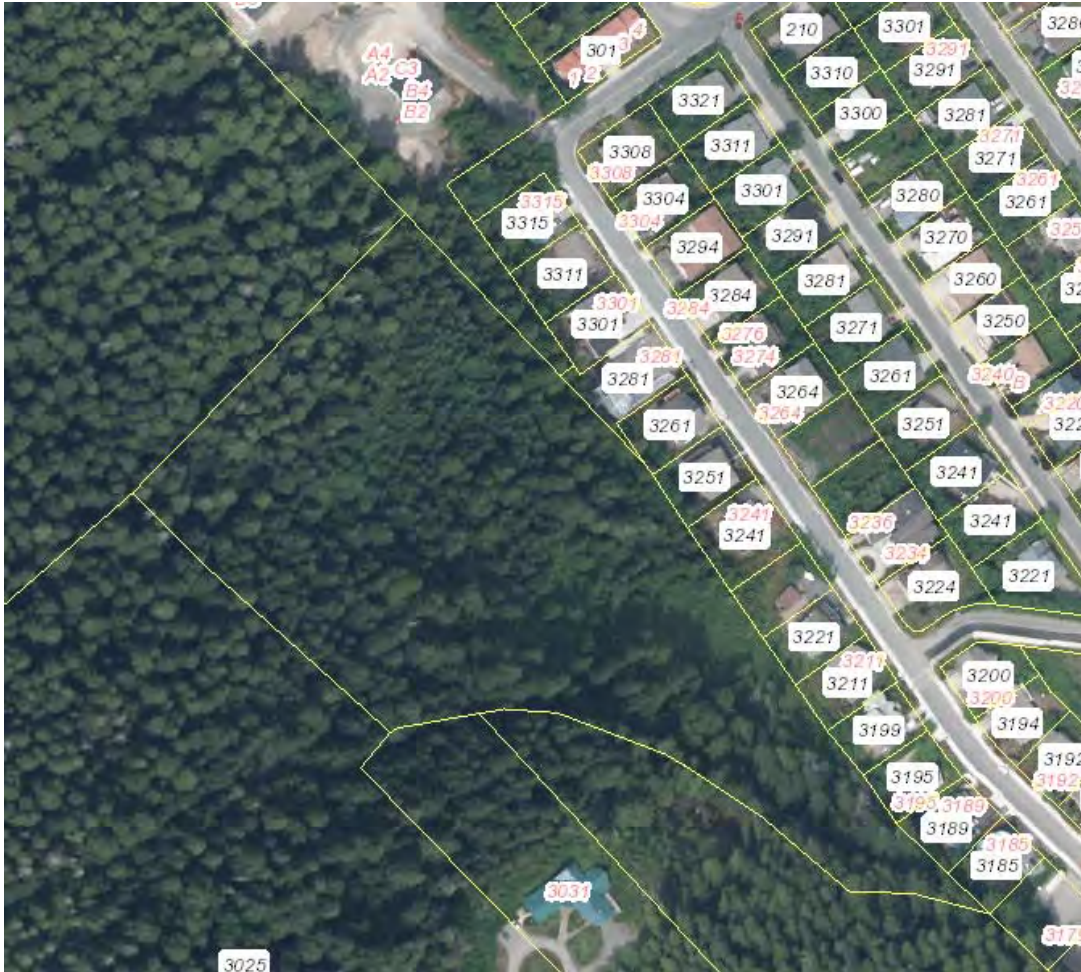
The proposed rezoning is not harmonious with the character of the existing neighborhood. It does not assure the privacy, light and air of its neighbors.

- 1) It establishes high density housing literally right in the backyard of people who have bought houses in a single housing unit neighborhood. This is unfair to those who have paid for a home and property expecting a certain type of neighborhood;
- 2) The housing project is going to require parking and that parking will impact adjacent residential neighbors.
- 3) There is not room for adequate buffers between high- and low-density residential uses to ameliorate noise, glare, and to otherwise reduce negative impacts associated with conflicting land uses in proximity to one another;
- 4) I purchased our house in this neighborhood based on existing amenities and zoning. This rezoning is counter to that expectation.
- 5) The property is inclusive/neighboring the Dan Moller trailhead, a historical trail in the Juneau area, and one used by Juneau residents. The natural value of this trail is critically important, and having high density housing off this trail will greatly disturb its use value to CBJ resident and residents alike. I personally use the trail to walk my dog during the summer, hike with my family, and ski during the winter. It's within walking distance to my house.
- 6) There has already been considerable development off Cordova Street and this development would require extending the road and services, and would create even more traffic on an already busy and steep street. As it is, Buses have a hard time turning onto Cordova. This is public safety concern.

In closing, I am all for people using their land, but this proposal unfortunately changes the rules for many homeowners in my neighborhood because a single land owner wants to develop. The landowner purchased the land under a given designation and knew what they purchased. I don't believe it's fair to the Pioneer Street

residents to internalize development costs _(i.e.. more traffic, crime, multi-family dwelling neighboring their back yard, impact on Dan Moller, and construction). I also don't think it's fair to the Dan Moller trail users to have an important recreational trail degraded.

In the long-run, I urge the City to come up with a long-term solution to preserve the lower trailhead access point. It appears that the landowner owns quiet a bit land surrounding this historic trailhead.



From: Charlie Herrington <charlesbherr@gmail.com>
Sent: Tuesday, September 03, 2019 6:33 PM
To: PC_Comments
Subject: Comment On Case #: AME2019 0010

EXTERNAL E-MAIL: BE CAUTIOUS WHEN OPENING FILES OR FOLLOWING LINKS

My name is Charlie Herrington. I live at 3311 Foster Ave.

I missed the community meeting a few weeks ago in August, but my neighbor brought me up to speed. It's my understanding that this rezoning is part of a larger plan that could create several hundred housing units on the land above Nowell, Foster, and Pioneer.

My primary concern is that Cordova Ave is not suited to handle this kind of traffic increase, especially during the morning and afternoon commuter times. I can't imagine any sort of housing development working well for the neighborhood without an additional access road being constructed, preferably on the north side of the roundabout.

Thanks,

Charlie Herrington
charlesbherr@gmail.com
907.419.4433

From: Nancy Jones <thomasn@gci.net>
Sent: Sunday, August 11, 2019 10:04 PM
To: CDD_Admin
Subject: Zoning upgrade

EXTERNAL E-MAIL: BE CAUTIOUS WHEN OPENING FILES OR FOLLOWING LINKS

Thank you for notifying our neighborhood about a possible rezoning of two nearby parcels. I will be out of town and won't be able to attend the meeting regarding this issue.

I am opposed to changing the parcels from D5 to D18, especially the land behind the houses on Pioneer Avenue. When we bought our lot and built our house over 20 years ago, I did not envision apartments or condos as a part of our D5 area. Neighborhoods with single family dwellings have a different feel than neighborhoods with apartments.

It is difficult getting onto Douglas Highway from Cordova now, especially during rush hours. If many more apartments had to access Douglas Highway via Cordova, it would be a bad situation!

Please listen to the people who currently would be affected by this change. I have not talked to anyone on my street who is in favor of it.

Thank you,

Nancy Jones
3224 Pioneer Ave

3042 Nowell Avenue

Juneau, AK 99801

Lindalaska2003@gmail.com

8/29/19

To: pc_comments@juneau.org

Cc: Laurel Christian Laurel.Christian@juneau.org

Re: Rezoning of parcels near Cordova and Pioneer

Dear Planners,

We have serious concerns about the rezoning proposal for the two parcels located off the top of Cordova Street owned by Anderson and Tlingit and Haida. There has already been substantial development that has significantly increased traffic on Cordova, which has not been mitigated by previous developers, and it seems to us that the additional level of traffic generated, if this rezone is approved, would increase frustration and delays, and could lead to dangerous traffic situations.

Cordova is steep and can become extremely slippery. It is already congested during peak use times and can get backed up from the intersection with Douglas Highway. The sidewalk does not extend down all streets (it doesn't go far down Nowell for example) and people often walk in the street. Many children and adults ride their bikes in the street, and many of us find this is a desirable advantage of living on a quiet street where our neighbors are cautious drivers.

The intersection of Cordova and the Douglas Highway can be especially hazardous. Cars get backed up in both directions on the highway and coming down the hill. Pedestrians add another challenge at this intersection. If you factor in icy roads and drivers without studded tires sliding down Cordova, you have the ingredients for serious accidents.

We can't imagine adding even one hundred more vehicles to this situation let alone the vehicle demand from the proposed 500 units. The addition of 500 units would more than double the current capacity, which is already overloaded at peak times. A study of the potential traffic impacts and possible mitigation must be considered before additional development of the Anderson and Tlingit and Haida parcels are rezoned and approved for development. We are also concerned about access and egress in an emergency. Thinking of evacuation in case of fires or other hazardous situations would be difficult for all the people leaving the hillside via Cordova. Emergency vehicles would also face challenging situations.

The Cordova-Pioneer Avenue neighborhoods are currently designated as low density residential areas. The proposal being considered would change part of the area to medium density. This is not in the spirit of protecting the character of this neighborhood as put forth in the Comprehensive Plan, and it violates the trust of the families who invested in the neighborhood for the qualities offered by single family zoning.

There are alternative properties around the CBJ already zoned D18 that could provide similar housing units to those proposed for these properties and that might provide more appropriate alternatives.

Living on Nowell Avenue we will be substantially impacted by increased traffic on Cordova, however we only became aware of the proposed zoning change through our neighborhood watch contacts. This potential change would impact everyone who accesses their homes via Cordova. The CBJ should be notifying this larger group of people concerning changes to the potential traffic on Cordova, and the changes to the character of the neighborhood.

We recommend rejecting the proposed zoning change.

Linda Kruger and Jeff Gnass

3042 Nowell Avenue

907-957-0335

3042 Nowell Avenue

Juneau, AK 99801

Lindalaska2003@gmail.com

8/29/19

To: David Epstein david.epstein@alaska.gov

Cc: pc_comments@juneau.org; Laurel.Christian@juneau.org

Re: Request for traffic impact analysis for the Cordova Avenue-Douglas Highway intersection

Dear Mr. Epstein,

We have serious concerns about the increased traffic currently accessing Cordova Avenue. Additional housing is being proposed further up Pioneer and CBJ has been asked to consider a zoning change that could lead to the development of up to 500 additional units off the top of Cordova. It seems to us that the level of traffic generated if this rezone is approved could increase dangerous traffic situations, especially at the intersection of Cordova and Douglas Highway.

Cordova is steep and can become slippery. It is already congested during peak use times and can get backed up from the intersection with Douglas Highway. The sidewalk does not extend down all streets (it doesn't go far down Nowell for example) and people often walk in the street. This creates an extra hazard, especially when streets are icy. Many children and adults also ride their bikes in the street.

The intersection of Cordova and Douglas Highway has become especially hazardous with additional housing that has been developed without increasing access routes (Cordova is still the only access route to these neighborhoods). Cars get backed up in both directions on the highway and coming down the hill. Pedestrians add another challenge at this intersection. If you factor in icy roads and drivers without studded tires sliding down Cordova, you have the ingredients for serious accidents.

We can't imagine adding even one hundred more vehicles to this situation let alone the demand from the proposed 500 units. The addition of 500 units would more than double the current capacity, which is already overloaded at peak times. A study of the potential traffic impacts and possible mitigation must be considered before additional development of the Anderson and Tlingit and Haida parcels are rezoned and approved for development. We are also concerned about access and egress in an emergency. Thinking of an evacuation in case of a fire or other hazardous situation, it would be difficult for all the people leaving the hillside via Cordova.

We recommend that Cordova be considered for a traffic impact analysis and consideration for mitigation of the crowded and dangerous conditions. Furthermore, regarding the Cordova-Douglas Highway intersection, it would seem challenging to attempt to mitigate the congestion at this intersection with a traffic light given the short distance of the intersection from the round-about.

Linda Kruger and Jeff Gnass

3042 Nowell Avenue

907-957-0335

From: Dane Lenaker <dane4695@gmail.com>
Sent: Wednesday, August 28, 2019 8:15 PM
To: PC_Comments
Subject: 9/24 Agenda Feedback

EXTERNAL E-MAIL: BE CAUTIOUS WHEN OPENING FILES OR FOLLOWING LINKS

Hello Team PC_Comments,

I was reviewing the agenda for 9/24 and wanted to offer a suggestion on the item: "A proposed rezoning request for two parcels near Cordova Street and Pioneer Avenue."

This app is really interesting, but it'd be easy to overlook this as insignificant. I recommend adding the current zoning on the property, and the proposed zoning. This seems to be normal formatting with past agendas. If you look at Coogan's application it was publically listed as D3->D5, which I think is highly transparent.

I've been to enough meetings now to know that Juneau citizens consistently complain about public notice in two ways:

- 1) not receiving notice early enough
- 2) insufficient specificity (or lack of detail) in the notice.

It seems like adding this small addition might reduce the risk of at least one of those complaints. It's minor, but I felt like it was worth mentioning.

Dane

Laurel Christian

From: Maureen Longworth <ahfm@gci.net>
Sent: Tuesday, September 3, 2019 12:26 AM
To: Laurel Christian; PC_Comments; david.epstein@alaska.gov
Cc: Irene Gallion; Alexandra Pierce; david.epstein@alaska.gov
Subject: Re: AME2019 0010

Follow Up Flag: Follow up
Flag Status: Flagged

EXTERNAL E-MAIL: BE CAUTIOUS WHEN OPENING FILES OR FOLLOWING LINKS

September 2, 2019

Juneau Planning Commission

Laurel Christian, Planner

Alexandra Pierce, Planning Manager

Cc:David Epstein, Traffic and Safety Engineer, DOT State of Alaska

Re: Comments on Anderson/THRHA Zone Change Application

Case No: AME2019 0010

Parcel no: 1D060L050010; 1D0501000011

I am a Nowell Avenue homeowner since 1995 and hope to be here for my lifetime. I appreciate the proximity by foot or car to both town and to nature afforded by our neighborhood. I walk on the Dan Moller and or Treadwell Trails above my house almost daily. I am a retired physician and I worry about access in and out of our neighborhood in case of an emergency and the lack of safety currently at the Cordova/Douglas Highway intersection.

I am against rezoning our neighborhood on either plot to include D-18 housing, as it is unsafe to burden an already unsafe situation; and it destroys our natural surroundings and population density that we chose for our home when we made the decision to purchase here. If and when the unsafe situation is corrected it would become unsafe again to more than double the population density that could be possible with the rezoning.

Since the roundabout was added our access out of Cordova onto the Douglas Highway heading toward the bridge is even worse especially in the afternoons and evenings because the stream of traffic coming off the roundabout is more constant heading past Cordova not allowing us to make a left hand turn to access the bridge. In the mornings during commute traffic time it is easier since the traffic approaching the roundabout from the Douglas direction often pause to let a car turn out of Cordova as a courtesy since they are backed up and driving slowly anyway. However if they do not pause for us to turn left in front of them I have had to instead make a right hand turn and then turn around in the bus turn out on the Douglas Highway requiring a lot of extra time and traffic exposure.

There is also difficulty visualizing the oncoming traffic approaching from Douglas on the right due to fencing, a utility pole and shrubbery. You have to inch out into the bike lane to get vision from various angles in order to assess when it is safe to complete a left turn, and in doing so lose sight of the traffic coming from the roundabout direction, at any time of day. If there is a car next to you turning right at the same time it is impossible to visualize the lanes coming from Douglas and you have to wait until the right turning car has completed its turn before you can continue inching out. And if that right turning car appears when you are already partially inched out you are really blocking any pedestrians or bikes and getting too close to traffic that then appears from the roundabout side.

In summary it is a horrible intersection and we have asked DOT to help us make it safer. We asked for a flashing yellow light and were told the orange flags were safer for pedestrians and they installed those. I still see the fresh flowers replaced on occasion for the woman who was killed crossing the highway at Cordova years ago and I wonder how many motor vehicle accidents there have been at that corner. A friend who got hit there after dropping me at home was so traumatized by that intersection she does not want to drive into our neighborhood. It is stressful to use that intersection on any regular basis as we do.

In the winter I see cars sliding down Cordova sideways and backwards on a regular basis. On foot wearing heavy duty spiked grippers Velcro- attached to the soles of my boots I have slid down Cordova crossing at Nowell and was unable to get to my feet due to the ice and had to crawl across Cordova at the Nowell intersection, because my spikes would not hold on the ice. A pick up truck approached and waited while I crawled and the driver said he could not get out to assist me because he would slide.

A couple of months ago I witnessed the smoke almost directly behind our house when the Foster home caught fire. Luckily the fire department was already called and they quickly contained and extinguished the fire. I already fear not being able to evacuate or receive aid in an emergency in my home. I was afraid to leave or remain in my home that day. I didn't know if I could get out if we were evacuated.

Please do not approve rezoning of our neighborhood. And please address the concerns I have listed with sound thoughtful improvements to assure our safety on foot and in cars.

Respectfully,

Maureen P. Longworth, M.D.

3099 Nowell Avenue

Juneau, AK 99801

907-586-4111

ahfm@gci.net

From: stanandamy@aol.com
Sent: Wednesday, August 28, 2019 10:14 AM
To: PC_Comments
Cc: Laurel Christian
Subject: Comments on Proposed Rezone of Property Near Cordova and Pioneer

EXTERNAL E-MAIL: BE CAUTIOUS WHEN OPENING FILES OR FOLLOWING LINKS

City Planners,

We have been following the discussing of the proposed rezone of property owned by the Andersons (D5 to D18) and Tlingit Haida (D5TD18 to D18) and have learned a lot about zoning, though we don't pretend to be experts! We have two primary concerns about this rezone request.

1) Traffic Safety on Cordova Street

Cordova Street is steep and becomes very slippery during the winter, so much so that city buses are redirected during the winter months and school buses do not come up Cordova Street at all. On several occasions, we have slipped onto the highway from Cordova Street and have frequently observed other cars slipping due to icy conditions. We have good tires but not all drivers do!

The sidewalk on Cordova is poorly maintained in the winter, creating hazards for pedestrians which include kids walking to the school bus stop across the highway. The result is that kids and adults frequently walk on the icy road, often with poor footwear. We have seen and stopped to help pedestrians who've fallen on the street. At the highway intersection, a driver on Cordova looking right to assess traffic (around a large utility post) when it is dark outside, can easily miss seeing pedestrians, including kids crossing the highway. Many do not bother to use the orange flags.

Conditions at the Cordova/Highway intersection become particularly hazardous at 7:30 AM, during Juneau's morning commute. At that time, drivers coming from Cordova can only access the highway when friendly bridge-bound drivers waive them in. This neighborly situation is less likely to suffice if additional multi-family housing (with the potential for over 500 units, more than doubling the current load) results in a large increase in the number of cars! Also, the dangers of the icy road and the potential hazard pedestrians accessing the bus stop will be compounded.

Clearly, a traffic impact analysis is needed before additional multi-family housing should be allowed to impact Cordova Street. We should not wait until additional fatalities occur, when we can already see there is a problem at this intersection. We are sending comments to DOT on this as well, and I refer you to their website: <http://www.dot.state.ak.us/stwddes/dcstraffic/tia/index.shtml>

2) Character of the west Juneau neighborhood

We love our current neighborhood, which is designated as "Urban/Low Density Residential" (ULDR). This proposal would change part of the Anderson lot to ULDR to "Medium Density Residential" (MDR). This appears to contradict the CBJ Comprehensive Plan, which expresses a desire to "protect the character of existing neighborhoods".

We understand that there may be a need for additional affordable housing in Juneau, but there appear to be numerous undeveloped tracts zoned D18. Therefore, we don't see the urgency of rezoning these two parcels as proposed. Furthermore, plans to install the required infrastructure (road, sewer and water) have not been presented. Our understanding is that the property owners are required to address the infrastructure needs, as well as the traffic impact, as discussed above.

Finally, we would like to note that **CBJ's procedure for noticing property owners within 500 feet of the proposed zoning change is insufficient.** Through our neighborhood watch contacts, we learned about the community meeting on August 20, as did others along the Cordova/Douglas Highway corridor. Clearly, the potential rezone would affect a much larger group than those within 500 feet of the property in question. CBJ should consider modifying this notice procedure.

In summary, we feel that the proposed zoning change should be rejected. Before further development and zoning changes are considered in west Juneau, we recommend and would like to take part in an overall planning review of the west Juneau neighborhood, which should include a Traffic Impact Analysis.

Thank you for your consideration,

Stan and Amy Lujan
3145 Pioneer Avenue
907-209-9713

From: stanandamy@aol.com
Sent: Wednesday, August 28, 2019 10:14 AM
To: david.epstein@alaska.gov
Cc: PC_Comments; Laurel Christian
Subject: Request for Traffic Impact Analysis - Cordova/Douglas Highway

EXTERNAL E-MAIL: BE CAUTIOUS WHEN OPENING FILES OR FOLLOWING LINKS

Mr. Epstein,

We are writing to express concern about traffic safety at the intersection of Cordova Street and Douglas Highway. This intersection has been hazardous since we moved to the west Juneau neighborhood 11 years ago. Hazards have increased with the recent multi-family development at the top of Cordova Street.

Now, a further rezone has been requested, which could more than double the load on Cordova Street (Anderson and Tlingit Haida parcels, to be considered by the CBJ Planning Commission on September 24). Your office has been asked to comment on the proposed rezone.

We urge you to comment on the proposed rezone and to initiate a traffic impact analysis for our neighborhood before additional fatalities result.

Specific Concerns About Traffic Safety on Cordova Street

Cordova Street is steep and becomes very slippery during the winter, so much so that city buses are redirected during the winter months and school buses do not come up Cordova Street at all. On several occasions, we have slipped onto the highway from Cordova Street and have frequently observed other cars slipping due to icy conditions. We have good tires but not all drivers do!

The sidewalk on Cordova is poorly maintained in the winter, creating hazards for pedestrians which include kids walking to the school bus stop across the highway. The result is that kids and adults frequently walk on the icy road, often with poor footwear. We have seen and stopped to help pedestrians who've fallen on the street. At the highway intersection, a driver on Cordova looking right to assess traffic (around a large utility post) when it is dark outside, can easily miss seeing pedestrians, including kids crossing the highway. Many do not bother to use the orange flags.

Conditions at the Cordova/Highway intersection become particularly hazardous at 7:30 AM, during Juneau's morning commute. At that time, drivers coming from Cordova can only access the highway when friendly bridge-bound drivers waive them in. This neighborly situation is less likely to suffice if additional multi-family housing (with the potential for over 500 units, more than doubling the current load) results in a large increase in the number of cars! Also, the dangers of the icy road and the potential hazard pedestrians accessing the bus stop will be compounded.

Thank you for your consideration,

Stan and Amy Lujan
 3145 Pioneer Avenue
 907-209-9713

From: Jill Matheson <vision@alaska.net>
Sent: Friday, September 06, 2019 1:10 PM
To: PC_Comments
Subject: Cordova Street (AME20190010)

EXTERNAL E-MAIL: BE CAUTIOUS WHEN OPENING FILES OR FOLLOWING LINKS

To Whom it May Concern:

I became aware of the proposed large development on Cordova St. and would like to offer some comments for the Planning Commission. While I live in Douglas proper and our property is no where near this development, we do pass by the Cordova/Douglas Hwy intersection multiple times a day. Frankly, it is already a poor safety zone for not only cars, but also for the pedestrians. I understand that is a DOT issue, and I would like the Commission to delay any rulings on ANY large developments on Douglas Island south of the bridge until DOT comes up with a better traffic solution.

Jill Matheson,
1603 Beach Dr. Douglas ---
Jill Geering Matheson, OD
Alaska Vision Center, Inc.
800 Glacier Ave.
Juneau, AK 99801
PH: 907-586-9864 FAX: 907-463-2679

From: Christy Newell <christy.j.newell@gmail.com>
Sent: Thursday, August 29, 2019 2:44 PM
To: PC_Comments
Subject: Rezoning in West Juneau

EXTERNAL E-MAIL: BE CAUTIOUS WHEN OPENING FILES OR FOLLOWING LINKS

I am a property owner at 3007 Nowell Ave.

I am writing to state my opposition to the rezoning of the two properties, owned by THRHA and Lonnie Anderson, from D5 to D18. This neighborhood has only one access point, Cordova St. The proposed rezoning could eventually result in doubling the amount of traffic using Cordova St. It is already a problem area during high-travel times of day, and is doubly worse in the winter when it is not well-maintained. The crosswalk from Cordova St. on Douglas Hwy. is a dangerous spot for pedestrians. Adding more traffic to this area will just make that issue worse.

The character of the West Juneau neighborhood south of Cordova St. is all well-kept single-family homes where pride in ownership is obvious. Adding in multi-family housing to this area will change the character and could also negatively impact the property values. The area to the north of Cordova St. is a known problem area with theft and drug activity. Juneau Police Department can't seem to keep up with it now. Adding in a potential for hundreds more residents in a densely-populated development could also bring with it an even larger crime problem for the entire West Juneau area. We purchased our home in West Juneau specifically for the character of the neighborhood. It is a special area that has no other match in Juneau. Rezoning these properties when there are plenty of others available, and that already have D18 zoning, only benefits the developers.

Christina Newell

September 23, 2019

To: Juneau Planning Commission
 Laurel Christian, Planner
 Alexandra Pierce, Planning Manager

From: Darwin and Kristen Peterson
 3261 Pioneer Avenue
darwinpeterson@gmail.com; kristenbressette@gmail.com
 907-350-1254; 907-209-8445

Re: Comments on Anderson/THRHA Zone Change Application
 Case #AME2019 0010

A change in zoning on Pioneer Avenue would alter the character of our neighborhood and thus undermine the primary reason we bought our home. If there had been (or even potential for) multi-unit housing 50 feet from our backdoor, we would undoubtedly not have bought our home (and invested substantially) in this well-established West Juneau neighborhood. The Planning Commission should deny this rezone application and maintain the existing zoning.

It is important to note that land buyers purchase the property under the existing zoning. The purchase price of the land paid by Anderson reflected the extremely challenging topography and corresponding development challenges. It is not the role of CBJ to rezone a developer's property to allow them to benefit financially, while negatively impacting property values and the quality of life for over a hundred families in this quaint West Juneau neighborhood. Our property value reflects the the green space behind us and multi-unit housing in close proximity would undoubtedly diminish that value.

Water drainage issues and erosion is also of great concern. It's already challenging (there is a cement barrier wall in our backyard to protect our home from sloughing uphill) and we are fearful of how removing the forest behind us would dramatically increase runoff causing additional flooding and damage to homes like ours that are located downhill from the proposed development. This will likely result in substantial cost to us for mitigation and repair through no fault

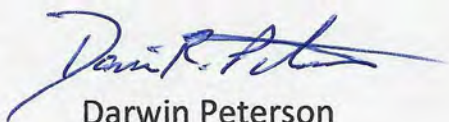
of our own. These risks should be analyzed by an environmental engineer and reviewed by the Commission as part of the rezone application process, not after.

A D-18 rezone would allow for hundreds of units to be built, more than the number of existing housing units currently accessed by Cordova Street. Cordova Street is the only access point and it is already overtaxed. On weekday mornings, and especially in the winter, traffic gets backed up all the way up Cordova Street and it's difficult to get onto the Douglas Highway. A thorough analysis of access and traffic impacts should be completed and reviewed by the Commission as part of the rezone application process, not after. Safety is already of great concern with current traffic and the potential for hundreds of more drivers is not responsible for our neighborhood.

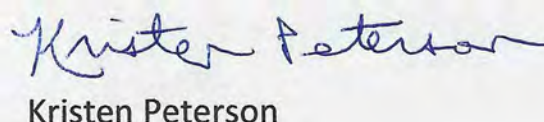
To change the character of the neighborhood for Pioneer Avenue residents for the purpose of financially benefitting Anderson, who knowingly bought the land in a D-5 zone with a price that reflected the challenging development issues is simply unfair. Besides, there are numerous multi-unit housing projects planned or underway all over Juneau in addition to all the vacant land zoned D-18 that is currently available. There is no justifiable reason to change the existing zoning in the Anderson parcel. Therefore, the Planning Commission should deny the rezone application and maintain the existing zoning.

We invite any members of the Commission to visit our neighborhood and backyards to understand the aforementioned reasons to deny this application.

Sincerely,



Darwin Peterson



Kristen Peterson

From: Donna Pierce <donnabpierce@yahoo.com>
Sent: Tuesday, August 27, 2019 2:09 PM
To: PC_Comments
Subject: West Juneau rezone AME2019 0010

EXTERNAL E-MAIL: BE CAUTIOUS WHEN OPENING FILES OR FOLLOWING LINKS

Thank you for holding the neighborhood meeting at the Douglas Library to explain these two proposals.

My understanding is that if both the parcels in question were rezoned D18, the number of potential new housing units is in excess of 500.

The developer's representative for the D5 parcel, Murray Walsh, stated that their plan was to construct 150 units.

Apparently Tlingit Haida has no specific plan for their large parcel, so the impacts of a rezone there are unknown.

From the information provided, this applicant has not shown that they can meet any of the requirements for transition zoning. Additionally, the proposed access to both properties goes through private land (owned by Coogan, I believe) and would require an agreement with him. There is also no indication they have done any work related to how they would connect to utilities and a commitment to pay for it. If these properties were developed to their maximum extent under the proposed rezone, there's no certainty that the existing line running up Cordova would have the capacity to support it.

In either case, the increase in traffic on Cordova and further stress on the intersection at Douglas Highway is **unacceptable**. The intersection already has an F designation by DOT. When specifically questioned, Mr. Walsh could only say that "it's a good thing Douglas drivers are so polite" and allow people to turn. He also said DOT might need to put a signal there. I think it's plain that DOT will never agree to a signal at that intersection because it is too close to the roundabout. We have already had one pedestrian fatality there, and more than one vehicle collision. Pedestrian safety could be substantially improved with a pedestrian activated flashing light, like on Riverside Drive, but the existing traffic load from Cordova is already dangerous and should not be made worse. Any further housing development in that area should require alternative access to North Douglas Hwy.

At the meeting staff said they wanted to take a holistic planning approach to the area and I think that is very much needed. We urge the Commission to reject the rezone of both of these parcels at this time.

Thank you for your consideration.

Donna & Bradley Pierce
3281 Nowell Ave.
Juneau 99801

August 26, 2019

To: Juneau Planning Commission
Laurel Christian, Planner
Alexandra Pierce, Planning Manager

From: Kevin and Barbara Ritchie
3184 Pioneer Avenue (our home since 1987)
kbrit@gci.net and koufax2@hotmail.com
907-957-1599 (Kevin) and 907-957-1554 (Barbara)

Re: Comments on Anderson/THRHA Zone Change Application
Case #AME2019-0010

1. The requested zoning changes would grant authority to build 530 new units. This is more than double the number of existing housing units currently accessed by Cordova Street and potentially a 1,000 or more additional drivers using Cordova as the only access.

According to the Community Development Department (CDD), the joint rezoning application allows for an increase in the number of housing units on the 29.45 acres from the current D-5 level of 147 to the D-18 level of 530 housing units.

To put this requested density increase in perspective, there are approximately 213 lots/units in the entire D-5 area from Cordova St toward Douglas (Nowell, Foster, Pioneer, all of Blueberry Hills, and the Merritt Subdivision) that are accessed by Cordova Street alone. In the largely D-18 area on the North Douglas side of Cordova Street, there is Cordova Island Hills, Cedar Park, plus the various multi-family and single family units, making for roughly 150 to 180 existing units.

In total, approximately 400 units are currently accessed by Cordova Street. **The requested zoning changes would grant authority to build 530 new units. This is more than double the number of existing housing units currently accessed by Cordova Street.**

According to the 2010 U.S. Census, Juneau's household size is 2.59. This means that the requested zoning changes would grant permission to add up to 1,200 residents.

While the applicants say that “it is hard to imagine more than 150 units” (Page 4 of application narrative), the **CDD staff at the August 20 community meeting stated numerous times that the CBJ must base its impact analysis on what current or future owners could do with the property under the proposed zoning. CDD staff stated that CBJ must consider what the “maximum potential” uses and development could be; not what the current owners loosely suggest that they intend to build.**

It is important to note that the applicant’s only statement regarding the number of units that will in fact be built is, “it is hard to imagine more than 150 units” (Page 4 of application narrative). And, it is known that current owner/applicant Anderson is trying to sell his property pending a D-18 designation that would make it more valuable. In any event, given that a new owner would not be bound by any previous development plan, the CBJ must base its analysis on the impact of the units allowed under the D-18 designation.

2. Contrary to the applicant’s statements, Cordova St. is currently overtaxed.

The applicant states that the “key issue” for the rezone is “access” and, “The *only* practical access for either parcel is an extension of Cordova.”

Regarding increased traffic, the applicant simply sidesteps the issue by making a vacuous statement: “Any new development will add traffic to the existing streets but they all operate freely now. The only exception is Cordova/Douglas Highway intersection morning commute and this operates rather well because of the neighborly manner of Douglas drivers.” The applicant does NOT attempt to make a responsible analysis regarding the “key issue” of access and impact of increased traffic.

“Operate freely” is an interesting way to characterize the current traffic flow. Currently, an increasing number of drivers use Pioneer Ave and Cordova a raceway, **with speeds double or more than the current 20 mph speed limit.** As long-time residents of Pioneer Ave we have observed more and faster speeding as housing is developed above. The CBJ police, public works, and planning departments have offered no successful way of discouraging speeders. If areas above the West Juneau single family dwelling neighborhood are up-zoned

to D-18, it would have a massive negative impact on the neighborhood below. Pioneer Ave and Blueberry Hills will become de facto arterials.

Regarding the dangerous and frustrating intersection of Cordova and Douglas Highway the applicant suggests that without “the neighborly manner of Douglas drivers” there would be a serious problem now. As residents of Pioneer Ave, we can say, sometimes you find a neighborly driver who stops to let you join the traffic line to the bridge, many times you don’t. To rely on the existence of “neighborly” drivers now, or in the future with a significant increase of traffic from the proposed new D-18 development, is not a solution.

There is a great deal of evidence that Cordova Street is overtaxed and that the intersection of Cordova and Douglas Highway is increasingly frustrating and dangerous. There is a great deal of evidence of problems including accidents, frustrated drivers pulling out in heavy traffic, pedestrian near misses (and a pedestrian fatality in the recent past) by cars swerving around cars stopped to turn left on Cordova, and many drivers who ignore or refuse to stop or even slow down at the crosswalk. The rezone application states that Cordova Street is the only access the applicants will accept and yet they present no analysis or even suggestions for the problems that will be exacerbated by their additional multifamily housing units.

Cordova Street cannot handle the additional traffic that would result from the proposed rezoning for multifamily development. And, Pioneer Ave/Blueberry Hills cannot handle the additional traffic if developers were to choose to access D-18 multifamily housing from Blueberry Hills. **A realistic and transparent analysis of access and traffic impacts must be done as part of this rezoning application process.**

3. Contrary to the applicant’s statement, Cordova is not “the *only* practical access for either parcel.”

It is highly likely that any unbiased analysis of traffic impacts will conclude that Cordova Street and the intersection with Douglas Highway are do not have the capacity to handle a large increase of traffic. Cordova is not a “practical access” for these parcels and certainly is not the “only” access option possible.

In fact, a very practical access option exists, i.e., a new access road from the North Douglas Highway. Whether this solution is implemented by developers or whether it is assisted with some level of public funding is the issue.

4. D-18 zoning should not be approved based on the applicant's claims that any other development than multifamily is not feasible due to cost.

First, it is important to note that land buyers purchase property under the existing zoning, and the purchase price reflects the difficulty and cost of development. **It is not the responsibility or role of the CBJ to rezone a developer's property to allow the developer a higher profit margin.**

The applicant estimates that a 70' wide single family dwelling lot would require \$87,500 to develop infrastructure and road within the subdivision and an additional \$26,500 to pay a share of the extension of Cordova St, for a total of \$114,000 of development costs per lot.

No one knows what the actual costs would be, but, for example, the new single family subdivision on Merritt Street faced extremely challenging topography and the developer has sold all of the lots (except for one very large lot) for \$140,000 and up per lot.

It is simply wrong to imply that only a rezone to D-18 will make the property in this application developable. Even if the current zoning, in place when the present owner bought the property, turns out to discourage the present owner from developing, the original purchase price of the land paid by Anderson reflected the challenging development issues.

5. There should continue to be only D-5 zoning on the side of Cordova St towards Douglas. The zoning application for D-18 for the Anderson parcel should be denied to preserve this well-established West Juneau neighborhood.

Currently there is no high density zoning in West Juneau on the side of Cordova Street toward Douglas. This West Juneau area is a low density neighborhood. D-5 zoning currently covers the entire area and is an important and fundamental feature of the neighborhood. Also, if developers were to choose to access D-18 multifamily housing developments through Blueberry Hills, there would be a

severe negative impact on Blueberry Hills and the entire neighborhood below due to increased traffic and speeds.

Avoiding Residential Land Use Conflicts (Current CBJ Comprehensive Plan Chapter 10 p.131):

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

To change the character of the neighborhood, which current property owners rely on, for the purpose of accommodating the plans and profit motive of Anderson, an individual owner/developer, is simply a very unfair and bad idea. **The Planning Commission should deny the rezone application and confirm the D-5 zoning of the neighborhood on the Douglas side of Cordova St as a single family dwelling neighborhood.**

6. It is timely for CBJ to consider Douglas Island infrastructure as a whole before approving rezoning for additional large developments.

Over the years there has been a general and significant density increase all along Douglas Highway south of the bridge, including West Juneau. This has created very high levels of traffic during the day, especially at peak hours.

This joint application and the additional impacts of multifamily development of up to 530 units make it abundantly apparent that it is timely for the CBJ to comprehensively consider the carrying capacity of Douglas Island as a whole before this rezoning application proceeds.

And, access to the large amount of D-18 land that exists west of Cordova Street should be part of that effort.

As Juneau’s Comprehensive Plan states, “Through the CIP, the CBJ government can plan for and develop the necessary public facilities and services—roads, sewers, utilities, schools and others—in a timely and orderly manner.” (Current CBJ Comprehensive Plan Chapter 10 p.129). The proposed rezone is neither

timely nor orderly. This rezone request is generated by Anderson's effort to sell his land at the highest profit possible, not part of an orderly planned development. To approve this rezone ahead of a reasonable and measured look at access on Douglas is not in the public interest.

7. Juneau does not have a reason to rezone this land for multifamily housing.

- Juneau has a healthy 6% rental vacancy rate. <http://live.laborstats.alaska.gov/housing/rentall.cfm>
- Numerous multi-family housing projects are planned or underway all over the Borough;
- Juneau's population is not growing; and
- There is already a great deal of vacant land zoned D-18.

8. Factual error:

On page 2, section 3, the applicant states, "As noted, the Anderson parcel is partially classified multi-family and partly D-5." This is not correct. The Anderson parcel is entirely zoned D-5 and is part of the D-5 West Juneau single family dwelling neighborhood.

Summary:

1. A realistic and transparent analysis of access and traffic impacts on the neighborhood down to Douglas Highway and Douglas Highway itself must be done as part of this rezoning application process.
2. The Planning Commission should deny this joint rezone application and confirm the Comprehensive Plan's designation of the neighborhood east of Cordova St toward Douglas as a D-5 neighborhood.
3. This joint application and the additional impacts of multifamily development of up to 530 units make it apparent that it is timely for the CBJ to comprehensively consider the carrying capacity of Douglas Island as a whole, including a comprehensive analysis of access, before this rezoning application or other major new developments are approved.

Please feel free to contact either of us at any time about this important topic.

8/29/2019

Comments on the proposed re-zone of near Cordova Street and Pioneer Avenue owned by the Andersons (D5 to D18) and Tlingit Haida (D5TD18 to D18) Case AME2019-10

Increased Traffic and Neighborhood Character:

Dear, Planners and Commissioner's,

I share very similar concerns lined out in the comments letter from Kevin and Barbara Ritchie dated: 8/26/2019 and Stan and Amy Luan dated: 8/28/2019. Our D-5 neighborhood on the SE side of Cordova Street as the Merritt Subdivision, Blueberry Hill's and Pioneer Avenue have all gone through many challenging topographical designs. Many of the developed lots required engineering, construction and excessive expense to develop and maintain a quality lower density neighborhood. Allowing D-5 to become D-18 would take away from effort, quality and character of our neighborhood and create more of a safety hazard than we already have at the Cordova Street and Douglas Highway intersection.

I encourage your careful review and rejection to this application.

Robert and Beverly Varness

3004 Goodwin Road

Juneau, AK 99801

(907)-789-2433

From: Robert Wild <robertgwild@gmail.com>
Sent: Monday, September 02, 2019 3:14 PM
To: PC_Comments
Subject: Comments re AME2019 0010

EXTERNAL E-MAIL: BE CAUTIOUS WHEN OPENING FILES OR FOLLOWING LINKS

I attended the public meeting at the Douglas Library on August 20 regarding the proposed rezone request for the two parcels, reviewed the applicants' permit application and the email information put out by our neighborhood leaders.

I also took the liberty of walking the property to a point about 400 feet past the end of Cordova Street. That area seems totally suited for what the applicants say they want to do, i.e. construct about 150 D-18 units.

It appears from map of 1D060/1D050 that the wedge of property behind the lower residences on Pioneer Avenue that is part of 1D060 would be a buffer between those residences and any D-18 units built on Anderson's property. However, if a Traffic Impact Analysis is required and it is determined that the road system cannot accommodate increased demand without modification, then those modifications should be made.

Best regards,

Robert Wild

3271 Nowell Avenue

From: Mary Zahn <kozzahn@gci.net>
Sent: Monday, September 02, 2019 8:13 PM
To: PC_Comments
Subject: comments on Anderson/THRHA Zone Change Application

EXTERNAL E-MAIL: BE CAUTIOUS WHEN OPENING FILES OR FOLLOWING LINKS

As a resident at 3090 Nowell Ave since 1975 I have seen many changes in my neighborhood, some of them questionable in their wisdom. I would hope that with the "growing up" of the city, a little more caution would be exercised in the decisions of the planning commission and assembly when it comes to the development of an area.

There are safety concerns that occur with the increase in traffic on a single access road that need to be seriously considered, there is a quality of life issue when maintaining a type of neighborhood, and we have a comprehensive city plan which needs to be adhered to.

The zoning changes requested are not in the best interest of the area and should be denied.

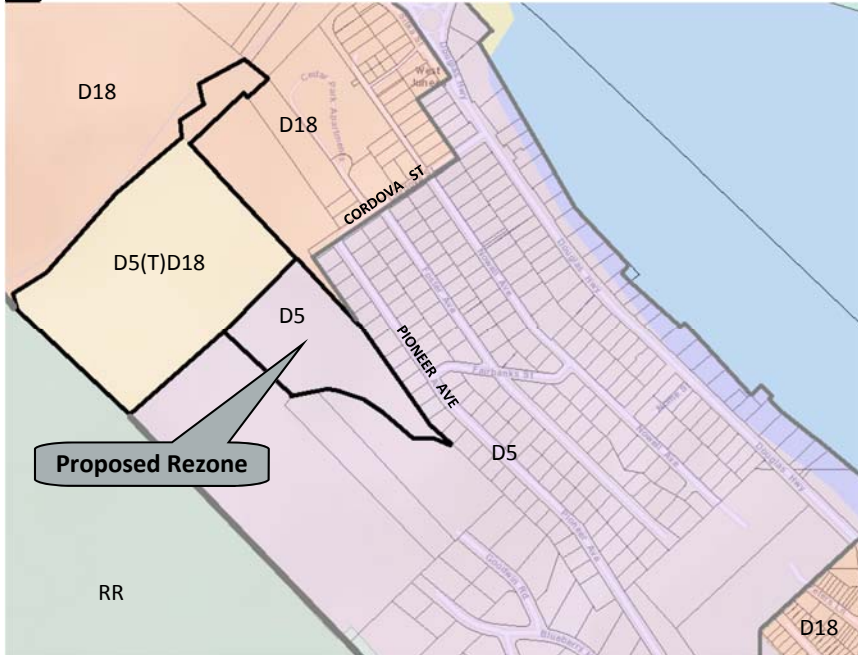
Thank you for listening.

Sincerely

Mary M. Zahn

Invitation to Comment

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



155 S. Seward Street Juneau, Alaska 99801

TO:

A request has been submitted for consideration and public hearing by the Planning Commission for a **rezone of two parcels**, near Cordova Street and Pioneer Avenue. If recommended for approval, the request will be sent to the CBJ Assembly for final consideration.

TIMELINE

Staff Report expected to be posted Monday, September 16, 2019 at <https://beta.juneau.org/assembly/assembly-minutes-and-agendas>
Find hearing results, meeting minutes and more here as well.

Now through September 2, 2019

Sept. 3 through 12 noon, Sept. 20

HEARING DATE & TIME
7:00 pm, September 24, 2019

September 25

Comments received during this period will be sent to the Planner, **Laurel Christian**, to be included in the staff report.

Comments received during this period will be sent directly to Commissioners to read over the weekend in preparation for the hearing.

You may testify and bring up to 2 pages of written material (15 copies) in City Hall's Assembly Chambers, 155 S. Seward St., Juneau.

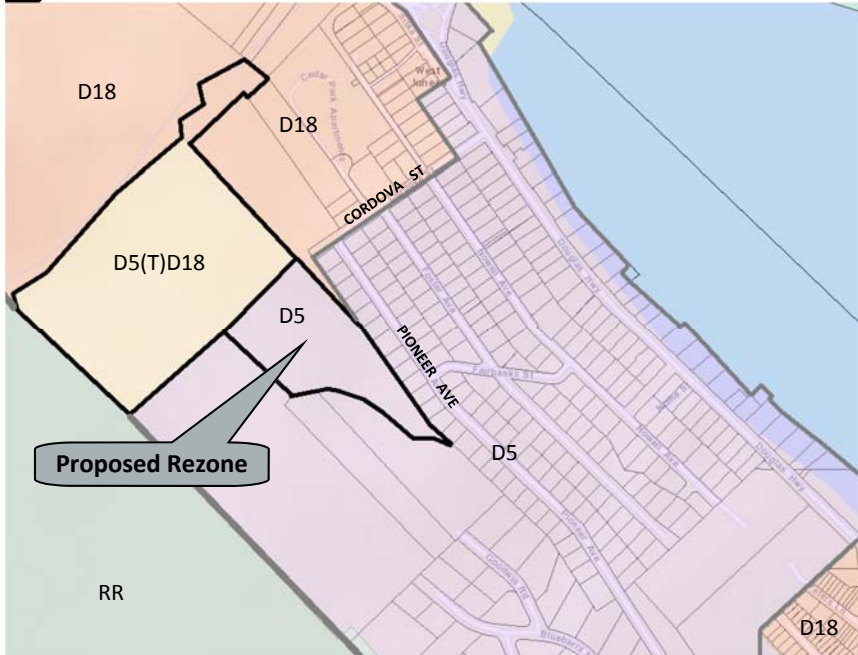
Results will be posted online, and if recommended for approval, the case will be sent to the CBJ Assembly.

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

Case No.: AME2019 0010
Parcel No.: 1D060L050010; 1D0501000011
CBJ Parcel Viewer: <http://epv.juneau.org>

Revised Notice

Re: Rezone of two parcels
Hearing Rescheduled



155 S. Seward Street Juneau, Alaska 99801

TO:

POSTPONED

You are receiving this notice regarding an application being heard by the Planning Commission for a rezone of two parcels, currently zoned transitional D5(T)D18 and D5, near Cordova Street and Pioneer Avenue. Originally, the hearing was set for September 24, 2019.

The hearing has been rescheduled for October 15, 2019.

TIMELINE

Staff Report expected to be posted Monday, October 7, 2019 at <https://beta.juneau.org/assembly/assembly-minutes-and-agendas>
Find hearing results, meeting minutes and more here as well.

Now through September 23, 2019

Comments received during this period will be sent to the Planner, **Laurel Christian**, to be included in the staff report.

Sept. 24 through 12 noon, Oct. 11

Comments received during this period will be sent directly to Commissioners to read over the weekend in preparation for the hearing.

HEARING DATE & TIME
7:00 pm, October 15, 2019

You may testify and bring up to 2 pages of written material (15 copies) in City Hall's Assembly Chambers, 155 S. Seward St., Juneau.

October 16

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

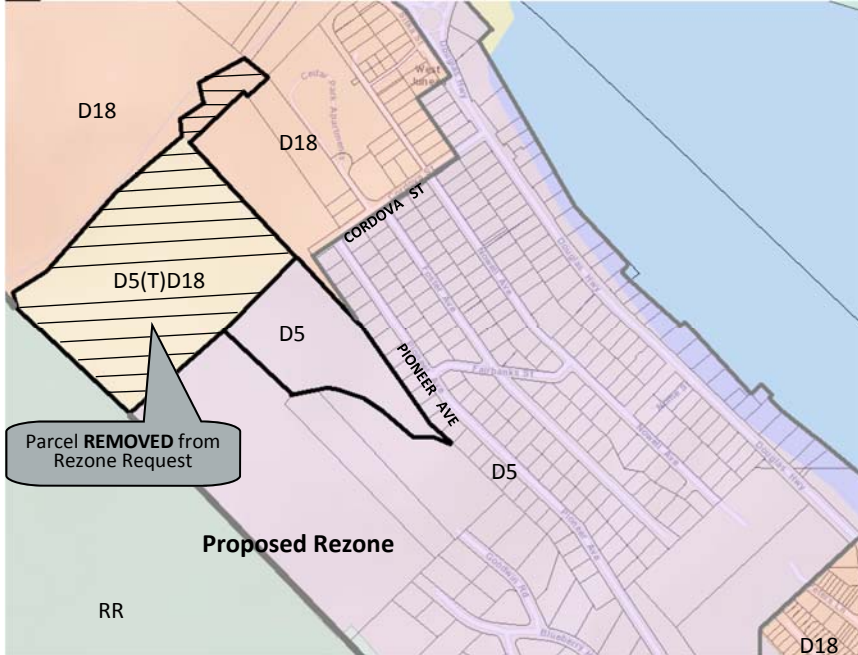
Phone: (907)586-0715 ♦ Email: pc_comments@juneau.org
Mail: Community Development, 155 S. Seward St, Juneau AK 99801

Case No.: AME2019 0010
Parcel No.: 1D060L050010; 1D0501000011
CBJ Parcel Viewer: <http://epv.juneau.org>

Notice of Change to Case

Re: AME2019 0010

Parcel Removed from Rezone Request



155 S. Seward Street Juneau, Alaska 99801

TO:

Tlingit Haida Regional Housing Authority (THRHA) has **WITHDRAWN** their portion of the rezone request, which would transition zone upgrade 21 acres from D5(T)D18 to D18. The THRHA parcel has been removed from the review of the rezone request and the Planning Commission **WILL NOT** review the THRHA parcel transition zone at this time. This proposed rezone request will only pertain to the Anderson parcel and be for 8.45 acres from D5 to D18.

TIMELINE

Staff Report expected to be posted Monday, October 7, 2019 at <https://beta.juneau.org/assembly/assembly-minutes-and-agendas>
Find hearing results, meeting minutes and more here as well.

Now through 12 noon, October 11

Comments received during this period will be sent to the Planning Commissioners to read over the weekend in preparation for the hearing. The planner handling the case, Laurel Christian, will also read any written comments that are received. You may also contact her via the phone number listed below.

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

HEARING DATE & TIME
7:00 pm, October 15, 2019

October 16

You may testify and bring up to 2 pages of written material (15 copies) in City Hall's Assembly Chambers, 155 S. Seward St., Juneau.

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

Case No.: AME2019 0010
Parcel No.: 1D060L050010; 1D0501000011
CBJ Parcel Viewer: <http://epv.juneau.org>



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

DATE: October 8, 2019

TO: Planning Commission

FROM: Beth McKibben, AICP, Senior Planner
 Community Development Department

FILE NO.: AME 2018 0009

PROPOSAL: Text amendment to revise Title 49 to repeal and replace 49.30 - Nonconforming Development

ATTACHMENTS

Attachment A – Ordinance 2019-37 PC v. 2

Please find attached the final version of Ordinance Serial No. 2019-37 PC v.2. This version incorporates the changes as directed by the Commission at the September 17, 2019 meeting. The following sections have been updated:

- 49.25.300 Determining Uses – added (5) Nonconforming Uses
- 49.25.430 Yard Setbacks – wording changes to (M) Additional stories and (5) Repair and reconstruction of nonconforming structures.
- 49.30.110 Purpose and Intent – wording changes
- 49.30.120 Application – wording changes for consistency
- 49.30.210 Nonconforming situations in general – (j), (l) and (m) wording changes
- 49.30.230 Nonconforming uses – (d) wording change
- 49.30.240 Nonconforming residential densities in zoning districts that allow residential development – (b) – wording changes; added (2); renumbered (2) and (3) and removed (4)
- 49.30.250 Nonconforming structures – revised figure 1; (f) Reconstruction revised to delete and replace language with new paragraph (1) and (2)
- 49.30.260 Nonconforming lots and lot fractions – wording changes
- 49.30.270 Nonconforming parking – wording changes
- 49.30.320 Nonconforming situation review- (f)(1)(A) wording change; deleted (f)(4)

49.80.120 Definitions

- Amended Nonconforming
- Added Nonconforming lots and lot fractions
- Amended Nonconforming parking
- Amended Nonconforming residential density
- Amended Nonconforming rights

Planning Commission
File No.: AME2018 0009
October 8, 2019
Page 2 of 2

- Amended Nonconforming situation
- Added Nonconforming structure
- Amended Nonconforming use
- Deleted Occupancy
- Deleted Primary use
- Amended Use

RECOMMENDATION

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

Presented by: The Manager
Introduced:
Drafted by: R. Palmer III

ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 2019-37 PC v.2

An Ordinance Amending the Land Use Code to Repeal and Replace the Nonconforming Development Code.

BE IT ENACTED BY THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU, ALASKA:

Section 1. Classification. This ordinance is of a general and permanent nature and shall become a part of the City and Borough of Juneau Municipal Code.

Section 2. Amendment of Section. CBJ 49.25.300 Determining uses, subsection (a) is amended to read:

49.25.300 Determining uses.

(a) (1) *Listed uses.* There is adopted the table of permissible uses, table 49.25.300. The uses permitted in a zoning area shall be determined through the table of permissible uses by locating the intersection of a horizontal, or use axis and a vertical, or zone axis. The conditions and procedures applicable to the use in the zone thus located shall be as indicated thereat by the digits "1," "2" or "3" as more fully set out in this section and by letters of the alphabet as more fully set out by footnotes in the table. The absence of a digit at the intersection of use and zone axes means that the identified use is not permitted in the identified zone.

(2) *Unlisted uses.* The allowability of a use not listed shall be determined pursuant to section 49.20.320.

(3) *Uses listed more than once.* Where a use might be classified under more than one category, the more specific shall control. If equally specific, the more restrictive shall control.

(4) *Accessory uses.* Uses constituting an incidental or insubstantial part of a permissible use and commonly associated with the permissible use may be allowed as an accessory use.

(5) *Nonconforming uses.* Nonconforming uses, including nonconforming residential densities in residential districts that allow residential development, are subject to chapter 49.30.

...

Section 3. Amendment of Section. CBJ 49.25.430 Yard setbacks, is amended at subsections 49.25.430(4)(M) and (5) to read:

49.25.430 Yard setbacks.

...

(M) *Additional stories.* The commission, through the conditional use permit process, may allow the addition of a second or third story atop or below an existing enclosed structure which projects into a required yard setback if the structure is either nonconforming or if a variance was previously granted for the structure. The commission may deny such request if it finds that the structure, with the addition, would result in excessive blockage of views, excessive restriction of light and air, or other deleterious impacts.

...

(5) *Replacement and reconstruction of nonconforming structures.* The replacement and reconstruction of nonconforming structures in residential districts shall be governed by chapter 49.30.

Section 4. Amendment of Section. CBJ 49.25.510 Special density considerations, is amended at CBJ 49.25.510 (f) to read:

49.25.510 Special density considerations.

...

(f) *Replacement and reconstruction of nonconforming structures.* The replacement and reconstruction of nonconforming structures, including multifamily dwellings, in zoning districts that allow residential development shall be governed by chapter 49.30.

...

Section 5. Amendment of Chapter. Chapter 49.30 Nonconforming Development is repealed and replaced to read:

Chapter 49.30 - NONCONFORMING SITUATIONS

ARTICLE I. GENERAL

49.30.110 Purpose and intent.

This chapter provides standards for the review of nonconforming situations, including a process for obtaining certification of nonconforming status by the director, and a process for obtaining a nonconforming situation review by the board of adjustment. The intent is to reduce the impacts of nonconforming situations and promote public health, safety and general welfare. Nothing in this chapter is intended to affect otherwise existing rights under CBJ Code.

49.30.120 Application.

(a) This chapter applies to the following nonconforming situations, whether existing alone or in any combination:

- (1) Nonconforming uses (49.30.230),
- (2) Nonconforming residential densities in residential zoning districts that allow residential development (49.30.240),
- (3) Nonconforming structures (49.30.250),
- (4) Nonconforming lots and lot fractions (49.30.260),
- (5) Nonconforming off-street parking spaces (49.30.270).

(b) This chapter does not apply to nonconforming signage, which is addressed in chapter 49.45.

ARTICLE 2. STANDARDS

49.30.210 Nonconforming situations in general.

(a) *Continuation of nonconforming situations.* Except as otherwise provided in this chapter, nonconforming situations may *remain*.

(b) *Change of nonconforming situation to comply with this title.* Any nonconforming situation may be changed to comply with this title. Once a nonconforming situation becomes compliant, the nonconforming rights under this chapter are lost, with respect to that nonconforming situation, and the nonconforming situation may not be re-established.

(c) *Ownership.* Change in ownership does not affect the legal status of a nonconforming situation.

(d) *Routine maintenance and repair.* Nothing in this chapter prohibits normal maintenance and routine repairs, which include, but are not limited to, roofing repair or replacement, window replacement, and minor structural repairs.

(e) *Certification of nonconforming status.* A property owner or authorized agent of the owner may apply for a certification of nonconforming status at any time, pursuant to the procedures provided in section 49.30.310.

(f) *Nonconforming status review prior to issuance of permit.* Prior to the issuance of a permit for work or development related to a potentially nonconforming situation, a nonconforming status review pursuant to the procedures provided in section 49.30.310, is required. Review and issuance of permits related to a nonconforming situation(s) will be subject to this chapter.

(g) *Certification of nonconforming status prior to a nonconforming situation review.*

Certification of nonconforming status must be obtained prior to proceeding with a nonconforming situation review pursuant to the procedures provided in section 49.30.320.

(h) *Structure deemed destroyed.* A nonconforming structure or structure containing a nonconforming use shall be deemed destroyed when damaged by any means to an extent of more than 75 percent of the cost of the replacement of the entire structure, exclusive of foundations.

(i) *Intentional damage, destruction, removal or demolition.* The nonconforming rights provided in this chapter are lost when a nonconforming situation is damaged, destroyed, demolished or removed by any means intentionally and within the control of the owner or the authorized agent of the owner.

(j) *Accidental damage or destruction.* Except as otherwise provided in this chapter, nonconforming rights are retained when a nonconforming structure or structure containing a

nonconforming use or residential density is damaged or destroyed accidentally or by any means beyond the control of the owner or the authorized agent of the owner.

(k) *Building official determinations under (h), (i) and (j).* The building official shall determine the extent and cause(s) of damage and/or destruction under subsections (h), (i) and (j) of this section, pursuant to CBJ 19.01 Building Regulations, Administrative Code.

(l) *Failure of a situation to qualify for nonconforming status certification.* If a situation does not qualify for, or is denied, nonconforming status certification, it is noncompliant and subject to applicable compliance action.

(m) *Effect of loss or abandonment of nonconforming situation or nonconforming situation rights.* The loss or abandonment of a nonconforming situation or of nonconforming situation rights under this chapter means the situation is subject to applicable compliance action.

49.30.220 Abandonment of a nonconforming situation.

(a) The abandonment of a nonconforming situation extinguishes all nonconforming rights associated with that situation.

(b) A nonconforming situation is abandoned if and when any of the following events occur:

- (1) The owner indicates in writing that the nonconforming situation is being permanently discontinued or abandoned;
- (2) The nonconforming situation becomes compliant with this title;
- (3) The nonconforming situation is intentionally damaged, destroyed, removed or demolished, as provided in CBJ 49.30.210(i).
- (4) With respect to a nonconforming structure, the structure is moved.

(c) A nonconforming situation is presumed to be abandoned if:

- (1) The owner takes action consistent with an intent to abandon the nonconforming situation;
 - (2) The structure(s) associated with the nonconforming situation has been vacant or the nonconforming use or situation has been discontinued for 365 consecutive days;
 - (3) The nonconforming situation has been replaced by another nonconforming situation, through the nonconforming situation review process provided in 49.30.320; or
 - (4) With respect to nonconforming residential density, the structure has been unoccupied for more than three years or, if being reconstructed pursuant to CBJ 49.30.240(b), the structure does not have a temporary certificate of occupancy within three years of the building permit being issued.
- (d) Determination of abandonment shall be made by the director and supported by findings under CBJ 49.30.220(b) or (c).

49.30.225 Overcoming presumption of abandonment.

- (a) A director's determination of abandonment under 49.30.220(c) is rebuttable and may be overcome upon a finding by the director that the information submitted establishes all of the following with respect to the nonconforming situation:
- (1) The owner has been maintaining the land and structure(s) in accordance with applicable building, fire and other codes and regulations;
 - (2) The owner has been maintaining or pursuing applicable permits and licenses; and

(3) The owner has filed applicable tax documents.

(b) Other factors that may be considered include whether:

(1) The owner has been engaged in activities that are consistent with or would affirmatively prove there was no intent to abandon, such as actively and continuously marketing the land, business or structure for sale or lease; and

(2) The owner has applied for a nonconforming situation review in accordance with section 49.30.320.

(c) The burden of proof for overcoming a presumption of abandonment is on the applicant.

49.30.230 Nonconforming uses.

(a) *Change of nonconforming use to another nonconforming use.* The owner may change a nonconforming use to another nonconforming use if approved by the board of adjustment pursuant to section 49.30.320, including a change from a nonconforming non-residential use to a residential use that exceeds the allowed maximum density in RR, D1, D3, D5, D10SF, D10, D15 and D18 zones.

(b) *Expansion of nonconforming use.* A nonconforming use within a structure may be extended to any portion of the existing structure, but may not be expanded to other structures or to other land beyond the original structure. A nonconforming use of land may not be increased or extended to occupy a greater area of land.

(c) *Modifications to nonconforming use.* Modifications to a nonconforming use are permissible and do not constitute a change or expansion of the nonconforming use, providing the impacts of such modification are nominal and do not impose a significant or new impact that is out of harmony with the neighborhood, as determined by the director.

(d) *Nonconforming residential uses in industrial and waterfront industrial zoning districts.* If a structure containing a nonconforming residential use in the industrial and waterfront industrial zoning districts is accidentally damaged, as provided in CBJ 49.30.210(j), the following applies:

(1) Nonconforming residential use rights are maintained and the structure may be rebuilt within three years if all of the following are met:

(A) Nonconforming residential use is or has been certified pursuant to the procedures set forth in section 49.30.310;

(B) The building official has not deemed the structure destroyed, under CBJ 49.30.210(h);

(C) Written notice of intent to reconstruct is provided to the department within 365 days of the date the accidental damage or destruction occurred, as determined by the building official;

(D) The reconstruction complies with applicable zoning district dimensional, development and design standards including but not limited to setbacks, parking, and landscaping that apply to new development.

(2) If a temporary certificate of occupancy for the structure has not been obtained within three years of issuance of a building permit, the nonconforming residential use rights are lost, and existing and future development on the site must comply with all provisions of this title.

(3) The director, in consultation with the building official, may approve one 18-month extension for the reconstruction, or for obtaining the temporary certificate of

occupancy, of the nonconforming residential use upon written request showing good cause.

49.30.240 Nonconforming residential densities in zoning districts that allow residential development.

(a) *Modification of existing dwelling units.* A structure containing nonconforming residential density may be modified subject to the following:

- (1) The nonconforming residential density is certified pursuant to the procedures provided in section 49.30.310 prior to commencing any modification that requires a building permit.
- (2) Applicable dimensional standards and parking requirements of this title are met unless otherwise provided in this chapter.

(b) *Accidental damage or destruction.* A conforming structure containing nonconforming residential density, which is damaged or destroyed may be reconstructed to contain nonconforming residential density, regardless of the cost of replacement or building official's determination under CBJ 49.30.210(h), subject to the following:

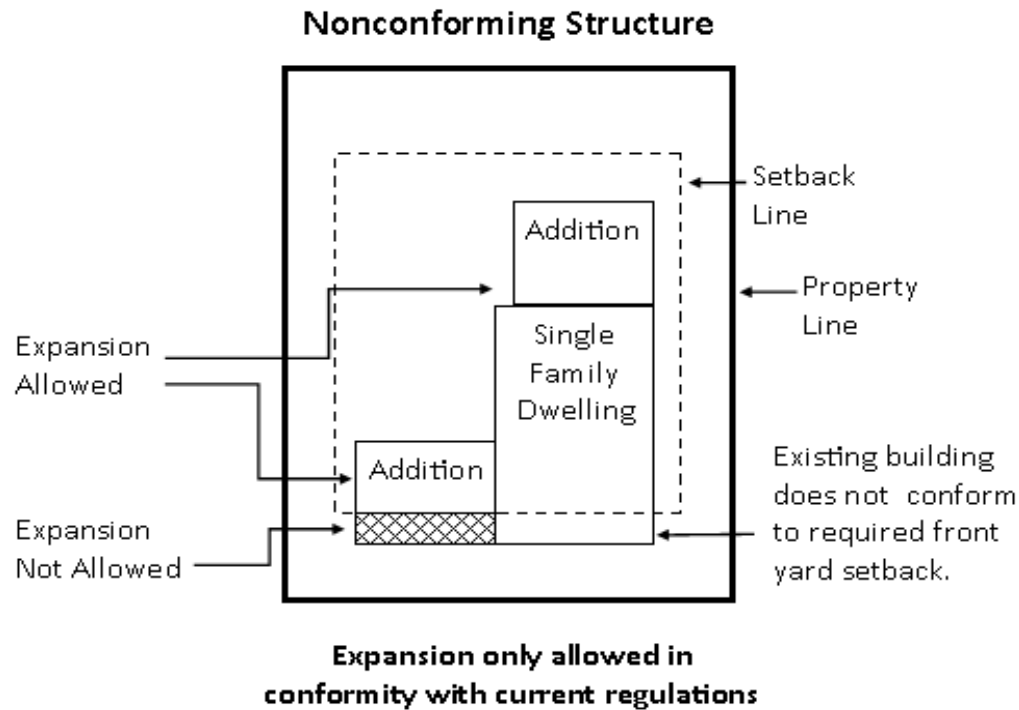
- (1) The nonconforming residential density is or has been certified pursuant to the procedures provided in section 49.30.310 prior to any work that requires a building permit;
- (2) The conforming structure being reconstructed is located in a zoning district that allows residential development.
- (3) Written notice of intent to reconstruct is provided to the department within 365 days of the date the damage or destruction occurred, as determined by the building official;

- (4) The total number of dwelling units established by the certification of nonconforming status is not increased;
- (5) A temporary certificate of occupancy for the structure has been obtained within three years of issuance of the building permit; and
- (6) The director, in consultation with the building official, may approve one 18-month extension for the reconstruction or for obtaining the temporary certificate of occupancy, upon written request showing good cause.

49.30.250 Nonconforming structures.

- (a) A nonconforming structure may be enlarged, altered or reconstructed as long as the enlargement, alteration, or reconstruction does not increase or aggravate the nonconforming situation and complies with other dimensional and parking standards of this title, except as otherwise provided in this chapter. (See Figure1)

Figure 1



(b) Certification of nonconforming status pursuant to section 49.30.310 must be obtained prior to any enlargement, alteration or reconstruction of a nonconforming structure.

(c) Improvements or renovations within an existing structure shall not be considered an enlargement, alteration, or reconstruction for purposes of this section.

(d) Projections allowed in yard setbacks under CBJ 49.25.430(4) shall not be considered to increase or aggravate a nonconforming situation.

(e) This subsection shall not be interpreted to allow the expansion of a nonconforming use or nonconforming residential density, which are governed by sections 49.30.230 and 49.30.240.

(f) *Reconstruction.*

(1) Non-residential. A nonconforming structure or nonconforming portion of a structure, the principal use of which is non-residential, which is deemed destroyed by the building official under 49.30.210(h), may not be reconstructed except in conformity with this

title.(2) Residential. A nonconforming structure or nonconforming portion of a structure, the principal use of which is residential, may be reconstructed regardless of the extent of the damage or destruction, as long as the structure is in a zoning district that allows residential development. The reconstruction may be in the existing footprint, except for encroachments into rights-of-way or adjacent property

49.30.260 Nonconforming lots and lot fractions.

(a) A nonconforming lot has the same development rights as a compliant lot subject to the following:

- (1) A certification of nonconforming status is obtained pursuant to the procedures provided in section 49.30.310;
- (2) The use on a lot does not have a minimum lot size requirement greater than the minimum lot size required by the underlying zoning district, unless otherwise authorized by this title; and
- (3) Applicable zoning district dimensional, development and design standards, including, but not limited to setbacks, parking and landscaping, are met.

(b) Unless located in an industrial or waterfront industrial zoning district, an undeveloped nonconforming lot or lot fraction that adjoins and has continuous frontage with one or more other undeveloped conforming or nonconforming lots under common ownership, may each be developed with a single-family dwelling or as otherwise provided in this title.

49.30.270 Nonconforming parking.

1
2 (a) A nonconforming parking situation may continue, be replaced or reconstructed under this
3 subsection with the same number and type of off-street parking spaces as were provided for the
4 original structure or use, if the government entity that controls the right-of-way determines
5 that it does not endanger public health, safety or welfare, including but not limited to back-out
6 parking.

7
8 (b) When a nonconforming parking situation is changed to become more compliant with 49.40,
9 newly provided parking may not be removed unless in accordance with this chapter. This does
10 not preclude the applicant's right to obtain a parking waiver in accordance with sections
11 49.40.210(d) Exceptions or 49.20.200 Variance.

12 13 **ARTICLE 3. REVIEWS**

14 **49.30.310 Nonconforming status review and certification.**

15 (a) *Purpose.* The purpose of nonconforming status review is to determine whether
16 nonconforming rights under this chapter exist, and certification is therefore appropriate. In
17 addition, it is intended to determine the current use of the lot, based on the use categories in
18 section 49.25.300. In the case of nonconforming residential density, the review also determines
19 the maximum extent of the nonconforming residential density.

20
21 (b) *When to seek certification of nonconforming status.* An owner may apply for certification of
22 nonconforming status, at any time. An owner must have a certificate of nonconforming status
23 prior to a nonconforming situation review.

24 (c) *Certification.* A nonconforming situation will be certified as having nonconforming status,
25 if the director finds the applicant's information establishes all of the following:

(1) The nonconforming situation was allowed, or not prohibited, by law when it was created or established; and

(2) The nonconforming situation has not been abandoned.

(d) *Application.* An application for certification of nonconforming status shall be submitted with the department on forms approved by the director, with relevant information establishing the factors set out in (c) above. The application should identify and include each nonconforming situation known to exist on the subject property.

(e) *Relevant information.*

(1) Information that may be relevant to nonconforming status may include, but is not limited to, the following:

(A) Building, land use, or development permits;

(B) Zoning codes or maps;

(C) Recorded plats;

(D) Dated photographs;

(E) Dated aerial photography;

(F) Insurance maps that identify use or development, e.g. Sanborn Maps.

(2) Information that may be relevant to whether the nonconforming situation has been continuously maintained without interruption may include, but is not limited to the following:

(A) Utility bills;

(B) Income tax records;

(C) Business licenses;

(D) Telephone listings;

- (E) Advertisements in dated publications;
- (F) Building, land use, or development permits;
- (G) Insurance policies;
- (H) Leases;
- (I) Dated photographs;
- (J) Dated aerial photographs;
- (K) Insurance maps that identify use or development, e.g. Sanborn Maps; or
- (L) Land use and development inventories prepared by a government agency.

(f) *Decision.* The director shall review the applicant's information and issue a written decision that includes separate certification findings on each nonconforming situation included in the application.

(g) *Burden of proof.* The burden of proof to establish nonconforming status is on the applicant.

(h) *Fee.* An application for a certification of nonconforming status shall include a fee as established by chapter 49.85.

49.30.320 Nonconforming situation review.

(a) *Purpose.* The board of adjustment shall hear all nonconforming situation reviews for the purpose of reviewing proposed changes to nonconforming situations as provided in this chapter. The nonconforming situation review process provides an opportunity for public input, and authorizes the board of adjustment to review, limit, approve or deny proposed changes.

(b) *Applicability.* The following may be allowed through a nonconforming situation review as provided in this chapter:

(1) A change of a nonconforming use to another nonconforming use that is prohibited in the zoning district.

(2) A change from a nonconforming nonresidential use to an allowed residential use that exceeds the allowed density in the RR, D1, D3, D5, D10SF, D10, D15 and D18 zoning district.

(c) *Submittal.* An application for a nonconforming situation review shall be submitted to the board of adjustment through the department on forms approved by the director.

(d) *Director's review procedure.*

(1) The director shall endeavor to determine whether the application accurately reflects the applicant's intentions, shall advise the applicant whether or not the application is acceptable, and, if it is not, what corrective action may be taken.

(2) After accepting the application, the director shall schedule it for a hearing before the board of adjustment and shall give notice to the applicant and the public in accordance with CBJ 49.15.230.

(3) Copies of the application or the relevant portions thereof shall be transmitted to interested agencies as specified on a list maintained by the director for that purpose.

Referral agencies shall be invited to respond within 15 days unless an extension is requested and granted in writing for good cause by the director.

(4) The director shall forward the application to the board of adjustment together with a report setting forth the director's recommendation for approval or denial, with or without conditions, and the reasons therefore. The director shall review and make findings on the approval criteria specified in subsection CBJ 49.30.320(f).

(e) *Fee.* An application for a nonconforming situation review shall include a fee as established by 49.85.

(f) *Approval criteria for nonconforming situation reviews.*

(1) All nonconforming situation review approvals require the following findings:

- (A) The value of adjoining property is unlikely to be more negatively affected from the proposed nonconforming situation than it is from other permitted or conditionally permitted uses in the district;
- (B) Public services and facilities are, or will be prior to occupancy, adequate to serve the proposed use, density and structure;
- (C) The nonconforming situation proposed will not cause undue harmful effects or be out of harmony with property in the neighboring area on account of its scale, bulk, coverage and density, generation of traffic, the nature and intensity of the proposed use, and other relevant effects; and
- (D) The nonconforming situation proposed will not materially endanger the public health, safety or welfare.

(2) Additional findings required for approving nonconforming use proposals:

- (A) The proposed nonconforming use is more appropriate to the district than the existing nonconforming use and does not significantly jeopardize future development of the area in compliance with the intent of the zoning district;
- (B) Any characteristics of the nonconforming use that are out of compliance with this title are not changed to become less compliant with the requirements of this title;
- (C) The nonconforming use will not result in the creation of additional nonconforming situations or the need for any variances;
- (D) With mitigation measures, there will be no measurable increase in overall detrimental impacts (over the impacts of the last legal use or development) on the surrounding area taking into account factors such as:
 - (i) The hours of operation;
 - (ii) Vehicle trips to the site and impact on surrounding on-street parking;
 - (iii) Noise, vibration, dust, odor, fumes, glare, and smoke;
 - (iv) Screening, public safety, neighborhood harmony;
 - (v) The amount, location, and nature of any outside displays, storage, or activities.
- (E) If the nonconforming use is in a single-family or multi-family residential zoning district, and if any changes are proposed to the site, the appearance of the new use or development will not lessen the residential character of the area. This is based on taking into account factors such as:
 - (i) Building scale, placement, and facade;
 - (ii) Parking area placement;

(iii) Buffering or screening and the potential loss of privacy to abutting residential uses; and

(iv) Lighting and signs.

(3) Additional findings required for approving nonconforming residential density proposals:

(A) When a nonconforming use is proposed to become a nonconforming residential density, it will have no measurable increase in overall detrimental impacts on the surrounding area taking into consideration factors such as:

(i) Vehicle trips and impact on surrounding on street parking;

(ii) Lot coverage,

(iii) Vegetative cover;

(B) The proposed nonconforming residential density does not exceed 1.5 times the base density permissible for the underlying zoning district in RR, D1, D3, D5, and D10SF zoning districts, and 1.25 times the base density permissible for the underlying zoning district in the D10, D15 and D18 zoning districts, rounded to the nearest whole number.

(A)

(g) *Board of adjustment hearing and determination.*

(1) At the hearing on the nonconforming situation review, the board of adjustment shall review the director's findings and recommendation(s) and determine:

(A) Whether the application is complete;

(B) Whether the proposed nonconforming use is appropriate according to this section;

(C) Whether the development as proposed will comply with other applicable requirements of this title;

(2) The board of adjustment shall adopt the director's finding on each item set forth in paragraph (f) of this section unless it finds, by a preponderance of the evidence, that the director's finding was in error, and states its reasoning for each finding with particularity.

(3) Even if the board of adjustment adopts the director's findings, it may nonetheless deny or condition approval of the proposed nonconforming situation if it concludes, based upon its own independent review of the information submitted at the hearing, that the nonconforming situation will more probably than not:

(A) The nonconforming situation lacks sufficient conformity with the comprehensive plan, land use plan, thoroughfare plan or other officially adopted plans; or

(B) The nonconforming situation conflicts with the chapter's intent to reduce the impacts of nonconforming situations and promote public health, safety and general welfare and is not needed to minimize an unreasonable impact to the subject property caused by a zoning change.

Section 6. Amendment of Section. CBJ 49.80.120 Definitions, shall be amended to incorporate the following definitions in alphabetical order:

49.80.120 Definitions.

...

Change means, with respect to a nonconforming use, that the nonconforming use has been converted to a different use for any period of time, regardless of intent.

Discontinued means that a nonconforming use has ceased, and has not substantially resumed.

Nonconforming means allowed, or not prohibited by law when established, but which due to the subsequent adoption, revision or amendment of a zoning ordinance, became noncompliant under title 49.

Nonconforming lots and lot fractions means a lot, or lot fractions, that were allowed, or not prohibited by law when established, but which due to the subsequent adoption, revision or amendment of a zoning ordinance, became noncompliant under title 49.

Nonconforming parking means off-street parking standards, including types of off-street parking, that were not in effect when the use was established, but which due to the subsequent adoption, revision or amendment of a zoning ordinance, are required under title 49.

Nonconforming residential density means residential development of a density that was allowed, or not prohibited by law, in the zoning district when constructed, but which due to the subsequent adoption, revision or amendment of a zoning ordinance, is a greater density than allowed in the zoning district under title 49.

Nonconforming rights means the rights provided in 49.30 applicable to situations that are certified or qualify to be certified as nonconforming situations, including rights relating to the continuation, maintenance, modification and reconstruction of nonconforming situations.

Nonconforming situation means a situation that was allowed or not prohibited by law when established but which, due to the subsequent adoption, revision or amendment of a zoning ordinance, became noncompliant under title 49, and has been continuously maintained without interruption as specified in this chapter. Nonconforming situations include nonconforming uses, nonconforming residential density, nonconforming structures, nonconforming lots and lot fractions, and nonconforming off-street parking, whether existing alone or in any combination.

Nonconforming structure means a structure, the dimensional standards or siting of which, was allowed, or not prohibited by law when constructed, but which due to the subsequent adoption, revision or amendment of a zoning ordinance, became noncompliant under title 49.

Nonconforming use means a use that was allowed, or not prohibited by law when established, but which due to the subsequent adoption, revision or amendment of a zoning ordinance, became noncompliant under title 49.

Use means activity, physically conducted on a lot or in a structure permitted by this title.

...

Section 7. Amendment of Section. CBJ 49.85.100 Generally, is amended to read:

49.85.100 Generally.

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

...

(10) Board of adjustment.

(A) Administrative variance, \$120.00;

(B) Non-administrative variance, \$400.00;

(C) Alternative development permit, \$400.00;

(D) Nonconforming situation review, \$400.00.

...

(20) Certification of nonconforming status, \$150.00; fee is waived if applied for in conjunction with a development permit.

Section 8. Effective Date. This ordinance shall be effective 30 days after its adoption.

Adopted this _____ day of _____, 2019.

Beth A. Weldon, Mayor

Attest:

Elizabeth J. McEwen, Municipal Clerk

Presented by: The Manager
Introduced:
Drafted by: R. Palmer III

ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 2019-37 PC v.2

An Ordinance Amending the Land Use Code to Repeal and Replace the Nonconforming Development Code.

BE IT ENACTED BY THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU, ALASKA:

Section 1. Classification. This ordinance is of a general and permanent nature and shall become a part of the City and Borough of Juneau Municipal Code.

Section 2. Amendment of Section. CBJ 49.25.300 Determining uses, subsection (a) is amended to read:

49.25.300 Determining uses.

(a) (1) *Listed uses.* There is adopted the table of permissible uses, table 49.25.300. The uses permitted in a zoning area shall be determined through the table of permissible uses by locating the intersection of a horizontal, or use axis and a vertical, or zone axis. The conditions and procedures applicable to the use in the zone thus located shall be as indicated thereat by the digits "1," "2" or "3" as more fully set out in this section and by letters of the alphabet as more fully set out by footnotes in the table. The absence of a digit at the intersection of use and zone axes means that the identified use is not permitted in the identified zone.

(2) *Unlisted uses.* The allowability of a use not listed shall be determined pursuant to section 49.20.320.

(3) *Uses listed more than once.* Where a use might be classified under more than one category, the more specific shall control. If equally specific, the more restrictive shall control.

(4) *Accessory uses.* Uses constituting an incidental or insubstantial part of a permissible use and commonly associated with the permissible use may be allowed as an accessory use.

(5) *Nonconforming uses.* Nonconforming uses, including nonconforming residential densities in residential districts that allow residential development, are subject to chapter 49.30.

...

Section 3. Amendment of Section. CBJ 49.25.430 Yard setbacks, is amended at subsections 49.25.430(4)(M) and (5) to read:

49.25.430 Yard setbacks.

...

(M) *Additional stories.* The commission, through the conditional use permit process, may allow the addition of a second or third story atop or below an existing enclosed structure which projects into a required yard setback if the structure is either lawfully nonconforming or if a variance was previously granted for the structure. The commission may deny such request if it finds that the structure, with the addition, would result in excessive blockage of views, excessive restriction of light and air, or other deleterious impacts.

...

(5) *Replacement and reconstruction of ~~certain~~ nonconforming ~~buildings~~ structures.* The replacement and reconstruction of ~~certain~~ nonconforming ~~buildings~~ structures in residential districts shall be governed by ~~subsection~~ chapter 49.30.500(b).

Section 4. Amendment of Section. CBJ 49.25.510 Special density considerations, is amended at CBJ 49.25.510 (f) to read:

49.25.510 Special density considerations.

...

(f) *Replacement and reconstruction of ~~certain~~ nonconforming ~~buildings~~ structures.* The replacement and reconstruction of ~~certain~~ nonconforming ~~buildings~~ structures, including multifamily dwellings, in zoning districts that allow residential development districts shall be governed ~~in part~~ by ~~subsection~~ chapter 49.30.500(b). ~~The replacement and reconstruction of multifamily dwellings in all multifamily residential districts shall be governed in part by subsection 49.30.500(c).~~

...

Section 5. Amendment of Chapter. Chapter 49.30 Nonconforming Development is repealed and replaced to read:

Chapter 49.30 - NONCONFORMING SITUATIONS

ARTICLE I. GENERAL

49.30.110 Purpose and intent.

This chapter provides standards for the review of nonconforming situations, including a process for obtaining certification of nonconforming status by the director, and a process for

obtaining a nonconforming situation review by the board of adjustment. The intent is to reduce the impacts of nonconforming situations; and promote public health, safety and general welfare; ~~and minimize unreasonable impacts to property impacted by zoning changes~~. Nothing in this chapter is intended to affect otherwise existing rights under CBJ Code.

49.30.120 Application.

(a) This chapter applies to the following nonconforming situations, whether existing alone or in any combination:

- (1) Nonconforming uses (49.30.230),
- (2) Nonconforming residential densities in residential zoning districts that allow residential development (49.30.240),
- (3) Nonconforming structures (49.30.250),
- (4) Nonconforming lots and lot fractions (49.30.260),
- (5) Nonconforming off-street parking spaces (49.30.270).

(b) This chapter does not apply to nonconforming signage, which is addressed in chapter 49.45.

ARTICLE 2. STANDARDS

49.30.210 Nonconforming situations in general.

(a) *Continuation of nonconforming situations.* Except as otherwise provided in this chapter, nonconforming situations may *remain*.

(b) *Change of nonconforming situation to comply with this title.* Any nonconforming situation may be changed to comply with this title. Once a nonconforming situation becomes compliant,

1
2 the nonconforming rights under this chapter are lost, with respect to that nonconforming
3 situation, and the nonconforming situation may not be re-established.

4 (c) *Ownership*. Change in ownership does not affect the legal status of a nonconforming
5 situation.

6 (d) *Routine maintenance and repair*. Nothing in this chapter prohibits normal maintenance
7 and routine repairs, which include, but are not limited to, roofing repair or replacement,
8 window replacement, and minor structural repairs.

9
10 (e) *Certification of nonconforming status*. A property owner or authorized agent of the owner
11 may apply for a certification of nonconforming status at any time, pursuant to the procedures
12 provided in section 49.30.310.

13 (f) *Nonconforming status review prior to issuance of permit*. Prior to the issuance of a permit
14 for work or development related to a potentially nonconforming situation, a nonconforming
15 status review pursuant to the procedures provided in section 49.30.310, is required. Review and
16 issuance of permits related to a nonconforming situation(s) will be subject to this chapter.

17 (g) *Certification of nonconforming status prior to a nonconforming situation review*.

18 Certification of nonconforming status must be obtained prior to proceeding with a
19 nonconforming situation review pursuant to the procedures provided in section 49.30.320.

20
21 (h) *Structure deemed destroyed*. A nonconforming structure or structure containing a
22 nonconforming use shall be deemed destroyed when damaged by any means to an extent of
23 more than 75 percent of the cost of the replacement of the entire structure, exclusive of
24 foundations.

25 (i) *Intentional damage, destruction, removal or demolition*. The nonconforming rights
provided in this chapter are lost when a nonconforming situation is damaged, destroyed,

demolished or removed by any means intentionally and within the control of the owner or the authorized agent of the owner.

(j) *Accidental damage or destruction.* ~~The nonconforming rights provided for~~ Except as otherwise provided in this chapter, nonconforming rights are retained when a nonconforming structure or structure containing a nonconforming use or residential density is damaged or destroyed accidentally or by any means beyond the control of the owner or the authorized agent of the owner.

(k) *Building official determinations under (h), (i) and (j).* The building official shall determine the extent and cause(s) of damage and/or destruction under subsections (h), (i) and (j) of this section, pursuant to CBJ 19.01 Building Regulations, Administrative Code.

(l) *Failure of a situation to qualify for nonconforming status certification.* If a situation does not qualify for, or is denied, nonconforming status certification, it ~~remains is~~ noncompliant and subject to applicable enforcement-compliance action.

(m) *Effect of loss or abandonment of nonconforming situation or nonconforming situation rights.* The loss or abandonment of a nonconforming situation or of nonconforming situation rights under this chapter means the situation is subject to applicable compliance action. ~~with all of code is required.~~

49.30.220 Abandonment of a nonconforming situation.

(a) The abandonment of a nonconforming situation extinguishes all nonconforming rights associated with that situation.

(b) A nonconforming situation is abandoned if and when any of the following events occur:

- (1) The owner indicates in writing that the nonconforming situation is being permanently discontinued or abandoned;
 - (2) The nonconforming situation becomes compliant with this title;
 - (3) The nonconforming situation is intentionally damaged, destroyed, removed or demolished, as provided in CBJ 49.30.210(i).
 - (4) With respect to a nonconforming structure, the structure is moved.
- (c) A nonconforming situation is presumed to be abandoned if:
- (1) The owner takes action consistent with an intent to abandon the nonconforming situation;
 - (2) The structure(s) associated with the nonconforming situation has been vacant or the nonconforming use or situation has been discontinued for 365 consecutive days;
 - (3) The nonconforming situation has been replaced by another nonconforming situation, through the nonconforming situation review process provided in 49.30.320; or
 - (4) With respect to nonconforming residential density, the structure has been unoccupied for more than three years or, if being reconstructed pursuant to CBJ 49.30.240(b), the structure does not have a temporary certificate of occupancy within three years of the building permit being issued.
- (d) Determination of abandonment shall be made by the director and supported by findings under CBJ 49.30.220(b) or (c).

49.30.225 Overcoming presumption of abandonment.

(a) A director's determination of abandonment under 49.30.220(c) is rebuttable and may be overcome upon a finding by the director that the information submitted establishes all of the following with respect to the nonconforming situation:

(1) The owner has been maintaining the land and structure(s) in accordance with applicable building, fire and other codes and regulations;

(2) The owner has been maintaining or pursuing applicable permits and licenses; and

(3) The owner has filed applicable tax documents.

(b) Other factors that may be considered include whether:

(1) The owner has been engaged in activities that are consistent with or would affirmatively prove there was no intent to abandon, such as actively and continuously marketing the land, business or structure for sale or lease; and

(2) The owner has applied for a nonconforming situation review in accordance with section 49.30.320.

(c) The burden of proof for overcoming a presumption of abandonment is on the applicant.

49.30.230 Nonconforming uses.

(a) *Change of nonconforming use to another nonconforming use.* The owner may change a nonconforming use to another nonconforming use if approved by the board of adjustment pursuant to section 49.30.320, including a change from a nonconforming non-residential use to a residential use that exceeds the allowed maximum density in RR, D1, D3, D5, D10SF, D10, D15 and D18 zones.

(b) *Expansion of nonconforming use.* A nonconforming use within a structure may be extended to any portion of the existing structure, but may not be expanded to other structures or to other land beyond the original structure. A nonconforming use of land may not be increased or extended to occupy a greater area of land.

(c) *Modifications to nonconforming use.* Modifications to a nonconforming use are permissible and do not constitute a change or expansion of the nonconforming use, providing the impacts of such modification are nominal and do not impose a significant or new impact that is out of harmony with the neighborhood, as determined by the director.

(d) *Nonconforming residential uses in industrial and waterfront industrial zoning districts.*

WhenIf a structure containing a nonconforming residential use in the industrial and waterfront industrial zoning districts is accidentally damaged, as provided in CBJ 49.30.210(j), the following applies:

(1) Nonconforming residential use rights are maintained and the structure may be rebuilt within three years if all of the following are met:

(A) Nonconforming residential use is or has been certified pursuant to the procedures set forth in section 49.30.310;

(B) The building official has not deemed the structure destroyed, under CBJ 49.30.210(h);

(C) Written notice of intent to reconstruct is provided to the department within 365 days of the date the accidental damage or destruction occurred, as determined by the building official;

(D) The reconstruction complies with applicable zoning district dimensional, development and design standards including but not limited to setbacks, parking, and landscaping; that apply to new development.

(2) If a temporary certificate of occupancy for the structure has not been obtained within three years of issuance of a building permit, the nonconforming residential use rights are lost, and existing and future development on the site must comply with all provisions of this title.

(3) The director, in consultation with the building official, may approve one 18-month extension for the reconstruction, or for obtaining the temporary certificate of occupancy, of the nonconforming residential use upon written request showing good cause.

49.30.240 Nonconforming residential densities in zoning districts that allow residential development.

(a) *Modification of existing dwelling units.* ~~A S~~structures containing nonconforming residential density may be modified subject to the following:

(1) The nonconforming residential density is certified pursuant to the procedures provided in section 49.30.310 prior to commencing any modification that requires a building permit.

(2) Applicable dimensional standards and parking requirements of this title are met unless otherwise provided in this chapter.

(b) *Accidental damage or destruction.* A ~~conforming~~ structure containing nonconforming residential density, which is damaged or destroyed may be reconstructed to contain

nonconforming residential density, regardless of the cost of replacement or building official's determination under CBJ 49.30.210(h), subject to the following:

(1) The nonconforming residential density is or has been certified pursuant to the procedures provided in section 49.30.310 prior to any work that requires a building permit;

(2) The conforming structure being reconstructed is located in a zoning district that allows residential development.

~~(2)~~(3) Written notice of intent to reconstruct is provided to the department within 365 days of the date the damage or destruction occurred, as determined by the building official;

~~(3)~~(4) The total number of dwelling units established by the certification of nonconforming status is not increased;

~~(4) Reconstruction may occur in the existing footprint, with the exception of encroachments into rights-of-way or adjacent property;~~

(5) A temporary certificate of occupancy for the structure has been obtained within three years of issuance of the building permit; and

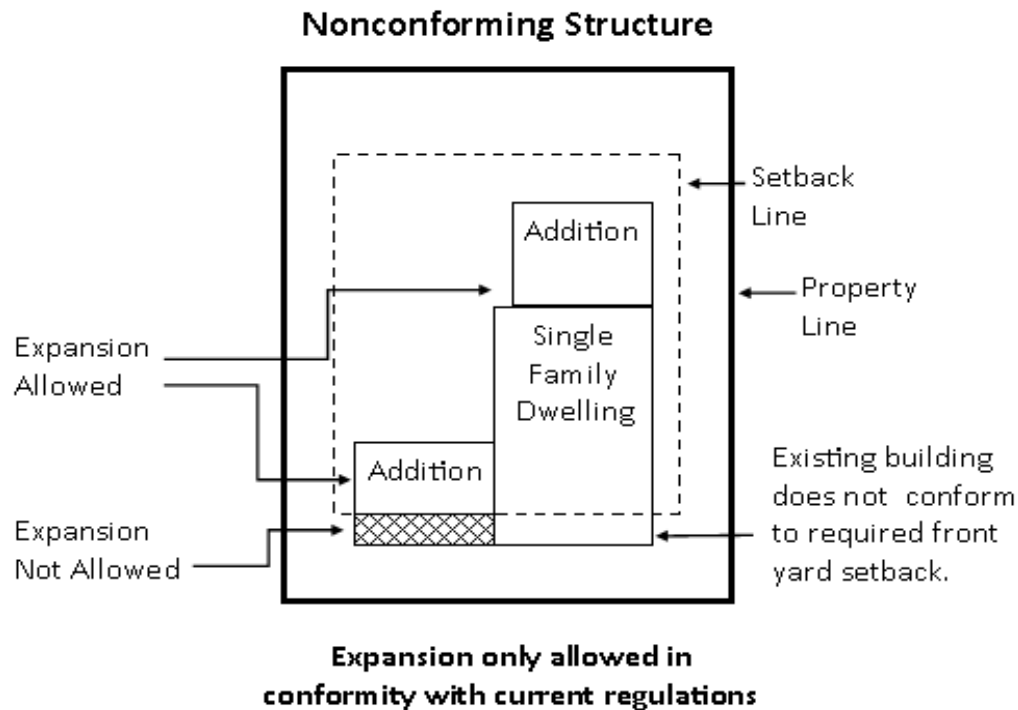
(6) The director, in consultation with the building official, may approve one 18-month extension for the reconstruction or for obtaining the temporary certificate of occupancy, upon written request showing good cause.

49.30.250 Nonconforming structures.

(a) A nonconforming structure may be enlarged, altered or reconstructed as long as the enlargement, alteration, or reconstruction does not increase or aggravate the nonconforming

situation and complies with other dimensional and parking standards of this title, except as otherwise provided in this chapter. (See Figure1)

Figure 1



- (b) Certification of nonconforming status pursuant to section 49.30.310 must be obtained prior to any enlargement, alteration or reconstruction of a nonconforming structure.
- (c) Improvements or renovations within an existing structure shall not be considered an enlargement, alteration, or reconstruction for purposes of this section.
- (d) Projections allowed in yard setbacks under CBJ 49.25.430(4) shall not be considered to increase or aggravate a nonconforming situation.
- (e) This subsection shall not be interpreted to allow the expansion of a nonconforming use or nonconforming residential density, which are governed by sections 49.30.230 and 49.30.240.

(f) *Reconstruction.* ~~A nonconforming structure or nonconforming portion of a structure that the building official has deemed destroyed, shall not be reconstructed except in conformity with the provisions of this chapter. This does not preclude the reestablishment of nonconforming residential density and its footprint as allowed by subsection 49.30.240(b).~~

(1) Non-residential. A nonconforming structure or nonconforming portion of a structure, the ~~primary~~principal use of which is non-residential, which is deemed destroyed by the building official under 49.30.210(h), may not be reconstructed except in conformity with this title.

(2) Residential. A nonconforming structure or nonconforming portion of a structure, the ~~primary~~principal use of which is residential, may be reconstructed regardless of the extent of the damage or destruction, as long as the structure is in a zoning district that allows residential development. The reconstruction may be in the existing footprint, except for encroachments into rights-of-way or adjacent property

49.30.260 Nonconforming lots and lot fractions.

(a) A nonconforming lot has the same development rights as a compliant lot subject to the following:

- (1) A certification of nonconforming status is obtained pursuant to the procedures provided in section 49.30.310;
- (2) The use on a lot does not have a minimum lot size requirement greater than the minimum lot size required by the underlying zoning district, unless otherwise authorized by this title; and

(3) Applicable zoning district dimensional, development and design standards, including, but not limited to setbacks, parking, and landscaping, are met.

(b) Unless located in an industrial or waterfront industrial zoning district, an undeveloped nonconforming lot or lot fraction that adjoins and has continuous frontage with one or more other undeveloped conforming or nonconforming lots under common ownership, may each be developed with a single-family dwelling or as otherwise provided in this title.

49.30.270 Nonconforming parking.

(a) A nonconforming parking situation ~~that involves nonconforming parking~~ may continue, be replaced or reconstructed under this subsection with the same number and type of off-street parking spaces as were provided for the original structure or use, if the government entity that controls the right-of-way determines that it does not endanger public health, safety or welfare, including but not limited to back-out parking.

(b) When a nonconforming parking situation is changed to become more compliant with 49.40, newly provided parking may not be removed unless in accordance with this chapter. This does not preclude the applicant's right to obtain a parking waiver in accordance with sections 49.40.210(d) Exceptions or 49.20.200 Variance.

ARTICLE 3. REVIEWS

49.30.310 Nonconforming status review and certification.

(a) *Purpose.* The purpose of nonconforming status review is to determine whether nonconforming rights under this chapter exist, and certification is therefore appropriate. In addition, it is intended to determine the current use of the lot, based on the use categories in

section 49.25.300. In the case of nonconforming residential density, the review also determines the maximum extent of the nonconforming residential density.

(b) *When to seek certification of nonconforming status.* An owner may apply for certification of nonconforming status, at any time. An owner must have a certificate of nonconforming status prior to a nonconforming situation review.

(c) *Certification.* A nonconforming situation will be certified as having nonconforming status, if the director finds the applicant's information establishes all of the following:

(1) The nonconforming situation was allowed, or not prohibited, by law when it was created or established; and

(2) The nonconforming situation has not been abandoned.

(d) *Application.* An application for certification of nonconforming status shall be submitted with the department on forms approved by the director, with relevant information establishing the factors set out in (c) above. The application should identify and include each nonconforming situation known to exist on the subject property.

(e) *Relevant information.*

(1) Information that may be relevant to nonconforming status may include, but is not limited to, the following:

(A) Building, land use, or development permits;

(B) Zoning codes or maps;

(C) Recorded plats;

(D) Dated photographs;

(E) Dated aerial photography;

(F) Insurance maps that identify use or development, e.g. Sanborn Maps.

(2) Information that may be relevant to whether the nonconforming situation has been continuously maintained without interruption may include, but is not limited to the following:

- (A) Utility bills;
- (B) Income tax records;
- (C) Business licenses;
- (D) Telephone listings;
- (E) Advertisements in dated publications;
- (F) Building, land use, or development permits;
- (G) Insurance policies;
- (H) Leases;
- (I) Dated photographs;
- (J) Dated aerial photographs;
- (K) Insurance maps that identify use or development, e.g. Sanborn Maps; or
- (L) Land use and development inventories prepared by a government agency.

(f) *Decision.* The director shall review the applicant's information and issue a written decision that includes separate certification findings on each nonconforming situation included in the application.

(g) *Burden of proof.* The burden of proof to establish nonconforming status is on the applicant.

(h) *Fee.* An application for a certification of nonconforming status shall include a fee as established by chapter 49.85.

49.30.320 Nonconforming situation review.

(a) *Purpose.* The board of adjustment shall hear all nonconforming situation reviews for the purpose of reviewing proposed changes to nonconforming situations as provided in this chapter. The nonconforming situation review process provides an opportunity for public input, and authorizes the board of adjustment to review, limit, approve or deny proposed changes.

(b) *Applicability.* The following may be allowed through a nonconforming situation review as provided in this chapter:

(1) A change of a nonconforming use to another nonconforming use that is prohibited in the zoning district.

(2) A change from a nonconforming nonresidential use to an allowed residential use that exceeds the allowed density in the RR, D1, D3, D5, D10SF, D10, D15 and D18 zoning district.

(c) *Submittal.* An application for a nonconforming situation review shall be submitted to the board of adjustment through the department on forms approved by the director.

(d) *Director's review procedure.*

(1) The director shall endeavor to determine whether the application accurately reflects the applicant's intentions, shall advise the applicant whether or not the application is acceptable, and, if it is not, what corrective action may be taken.

(2) After accepting the application, the director shall schedule it for a hearing before the board of adjustment and shall give notice to the applicant and the public in accordance with CBJ 49.15.230.

(3) Copies of the application or the relevant portions thereof shall be transmitted to interested agencies as specified on a list maintained by the director for that purpose.

Referral agencies shall be invited to respond within 15 days unless an extension is requested and granted in writing for good cause by the director.

(4) The director shall forward the application to the board of adjustment together with a report setting forth the director's recommendation for approval or denial, with or without conditions, and the reasons therefore. The director shall review and make findings on the approval criteria specified in subsection CBJ 49.30.320(f).

(e) *Fee.* An application for a nonconforming situation review shall include a fee as established by 49.85.

(f) *Approval criteria for nonconforming situation reviews.*

(1) All nonconforming situation review approvals require the following findings:

- (A) The value of adjoining property is unlikely to~~will not~~ be more negatively affected from the proposed nonconforming situation than it is from other permitted or conditionally permitted uses in the district;
- (B) Public services and facilities are, or will be prior to occupancy, adequate to serve the proposed use, density and structure;
- (C) The nonconforming situation proposed will not cause undue harmful effects or be out of harmony with property in the neighboring area on account of its scale, bulk, coverage and density, generation of traffic, the nature and intensity of the proposed use, and other relevant effects; and
- (D) The nonconforming situation proposed will not materially endanger the public health, safety or welfare.

(2) Additional findings required for approving nonconforming use proposals:

- (A) The proposed nonconforming use is more appropriate to the district than the existing nonconforming use and does not significantly jeopardize future development of the area in compliance with the intent of the zoning district;
- (B) Any characteristics of the nonconforming use that are out of compliance with this title are not changed to become less compliant with the requirements of this title;
- (C) The nonconforming use will not result in the creation of additional nonconforming situations or the need for any variances;
- (D) With mitigation measures, there will be no measurable increase in overall detrimental impacts (over the impacts of the last legal use or development) on the surrounding area taking into account factors such as:
 - (i) The hours of operation;
 - (ii) Vehicle trips to the site and impact on surrounding on-street parking;
 - (iii) Noise, vibration, dust, odor, fumes, glare, and smoke;
 - (iv) Screening, public safety, neighborhood harmony;
 - (v) The amount, location, and nature of any outside displays, storage, or activities.
- (E) If the nonconforming use is in a single-family or multi-family residential zoning district, and if any changes are proposed to the site, the appearance of the new use or development will not lessen the residential character of the area. This is based on taking into account factors such as:
 - (i) Building scale, placement, and facade;
 - (ii) Parking area placement;

(iii) Buffering or screening and the potential loss of privacy to abutting residential uses; and

(iv) Lighting and signs.

(3) Additional findings required for approving nonconforming residential density proposals:

(A) When a nonconforming use is proposed to become a nonconforming residential density, it will have no measurable increase in overall detrimental impacts on the surrounding area taking into consideration factors such as:

(i) Vehicle trips and impact on surrounding on street parking;

(ii) Lot coverage,

(iii) Vegetative cover;

(B) The proposed nonconforming residential density does not exceed 1.5 times the base density permissible for the underlying zoning district in RR, D1, D3, D5, and D10SF zoning districts, and 1.25 times the base density permissible for the underlying zoning district in the D10, D15 and D18 zoning districts, rounded to the nearest whole number.

~~(4) Even if the proposed nonconforming situation complies with all the requirements above and all recommended conditions of approval, the director may nonetheless recommend denial of the application if it is found that the development:~~

~~(A) Will materially endanger the public health or safety;~~

~~(B)(A) Will not be in general conformity with the land use plan, thoroughfare plan, or other officially adopted plans.~~

(g) *Board of adjustment hearing and determination.*

(1) At the hearing on the nonconforming situation review, the board of adjustment shall review the director's findings and recommendation(s) and determine:

(A) Whether the application is complete;

(B) Whether the proposed nonconforming use is appropriate according to this section;

(C) Whether the development as proposed will comply with other applicable requirements of this title;

(2) The board of adjustment shall adopt the director's finding on each item set forth in paragraph (f) of this section unless it finds, by a preponderance of the evidence, that the director's finding was in error, and states its reasoning for each finding with particularity.

(3) Even if the board of adjustment adopts the director's findings, it may nonetheless deny or condition approval of the proposed nonconforming situation if it concludes, based upon its own independent review of the information submitted at the hearing, that the nonconforming situation will more probably than not:

(A) The nonconforming situation lacks sufficient conformity with the comprehensive plan, land use plan, thoroughfare plan or other officially adopted plans; or

(B) The nonconforming situation conflicts with the chapter's intent to reduce the impacts of nonconforming situations and promote public health, safety and general welfare and is not needed to minimize an unreasonable impact to the subject property caused by a zoning change.

Section 6. Amendment of Section. CBJ 49.80.120 Definitions, shall be amended to incorporate the following definitions in alphabetical order:

49.80.120 Definitions.

...

Change means, with respect to a nonconforming use, that the nonconforming use has been converted to a different use for any period of time, regardless of intent.

Discontinued means that a nonconforming use has ceased, and has not substantially resumed.

Nonconforming means allowed, or not prohibited by law when established, but which due to the subsequent adoption, revision or amendment of a zoning ordinance, became noncompliant under title 49.

~~legally established according to applicable zoning and building laws at the time, but not meeting current zoning and building regulations.~~

~~*-Nonconforming lots and lot fractions* means a lot, or lot fractions, that were allowed, or not prohibited by law when established, but which due to the subsequent adoption, revision or amendment of a zoning ordinance, became noncompliant under title 49.~~

~~*Nonconforming parking* means the provision of less than the number and type of off-street parking spaces required under this title because fewer off-street parking spaces, if any, were required by law at the time the use was established.~~ off-street parking standards, including types of off-street parking, that were not in effect when the use was established~~that was~~

~~allowed or not prohibited by law when provided, or when the use was established, but which due to the subsequent adoption, revision or amendment of a zoning ordinance, are required under title 49. but which subsequently due to adoption, revision or amendment of a zoning ordinance now basis less than the required number of off street parking spaces or is of a type, such as back out parking, that is no longer permitted~~

Nonconforming residential density means a residential development of a density that was allowed, or not prohibited by law, in the zoning district ~~and was when~~ constructed, but which ~~subsequently,~~ due to the subsequent adoption, revision or amendment of a zoning ordinance, ~~now basis~~ a greater density than allowed in the zoning district under title 49.

Nonconforming rights means the rights provided in 49.30 applicable to situations that are certified or qualify to be certified as nonconforming situations~~-,~~ including rights relating to the ~~perpetua~~continuation, maintenance, modification and reconstruction of nonconforming situations.

Nonconforming situation means a situation ~~is one~~ that was allowed or not prohibited by law when ~~established but became illegal~~ but which, due to the subsequent adoption, revision or amendment of a zoning ordinance, by a subsequent change in the law and/or by the adoption or amendment of this title became noncompliant under title 49, and has been continuously maintained without interruption as specified in this chapter.~~:-~~ Nonconforming situations include nonconforming uses, nonconforming residential density, nonconforming structures,

nonconforming lots and lot fractions, and nonconforming off-street parking, whether existing alone or in any combination.

Nonconforming structure means a structure, the dimensional standards or siting of which, was allowed, or not prohibited by law when constructed, but which due to the subsequent adoption, revision or amendment of a zoning ordinance, became noncompliant under title 49.

Nonconforming use means a use that was allowed, or not prohibited by law when established, but which due to the subsequent adoption, revision or amendment of a zoning ordinance, that was allowed by right when established or a use that obtained a required land use approval when established, became noncompliant under title 49.

~~but that subsequently, due to a change in the zoning district or zoning regulations, the use, or the amount of area devoted to the use, is now not permitted under the current zoning designation.~~

~~Occupy or occupancy means actual physical occupancy of a structure or lot, regardless of intent.~~

~~Primary use means the primary activity actually conducted in a substantial and continuous manner on a lot or in a structure, and for which the lot or structure is primarily occupied and maintained, regardless of intent.~~

Use means activity, physically-actually conducted on a lot or in a structure, and for which the lot or structure is actually occupied and maintained, regardless of intent permitted by this title.

...

Section 7. Amendment of Section. CBJ 49.85.100 Generally, is amended to read:

49.85.100 Generally.

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

...

(10) Board of adjustment.

(A) Administrative variance, \$120.00;

(B) Non-administrative variance, \$400.00;

(C) Alternative development permit, \$400.00;

(D) Nonconforming situation review, \$400.00.

...

(20) Certification of nonconforming status, \$150.00; fee is waived if applied for in conjunction with a development permit.

Section 8. Effective Date. This ordinance shall be effective 30 days after its adoption.

Adopted this _____ day of _____, 2019.

Beth A. Weldon, Mayor

Attest:

Elizabeth J. McEwen, Municipal Clerk



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

Date: September 12, 2019

To: Ben Haight, Planning Commission Chair

From: Beth McKibben, AICP, Senior Planner

A handwritten signature in black ink, appearing to be 'BMc', is placed to the right of the 'From:' line.

Subject: AME2018 0009, text amendment to revise Title 49 to repeal and replace 49.30 - Nonconforming Development

ATTACHMENTS

Attachment A – Ordinance 2019-37 v2

Attachment B – August 21, 2019 staff report and attachments

BACKGROUND

The Planning Commission held a public hearing on August 27, 2019 for the draft ordinance 2019-37, which is intended to repeal and replace CBJ 49.30 – Nonconforming Development. The Commission formed an ad hoc committee to continue working with staff on the draft ordinance. The Committee met three times: August 30, September 3, and September 10, 2019. The Committee's work focused primarily on clarification and refinement, as directed by the Planning Commission at the August 27, 2019 public hearing.

For the purposes of continuing the review and discussion from the previous hearing and Committee meetings, Attachment A Ordinance 2019-37 v2 has been drafted as follows:

- **Bolded** words/phrasing indicate the revisions from the public hearing to the Committee meetings
- **Bolded and underlined** words/phrasing indicate revisions based upon input from the last Committee meeting and further review by CBJ staff

DISCUSSION

The committee's work focused primarily on the following revisions:

Nonconforming residential uses in Industrial and Waterfront Industrial zoning districts

Residential uses are not permissible in these zoning districts. Only caretaker units are permissible as an accessory use to a primary use, and therefore are not counted as density. Therefore, reconstruction of nonconforming, residential uses in these districts is treated more strictly than in zoning districts where residential uses are permitted.

Takings

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A distinction between residential uses already exists in code between commercial and residential zoning districts and industrial zoning districts. This distinction is maintained with this ordinance. Additionally, property owners in the industrial zoning districts are able to redevelop their property for other uses that are permissible in the industrial districts, and thus it is not a taking.

Nonconforming Situations in General

Certification of nonconforming situations

This ordinance clarifies that a certificate of nonconforming status is not necessarily required before *any* work on a nonconforming situation can take place.

Damage and destruction

Language has been added to clarify that the Building Official makes the official determination of the extent and cause of damage or destruction. This applies to determining whether damage or destruction was intentional or accidental, and whether the damage has reached the threshold to be deemed destroyed.

Failure to qualify for nonconforming status

A new section has been added to clarify that when a situation fails to be certified, or cannot be certified, it is noncompliant and subject to enforcement.

Abandonment

This ordinance has two statuses of abandonment: when all nonconforming rights are lost and when they are presumed lost and may be overcome. Clarification has been added for how the Director determines abandonment. The process for rebutting a director's determination of abandonment has been refined.

Nonconforming Uses

Minor revisions were made providing clarification to what is considered acceptable modification. Additionally, clarification was added for reconstruction of nonconforming residential uses in Industrial and Waterfront Industrial zoning districts.

Nonconforming Residential Density

The definition for nonconforming residential density was revised. The reconstruction section was refined. The Committee discussed adding a superscript to lines 1.200 and 1.300 of the Table of Permissible Uses (49.25.300), directing users to a new Note AC, which would state "Refer to 49.30.240".

Nonconforming Structures

This section was clarified to include that nonconforming structures can be modified, enlarged, or altered if the modification does not aggravate the nonconformity. Additionally, the ordinance now references section CBJ 49.25.430(4), exceptions to setbacks, which includes the opportunity to apply to add stories

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to a nonconforming structure through the conditional use process. This clarifies that nonconforming structures may be modified in compliance with the existing code, including available setback exceptions. Figure 1 was refined to better show what expansion is and is not allowed.

Nonconforming Parking

Language has been added that provides for the government entity controlling the right-of-way accessing the parking must find the replacement or reconstruction of nonconforming parking does not endanger the public health, safety, or welfare. This includes back out parking, as well as the number of off-street parking spaces. Clarification was provided for a nonconforming-parking situation that becomes more conforming.

Nonconforming Status Review (Approved by Director)

Review of a situation(s) is required to establish whether the situation is nonconforming or noncompliant. When the situation is nonconforming, the review will then determine whether or not a nonconforming situation is aggravated by the permit that is being sought. In other words, if an owner is seeking a permit that directly relates to a nonconforming situation, certification of the nonconforming situation must occur prior to issuing the permit, but if the permit being sought *does not* relate to the nonconforming situation, then certification is not required. The “review” is needed to make this determination. Certification is still required as a component of the Nonconforming Situation Review (discussed below). It may take place before, or concurrently, with the Nonconforming Situation Review. Certification of Nonconforming Situations may still be requested at any time and separate from other permits.

Nonconforming Situation Review (approved by Board of Adjustment)

The process for review was revised to more closely follow that of the Alternative Development Overlay District (ADOD) process (49.70.1200), which is also under the Board of Adjustment’s purview. The Director’s review procedure has been added, and includes the requirement to solicit input from other agencies, as is currently required for the ADOD, Conditional Use Permits, and subdivisions.

Definitions

As discussed above, the definition of nonconforming residential density was refined. Additionally, the definition of nonconforming parking has expanded from narrowly addressing off-street parking to include the type of parking, such as back out.

Two new suggested definitions of nonconforming rights have been added as requested by the Committee. The Commission needs to decide if a definition is necessary, and if so, choose one.

Fees

The fee for the Nonconforming Situation Review remains at \$400, which is the same as a Non-Administrative Variance and Alternative Development Permit. This process requires legal notification of the public hearing including legal ads and abutter notification.

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The fee for certification of a nonconforming situation(s) remains at \$150. The fee is to receive the certification if the Nonconforming Status Review is the only application being applied for. If a certification of the nonconforming status is in conjunction with a development permit, the fee is waived.

Additional Amendments to Be Incorporated Prior to Presentation to the Assembly

CBJ 49.25.430(4)(M) provides the opportunity for nonconforming structures to add stories with an approved Conditional Use Permit. The section now includes the term “lawfully nonconforming”. To be consistent with the revised nonconforming chapter the word “lawfully” will be deleted.

CBJ 49.25.430(5) replacement and reconstruction of certain nonconforming buildings will be amended to refer to 49.30, rather than 49.30.500(b).

CBJ 49.25.510(f) replacement and reconstruction of certain nonconforming buildings will be amended to refer to 49.30, rather than 49.30.500(b).

Presented by: The Manager
Introduced:
Drafted by: R. Palmer III

ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 2019-37

An Ordinance Amending the Land Use Code to Repeal and Replace the Nonconforming Development Code.

BE IT ENACTED BY THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU, ALASKA:

Section 1. Classification. This ordinance is of a general and permanent nature and shall become a part of the City and Borough of Juneau Municipal Code.

Section 2. Amendment of Chapter. Chapter 49.30 Nonconforming Development is repealed and replaced to read:

Chapter 49.30 - NONCONFORMING SITUATIONS

ARTICLE I. GENERAL

49.30.110 Purpose and intent.

This chapter provides standards for the review of nonconforming situations, including a process for obtaining certification of nonconforming status by the director, and a process for obtaining a nonconforming situation review by the board of adjustment. The intent is to reduce the impacts of nonconforming situations; promote public health, safety and general welfare; and minimize unreasonable impacts to property impacted by zoning changes. **Nothing in this chapter is intended to affect otherwise existing rights under CBJ Code.**

49.30.120 Application.

(a) This chapter applies to the following nonconforming situations, whether existing alone or in any combination:

- (1) Nonconforming uses (49.30.230),
- (2) Nonconforming residential densities (49.30.240),
- (3) Nonconforming structures (49.30.250),
- (4) Nonconforming lots and lot fractions (49.30.260),
- (5) Nonconforming off-street parking spaces (49.30.270).

(b) This chapter does not apply to nonconforming signage, which is addressed in chapter 49.45.

ARTICLE 2. STANDARDS

49.30.210 Nonconforming situations in general.

(a) *Continuation of nonconforming situations.* Except as otherwise provided in this chapter, nonconforming situations may ***remain***.

(b) *Change of nonconforming situation to comply with code.* Any nonconforming situation may be changed to comply with **code**. Once a nonconforming situation becomes compliant, the nonconforming rights **under this chapter** are lost, **with respect to that nonconforming situation**, and the nonconforming situation may not be re-established.

(c) *Ownership.* Change in ownership does not affect the legal status of a nonconforming situation.

- (d) *Routine maintenance and repair.* Nothing in this chapter prohibits normal maintenance and routine repairs, **which** include, but are not limited to, roofing repair or replacement, window replacement, and **minor** structural repairs.
- (e) *Certification of nonconforming status.* A property owner or authorized agent of the owner may apply for a certification of nonconforming status at any time, pursuant to the procedures provided in section 49.30.310.
- (f) **Nonconforming status review** *prior to issuance of permit.* Prior to the issuance of a permit for work or development related to a potentially nonconforming situation, **nonconforming status review** pursuant to the procedures provided in section 49.30.310, is required. **Review and issuance of permits related to a nonconforming situation(s) will be subject to this chapter.**
- (g) *Certification of nonconforming status prior to a nonconforming situation review.* Certification of nonconforming status **must be obtained prior to proceeding with** a nonconforming situation review pursuant to the procedures provided in section 49.30.320.
- (h) *Structure deemed destroyed.* A nonconforming structure or structure containing a nonconforming use shall be deemed destroyed when damaged by any means to an extent of more than 75 percent of the cost of the replacement of the entire structure, exclusive of foundations, ~~**except as provided for in this chapter.**~~
- (i) *Intentional damage, destruction, removal or demolition.* **The** nonconforming rights provided in this chapter are lost when a nonconforming situation is damaged, destroyed, demolished or removed by any means **intentionally and** within the control of the owner or the authorized agent of the owner.

(j) *Accidental damage or destruction.* **The** nonconforming rights provided for in this chapter are retained when a nonconforming structure or structure containing a nonconforming use or residential density is damaged or destroyed **accidentally or by any means** beyond the control of the owner or the authorized agent of the owner.

(k) ***Building official determinations under (h), (i) and (j).*** The building official shall determine the extent and cause(s) of damage and/or destruction under **subsections** (h), (i) and (j) **of this section**, pursuant to CBJ 19.01 Building Regulations, Administrative Code.

(l) ***Failure of a situation to qualify for nonconforming status certification.*** **If a situation does not qualify for, or is denied, nonconforming status certification, it remains noncompliant and subject to applicable enforcement action.**

(m) ***Effect of loss or abandonment of nonconforming situation or nonconforming situation rights.*** **The loss or abandonment of a nonconforming situation or of nonconforming situation rights under this chapter means compliance with all of code is required.**

49.30.220 Abandonment of a nonconforming situation.

(a) The abandonment of a nonconforming situation extinguishes all nonconforming rights associated with that situation.

(b) A nonconforming situation is abandoned if and when any of the following events occur:

- (1) The owner indicates in writing that the nonconforming situation is being permanently discontinued or abandoned;
- (2) The nonconforming situation becomes compliant with this title;

(3) The nonconforming situation is intentionally damaged, destroyed, removed or demolished, as provided in CBJ 49.30.210(i).

(4) With respect to a nonconforming structure, the structure is moved.

(c) A nonconforming situation is presumed to be abandoned if:

- (1) The owner takes action consistent with an intent to abandon the nonconforming situation;
- (2) The structure(s) associated with the nonconforming situation has been vacant or the nonconforming use or situation has been discontinued for 365 consecutive days;
- (3) The nonconforming situation has been replaced by another nonconforming situation, through the nonconforming situation review process provided in 49.30.320; or

(4) With respect to nonconforming residential density, the structure has been unoccupied for more than three years or, if being reconstructed pursuant to CBJ 49.30.240(b), the structure does not have a temporary certificate of occupancy within three years of the building permit being issued.

(d) Determination of abandonment **shall be made by the director and supported by findings under CBJ 49.30.220(b) or (c).**

49.30.225 Overcoming presumption of abandonment.

(a) A director's determination of abandonment under 49.30.220(c) is rebuttable and may be overcome upon a finding by the director that the information submitted establishes all of the following with respect to the nonconforming situation:

- (1) The owner has been maintaining the land and structure(s) in accordance with applicable building, fire and other codes and regulations;
- (2) The owner has been maintaining or pursuing applicable permits and licenses; **and**
- (3) The owner has filed applicable tax documents.

(b) **Other factors that may be considered include whether:**

(1) The owner has been engaged in activities that are consistent with or would affirmatively prove there was no intent to abandon, such as actively and continuously marketing the land, business or structure for sale or lease; and

(2) The owner has applied for a nonconforming situation review in accordance with section 49.30.320.

(c) The burden of proof for overcoming a presumption of abandonment is on the applicant.

49.30.230 Nonconforming uses.

(a) *Change of nonconforming use to another nonconforming use.* The owner may change a nonconforming use to another nonconforming use if approved by the board of adjustment pursuant to section 49.30.320, including a change from a nonconforming non-residential use to a residential use that exceeds the allowed maximum density in RR, D1, D3, D5, D10SF, D10, D15 and D18 zones.

(b) *Expansion of nonconforming use.* A nonconforming use within a structure may be extended to any portion of the existing structure, but may not be expanded to other structures or to other land beyond the original structure. A nonconforming use of land may not be increased or extended to occupy a greater area of land.

(c) **Modifications to nonconforming use.** **Modifications** to a nonconforming use are permissible and do not constitute a change or expansion of the nonconforming use, providing the impacts of such modification are **nominal and do not impose a significant or new impact** that is out of harmony with the neighborhood, as determined by the director.

(d) *Nonconforming residential uses in industrial and waterfront industrial zoning districts.*
When a structure containing a nonconforming residential use in the industrial and waterfront

industrial zoning districts is accidentally damaged, **as provided in CBJ 49.30.210(j)**, the following applies:

- (1) Nonconforming residential use rights are maintained and the structure may be rebuilt within three years if all of the following are met:
 - (A) Nonconforming residential use **is or** has been certified pursuant to the procedures set forth in section 49.30.310;
 - (B) **The building official has not deemed the structure destroyed, under CBJ 49.30.210(h);**
 - (C) Written notice of intent to reconstruct is provided to the department within 365 days of **the date the accidental damage or destruction occurred, as determined by the building official;**
 - (D) The reconstruction complies with applicable zoning district dimensional, development and design standards including but not limited to setbacks, parking and landscaping, that apply to new development.
- (2) If a temporary certificate of occupancy for the structure has not been obtained within three years of issuance of a building permit, the nonconforming residential use rights are lost, and existing and future development on the site must comply with all provisions of code.
- (3) The director, in consultation with the building official, may approve one 18-month extension for the reconstruction, **or for obtaining the temporary certificate of occupancy**, of the nonconforming residential use upon written request showing good cause.

49.30.240 Nonconforming residential densities in zoning districts that allow residential development.

(a) ***Modification of existing dwelling units.*** Structures containing nonconforming residential density may be modified subject to the following:

- (1) The nonconforming residential density is certified pursuant to the procedures provided in section 49.30.310 prior to commencing any modification that requires a building permit.
- (2) Applicable dimensional standards and parking requirements of this title are met unless otherwise provided in this chapter.

(b) ***Accidental damage or destruction.*** A structure containing nonconforming residential density, **which is** damaged or destroyed may be reconstructed, regardless of the cost of **replacement or building official's determination under CBJ 49.30.210(h)**, subject to the following:

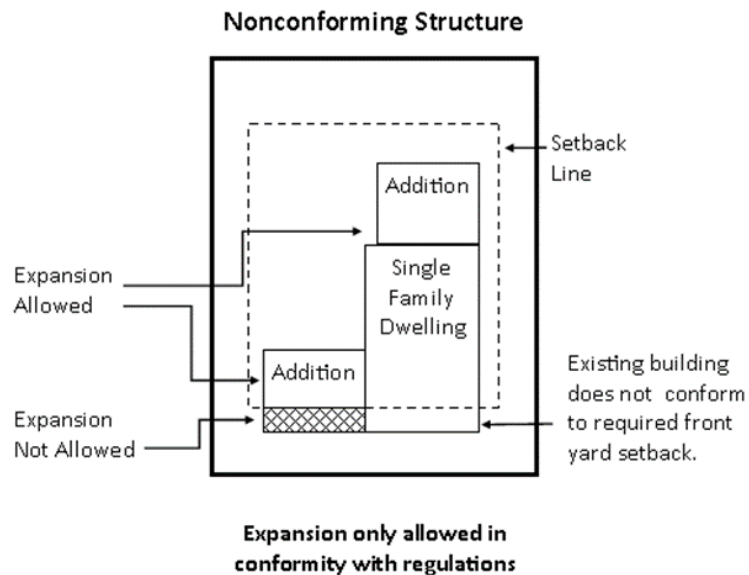
- (1) The nonconforming residential density is **or has been** certified pursuant to the procedures provided in section 49.30.310 prior to any work that requires a building permit;
- (2) Written notice of intent to reconstruct is provided to the department within 365 days of **the date** the damage or destruction **occurred, as determined by the building official;**
- (3) The total number of dwelling units established by the certification of nonconforming status **is not** increased;
- (4) Reconstruction may occur in the existing footprint, with the exception of encroachments into rights-of-way or adjacent property;

- (5) A temporary certificate of occupancy for the structure has been obtained within three years of issuance of the building permit; and
- (6) The director, in consultation with the building official, may approve one 18-month extension for the reconstruction **or for obtaining the temporary certificate of occupancy**, upon written request showing good cause.

49.30.250 Nonconforming structures.

- (a) A nonconforming structure may be enlarged, altered or reconstructed as long as the enlargement, alteration, or reconstruction does not increase **or aggravate the nonconforming situation** and complies with other dimensional and parking standards of this title, except as otherwise provided in this chapter. (See Figure1)

Figure 1



- (b) Certification of nonconforming status pursuant to section 49.30.310 must be obtained prior to any enlargement, alteration or reconstruction of a nonconforming structure.

(c) Improvements or renovations within an existing structure shall not be considered an enlargement, alteration, or reconstruction for purposes of this section.

(d) **Projections allowed in yard setbacks under CBJ 49.25.430(4) shall not be considered to increase or aggravate a nonconforming situation.**

(e) This subsection shall not be interpreted to allow the expansion of a nonconforming use or nonconforming residential density, which are governed by sections 49.30.230 and 49.30.240.

(f) *Reconstruction.* A nonconforming structure or nonconforming portion of a structure that the building official has deemed destroyed, shall not be reconstructed except in conformity with the provisions of this chapter. This does not preclude the reestablishment of nonconforming residential density and its footprint as allowed by subsection 49.30.240(b).

49.30.260 Nonconforming lots and lot fractions.

(a) A nonconforming lot **has the same development rights as a compliant lot** subject to the following:

- (1) A certification of nonconforming status is obtained pursuant to the procedures provided in section 49.30.310;
- (2) The use **on a lot** does not have a minimum lot size requirement greater than the minimum lot size required by the underlying zoning district, unless otherwise authorized by this title; and
- (3) Applicable zoning district dimensional, development and design standards including, but not limited to setbacks, parking, landscaping are met.

(b) Unless located in an industrial or waterfront industrial zoning district, an undeveloped nonconforming lot or lot fraction that adjoins and has continuous frontage with

one or more other undeveloped lots under common ownership, may each be developed with a single-family dwelling or as otherwise provided in this title.

49.30.270 Nonconforming parking.

(a) **A nonconforming situation that involves nonconforming parking may continue**, be replaced or reconstructed under this subsection with the same number and type of off-street parking spaces as were provided for the original structure or use, **if the government entity that controls the right-of-way determines that it does not endanger public health, safety or welfare, including but not limited to back-out parking.**

(b) When a nonconforming parking situation is changed to become more compliant with 49.40, **newly provided parking may not be removed unless in accordance with this chapter.**

This does not preclude the applicant's right to obtain a parking waiver in accordance with sections 49.40.210(d) Exceptions or 49.20.200 Variance.

ARTICLE 3. REVIEWS

49.30.310 Nonconforming status review and certification.

(a) *Purpose.* **The purpose of nonconforming status review is to determine whether nonconforming rights under this chapter exist, and certification is therefore appropriate.** In addition, it is intended to determine the current use of the lot, based on the use categories in section 49.25.300. In the case of nonconforming residential **density, the review also determines** the maximum extent of the nonconforming residential density.

(b) *When to seek certification of nonconforming status.* An owner may apply for certification of nonconforming status, **at any time**. An owner must have a certificate of nonconforming status prior to a nonconforming situation review.

(c) *Certification.* A nonconforming situation will be certified as having nonconforming status, if the director finds the applicant's information establishes all of the following:

(1) The nonconforming situation **was allowed or not prohibited by law** when it was created or established; and

(2) The nonconforming situation has not been abandoned.

(d) *Application.* An application for certification of nonconforming status shall be submitted with the department on forms approved by the director, with relevant information establishing the factors set out in (c) above. The application should identify and include each nonconforming situation known to exist on the subject property.

(e) *Relevant information.*

(1) Information that may be relevant to nonconforming status may include, but is not limited to, the following:

(A) Building, land use, or development permits;

(B) Zoning codes or maps;

(C) Recorded plats;

(D) Dated photographs;

(E) Dated aerial photography;

(F) Insurance maps that identify use or development, e.g. Sanborn Maps.

(2) Information that may be relevant to whether the nonconforming situation has been continuously maintained without interruption may include, but is not limited to the following:

- (A) Utility bills;
- (B) Income tax records;
- (C) Business licenses;
- (D) Telephone listings;
- (E) Advertisements in dated publications;
- (F) Building, land use, or development permits;
- (G) Insurance policies;
- (H) Leases;
- (I) Dated photographs;
- (J) Dated aerial photographs;
- (K) Insurance maps that identify use or development, e.g. Sanborn Maps; or
- (L) Land use and development inventories prepared by a government agency.

(f) *Decision.* The director shall review the applicant's information and issue a written decision that includes separate certification findings on each nonconforming situation included in the application.

(g) *Burden of proof.* The burden of proof to establish nonconforming status is on the applicant.

(h) *Fee.* An application for a certification of nonconforming status shall include a fee as established by chapter 49.85.

49.30.320 Nonconforming situation review.

- (a) *Purpose.* The board of adjustment shall hear all nonconforming situation reviews for the purpose of reviewing proposed changes to nonconforming situations as provided in this chapter. The nonconforming situation review process provides an opportunity for public input, and authorizes the board of adjustment to review, limit, approve or deny proposed changes.
- (b) *Applicability.* The following may be allowed through a nonconforming situation review as provided in this chapter:
 - (1) A change of a nonconforming use to another non-conforming use that is prohibited in the zoning district.
 - (2) A change from a nonconforming nonresidential use to an allowed residential use that exceeds the allowed density in the RR, D1, D3, D5, D10SF, D10, D15 and D18 zoning district.
- (c) *Submittal.* An application for a nonconforming situation review shall be submitted to the board of adjustment through the department on forms approved by the director.
- (d) *Director's review procedure.*
 - (1) The director shall endeavor to determine whether the application accurately reflects the applicant's intentions, shall advise the applicant whether or not the application is acceptable, and, if it is not, what corrective action may be taken.
 - (2) After accepting the application, the director shall schedule it for a hearing before the board of adjustment and shall give notice to the applicant and the public in accordance with CBJ 49.15.230.
 - (3) Copies of the application or the relevant portions thereof shall be transmitted to interested agencies as specified on a list maintained by the director for that purpose.

Referral agencies shall be invited to respond within 15 days unless an extension is requested and granted in writing for good cause by the director.

- (4) The director shall forward the application to the board of adjustment together with a report setting forth the director's recommendation for approval or denial, with or without conditions, and the reasons therefore. The director shall **review and make findings on the approval criteria** specified in subsection CBJ 49.30.320(f).

(e) *Fee.* An application for a nonconforming situation review shall include a fee as established by 49.85.

(f) *Approval criteria for nonconforming situation reviews.*

- (1) All nonconforming situation review approvals require the following findings:

- (A) The value of adjoining property will not be **more negatively affected from the proposed nonconforming situation than it is** from other permitted or conditionally permitted uses in the district;
- (B) Public services and facilities are, or will be prior to occupancy, adequate to serve the proposed use, density and structure;
- (C) **The nonconforming situation proposed will not cause undue harmful effects or be out of harmony with property in the neighboring area on account of its** scale, bulk, coverage and density, generation of traffic, the nature and intensity of the proposed use, and other relevant effects; and
- (D) The **nonconforming situation proposed** will not materially endanger the public health, safety or welfare.

- (2) Additional findings required for approving nonconforming use proposals:

- (A) The proposed nonconforming use is more appropriate to the district than the existing nonconforming use and does not significantly jeopardize future development of the area in compliance with the intent of the zoning district;
- (B) Any characteristics of the nonconforming use that are out of compliance with this title are not changed to become less compliant with the requirements of this title;
- (C) The nonconforming use will not result in the creation of additional nonconforming situations or the need for any variances;
- (D) With mitigation measures, there will be no measurable increase in overall detrimental impacts (over the impacts of the last legal use or development) on the surrounding area taking into account factors such as:
 - (i) The hours of operation;
 - (ii) Vehicle trips to the site and impact on surrounding on-street parking;
 - (iii) Noise, vibration, dust, odor, fumes, glare, and smoke;
 - (iv) Screening, public safety, neighborhood harmony;
 - (v) The amount, location, and nature of any outside displays, storage, or activities.
- (E) If the nonconforming use is in a single-family or multi-family residential zoning district, and if any changes are proposed to the site, the appearance of the new use or development will not lessen the residential character of the area. This is based on taking into account factors such as:
 - (i) Building scale, placement, and facade;
 - (ii) Parking area placement;

(iii) Buffering or screening and the potential loss of privacy to abutting residential uses; and

(iv) Lighting and signs.

(3) Additional findings required for approving nonconforming residential density proposals:

(A) When a nonconforming use is proposed to become a nonconforming residential density, it will have no measurable increase in overall detrimental impacts on the surrounding area taking into consideration factors such as:

(i) Vehicle trips and impact on surrounding on street parking;

(ii) Lot coverage,

(iii) Vegetative cover;

(B) The proposed nonconforming residential density does not exceed 1.5 times the base density permissible for the underlying zoning district in RR, D1, D3, D5, and D10SF zoning districts, and 1.25 times the base density permissible for the underlying zoning district in the D10, D15 and D18 zoning districts, rounded to the nearest whole number.

(4) Even if the proposed nonconforming situation complies with all the requirements

above and all recommended conditions of approval, the director may

nonetheless recommend denial of the application if it is found that the development:

(A) Will materially endanger the public health or safety;

(B) Will not be in general conformity with the land use plan, thoroughfare plan, or other officially adopted plans.

(g) Board of adjustment hearing and determination.

- (1) At the hearing on the nonconforming situation review, the board of adjustment shall review the director's **findings and recommendation(s) and determine:**
 - (A) Whether the application is complete;
 - (B) Whether the proposed nonconforming use is appropriate according to this section;
 - (C) Whether the development as proposed will comply with other applicable requirements of this title;
- (2) The board of adjustment shall adopt the director's **finding** on each item set forth in paragraph (f) of this section unless it finds, by a preponderance of the evidence, that the director's **finding** was in error, and states its reasoning for each finding with particularity.
- (3) Even if the board of adjustment adopts the director's **findings**, it may nonetheless deny or condition **approval of the proposed nonconforming situation** if it concludes, based upon its own independent review of the information submitted at the hearing, that the nonconforming situation will more probably than not:
 - (A) **The nonconforming situation lacks sufficient conformity with the comprehensive plan, land use plan, thoroughfare plan or other officially adopted plans; or**
 - (B) **The nonconforming situation conflicts with the chapter's intent to reduce the impacts of nonconforming situations and promote public health, safety and general welfare and is not needed to minimize an unreasonable impact to the subject property caused by a zoning change.**

Section 3. Amendment of Section. CBJ 49.80.120 Definitions, shall be amended to incorporate the following definitions in alphabetical order:

49.80.120 Definitions.

...

Nonconforming parking means the provision of less than the number and type of off-street parking spaces required under this title because fewer off-street parking spaces, if any, were required by law at the time the use was established.

Nonconforming residential density means a residential development that was allowed, or not prohibited by law, in the zoning district and was constructed, but which subsequently, due to adoption, revision or amendment of a zoning ordinance, now has greater density than allowed in the zoning district.

Choose one of the following or delete both:

Nonconforming rights means the rights provided in 49.30 applicable to situations that are certified or qualify to be certified as nonconforming situations.

Or

Nonconforming rights means the rights provided in 49.30 applicable to situations that are certified or qualify to be certified as nonconforming situations. , including rights relating to the perpetuation, maintenance, modification and reconstruction of nonconforming situations.

Nonconforming situation means a situation is one that was allowed or not prohibited by law when created but became illegal by a subsequent change in the law and/or by the adoption or amendment of this title and has been continuously maintained without interruption as specified in this chapter..

Nonconforming use means a use that was allowed by right when established or a use that obtained a required land use approval when established, but that subsequently, due to a change in the zoning district or zoning regulations, the use, or the amount of area devoted to the use, is now not permitted under the current zoning designation.

Change means, with respect to a nonconforming use, that the nonconforming use has been converted to a different use for any period of time, regardless of intent.

Discontinued means that a nonconforming use has ceased, and has not substantially resumed.

Occupy or occupancy means actual physical occupancy of a structure or lot, regardless of intent.

Primary use means the primary activity actually conducted in a substantial and continuous manner on a lot or in a structure, and for which the lot or structure is primarily occupied and maintained, regardless of intent.

Use means activity actually conducted on a lot or in a structure, and for which the lot or structure is actually occupied and maintained, regardless of intent.

...

Section 4. Amendment of Section. CBJ 49.85.100 Generally, is amended to read:

49.85.100 Generally.

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

...

(10) Board of adjustment.

- (A) Administrative variance, \$120.00;
- (B) Non-administrative variance, \$400.00;
- (C) Alternative development permit, \$400.00;
- (D) Nonconforming situation review, \$400.00.

...

(20) Certification of nonconforming status, \$150.00; fee is waived if in conjunction with a development permit;

Section 5. Effective Date. This ordinance shall be effective 30 days after its adoption.

Adopted this _____ day of _____, 2019.

Attest:

Beth A. Weldon, Mayor

Elizabeth J. McEwen, Municipal Clerk



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

DATE: August 21, 2019

TO: Planning Commission

FROM: Beth McKibben, AICP, Senior Planner
 Community Development Department

FILE NO.: AME2018 0009

PROPOSAL: Text amendment to revise Title 49 to repeal and replace 49.30 - Nonconforming Development.

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

ATTACHMENTS

- Attachment A – Ordinance 2019-37
- Attachment B – Memorandum to December 11, 2018 Planning Commission Committee of the Whole, Dated November 27, 2018
- Attachment C – Minutes, December 11, 2018 Planning Commission Committee of the Whole

BACKGROUND

Zoning nonconformities are existing uses, structures, densities, or lots that were legally established prior to a change in zoning provisions, which do not comply with new (current) zoning regulations. Neither the existing ordinance nor this proposed ordinance remedy illegal nonconformities, e.g. development constructed without a permit. For the purposes of this report, the word “nonconformities” refers to legal nonconformities unless specifically stated otherwise.

As land use policies and zoning regulations are revised and updated, questions may arise regarding the continued use, replacement, or expansion of nonconformities. In the existing code, the various nonconformities are blended into single paragraphs and not written in a user-friendly manner, particularly the reconstruction section, which makes it challenging to understand. Further, certain nonconformities may create financial challenges for buyers and sellers.

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Zoning ordinances vary considerably in how they treat nonconformities. There are four general options:

1. Phase them out over time;
2. Maintain the status quo;
3. Allow limited modification and expansion; and
4. Change zoning standards to make certain uses, structures or lots conforming.

The Planning Commission referred the consideration of amendments to CBJ 49.30 - Nonconforming Development to the Title 49 Committee. Staff previously identified this section of code as needing revisions to provide clarity. More critically, prospective buyers have been encountering challenges in financing nonconforming developments that previously have been financed, which has raised the level of urgency to improve this chapter.

The Title 49 Committee reviewed and considered a complete revision to CBJ 49.30 at four meetings in 2017. The Planning Commission Committee of the Whole discussed the proposed language at the December 11, 2018 meeting (Attachments B & C). In May 2019, CDD staff met with a small group of real estate, mortgage, and appraisal professionals. The proposed revisions to the nonconforming development code were presented and discussed. On August 13, 2019, staff presented the proposed revisions to the Southeast Alaska Board of Realtors, and informed them of the public hearing schedule.

DISCUSSION

The proposed ordinance establishes that not all nonconformities are the same. Some nonconformities are benign while some have significant detrimental effects. In some instances, continuance or expansion of a benign nonconformity may not threaten public health or safety, may have little impact on the long term land use objectives, and may even be preferable to the alternative of disinvestment. For this reason, benign nonconformities are treated differently than those likely to have significant detrimental effects.

The proposed ordinance mixes the phasing out of detrimental nonconformities and recommends maintaining the status quo or allowing limited modification and expansion to benign nonconformities. The proposed ordinance repeals and replaces all of 49.30. The ordinance clarifies and defines the following non-conforming situations:

1. Nonconforming use;
2. Nonconforming residential density;
3. Nonconforming structure;
4. Nonconforming lot;
5. Nonconforming on-site parking spaces;

Nonconforming signs are addressed in CBJ 49.45 - Signs. Staff proposes to address signs when that section of Title 49 is amended.

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Nonconforming development in stream buffers will be addressed with the work on the stream buffers ordinance, which is underway.

1. *Nonconforming Use*

Nonconforming use, in general, is a use that was allowed or legally permitted when established, but due to changes in a zoning district (rezone) or zoning regulations, is no longer allowed.

The proposed ordinance allows for nonconforming uses to continue to operate. Changes in the operation may be allowed so long as the external impacts of the changes comport or harmonize with the neighborhood. A nonconforming use may be changed to another nonconforming use through a nonconforming situation review (discussed later page 8 of 11).

Additionally, in the residential zoning districts, through a nonconforming situation review, a nonconforming, nonresidential use may be changed to an allowed residential use that exceeds the density of the zoning district. This is one method to remove more egregious, nonconforming uses from residential areas and promote more housing. A nonconforming use may change to a conditional use allowed in the zoning district with an approved Conditional Use Permit. In this case, the nonconforming rights of the nonconforming use would then be lost.

Nonconforming uses may be expanded within the existing building, but may not be expanded to other buildings or take up a greater area of land, e.g. an addition to the building that expanded the nonconforming use operations would not be allowed.

Once a nonconforming use is determined to be abandoned, subsequent uses must comply with current code unless the use is reestablished through the nonconforming situation review. If a nonconforming use is accidentally destroyed and the cost of repair is more than 75% of the cost of replacement, the nonconforming use cannot be reestablished.

For developments that are nonconforming residential use, the nonconforming dwelling(s) may not be reconstructed when the cost of repairs exceeds 75% of the cost of replacement of the building, exclusive of foundations, using new materials. The extent of the damage shall be determined by the building official. **Currently, only the Industrial and Waterfront Industrial zoning districts would have a situation of a nonconforming residential use.** These two zoning districts currently only allow a caretaker unit that is accessory to another use; single- and multi-family development are not allowed. Nonconforming residential uses are treated more strictly than nonconforming residential densities, because there is a need for industrial land in Juneau, and residential uses are generally incompatible with industrial uses. When a nonconforming residential use is unintentionally damaged:

- Nonconforming residential use rights are maintained and the structure may be rebuilt within three (3) years if:
 - Nonconforming residential use is accepted as legally nonconforming with a certification of legal nonconforming status
 - Written notice of intent to reconstruct is provided to the department within 365 days.
 - The structure is not deemed destroyed by the Building Official.
 - The reconstruction complies with existing associated district-specific dimensional, development, and design standards such as setbacks, parking, landscaping, etc. that would apply to new development.
- If a temporary certificate of occupancy has not been obtained for the structure within three (3) years, the nonconforming residential use rights are lost, and all existing and future development on the site must comply with current CBJ Code.
- The Director, with the concurrence of the Building Official, may approve one 18-month extension for the reconstruction of the nonconforming residential use upon written request showing good cause.

Nonconforming residential use rights are lost when the structure is intentionally destroyed.

2. *Nonconforming Residential Density*

Nonconforming residential density is a new concept that is not in the existing code. Nonconforming residential density occurs when a residential use is an allowed use in the zoning district and was constructed at a lawful density at the time it was constructed, but due to changes in the zoning district or zoning regulations, now has greater density than is currently allowed in the zoning district.

An example of nonconforming residential density is an existing four-plex on one (1) lot in a D5 zoning district. Residential uses are allowed in the D5 zoning district, but the density on the lot (four-plex = 4 units) exceeds what the current zoning district allows (one (1) single-family / duplex per lot).

The addition of this concept implements the Housing Action Plan by preserving existing housing. Additionally, it addresses the challenge that owners of nonconforming residential densities struggle with when trying to sell their homes because lenders are reluctant to lend money when the units cannot be reconstructed in the event of a catastrophe.

The reconstruction of nonconforming residential densities may be approved with a certificate of nonconforming status (refer to page 7 of 19 in Attachment A).

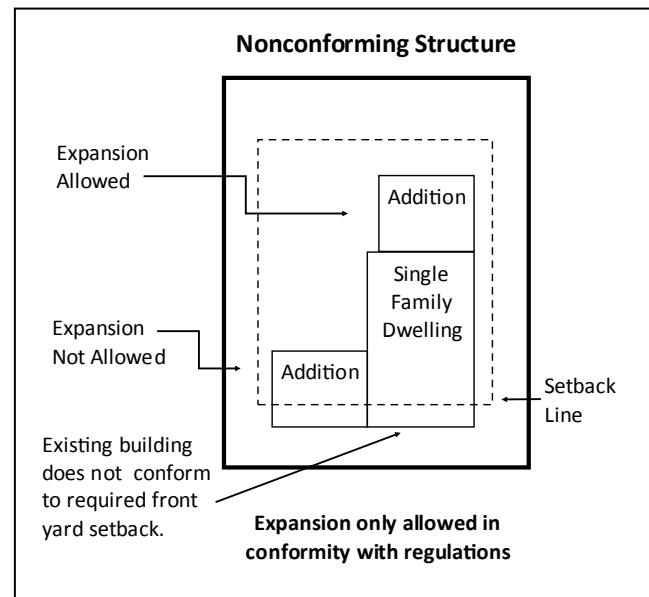
- Nonconforming residential densities may be altered or reconstructed when an approved certificate of legal nonconforming status is obtained.

- Nonconforming residential density rights continue even if a building is unoccupied for any amount of time.
- If the building is accidentally destroyed or damaged, the nonconforming density rights are maintained as long as it is reconstructed within three (3) years.
- Written notice of intent to reconstruct must be provided within 365 days.
- Reconstruction can be in the same footprint on the original location if the structure was nonconforming for setbacks or lot coverage. However, the reconstructed building cannot encroach into right-of-ways or across property lines.
- There is no threshold for the cost repair, as there is for reconstruction of nonconforming uses or nonresidential structures.
- If a temporary certificate of occupancy is not been obtained within three (3) years, nonconforming residential density rights are lost, the site is considered vacant, and redevelopment must comply with current codes.
- There is an opportunity for one 18-month extension to substantially complete the reconstruction.

3. **Nonconforming Structure**

Nonconforming structures are those structures that do not meet one or more of the dimensional standards set forth in 49.25 Article IV such as height, setbacks, or lot coverage. These structures may be continued and maintained. Nonconforming structures may be expanded, but only if the expansion does not increase the nonconformity. An example of this is a structure that is nonconforming because it does not meet the current front yard setback.; an addition to the rear or side of the building could be added if the addition complies with the current dimensional requirements.

CBJ 49.25.430(4)(M) provides that nonconforming structures may add additional stories with an approved Conditional Use Permit. No amendments are proposed to this. If a nonconforming structure is moved, it must conform to current code requirements.



As discussed above, a nonconforming structure with a nonconforming residential density may be reconstructed in the existing footprint, except they may not encroach onto right-of-ways or onto adjacent property. This is also true for structures on nonconforming lots, which are discussed below.

All other nonconforming structures (with uses other than residential) must be reconstructed in compliance with current regulations if they are accidentally damaged and the cost of repair is greater than 75% of the cost of replacement, exclusive of foundations, using new materials. The extent of the damage shall be determined by the Building Official. This is different than nonconforming residential density, which may be reconstructed regardless of the cost of replacement when it is damaged accidentally.

If a nonconforming structure is intentionally destroyed, it may only be reconstructed in accordance with current code requirements. This true for all nonconformities.

Nonconforming rights are lost when the damage is intentional. Nonconforming rights are lost if a nonconforming structure is proven to be abandoned. Nonconforming rights are lost if the structure is brought into conformity.

4. *Nonconforming Lot*

Nonconforming lots are those lots that do not meet one or more of the dimensional standards set forth in 49.25 Article IV such as lot area, lot depth, or lot width for the zoning district in which the lot is located.

A nonconforming lot may be used for any permitted use in its zoning district, if the use does not require a minimum lot size greater than the minimum lot size required by the zoning district.

Nonconforming lots may be developed for any use permitted in the zoning district if any associated district requirements may be met, such as setbacks and parking. In order for these lots to be developed, they must be certified as legally nonconforming (refer to page 10 of 19 in Attachment A). Nonconforming structures on these lots may be reconstructed in the same footprint, except that the structure cannot encroach into right-of-ways or across property lines.

As the existing code allows, when an undeveloped, nonconforming lot adjoins and has continuous frontage with one or more undeveloped lots and are under the same ownership, each lot may be developed with a single-family dwelling, unless located in the Industrial or Waterfront Industrial zoning districts.

5. *Nonconforming Parking*

Nonconforming parking is parking that does not meet the minimum on-site space requirements set forth in 49.40 Article II. As currently provided for in code, a use may be replaced or reconstructed with the same number of off-street parking spaces as were provided for the original building.

The proposed ordinance contains new language that clarifies that when a use (conforming or nonconforming) has a nonconforming number of on-site parking spaces, and later becomes

more conforming for off street parking spaces, the parking may not revert back to the less conforming number of off-street parking spaces.

An example of this is a single-family dwelling that was built prior to the requirement for two off-street parking spaces. Later, a single-car garage was added to the property, providing one off-street parking space. The garage cannot now be converted to living space and thereby eliminates the one off-street parking space, unless another off-street parking space is provided or a parking waiver [49.40.210(d)(6)] is approved.

6. *Overcoming the Presumption of Abandonment*

Nonconforming situations may be considered “abandoned” through a variety of ways. For example, if a nonconforming use is changed to an allowed use, or an approved conditional use, the nonconforming rights are lost.

However, there are also circumstances when a nonconforming situation is “presumed” to be abandoned. For example, if a structure associated with a nonconforming use has been vacant, or the use has been inactive for 365 days, the use is “presumed” abandoned.

The proposed ordinance includes a method for a property owner to “overcome” a determination that a nonconforming situation has been abandoned (refer to page 5 of 19 in Attachment A). The review of such a determination would be approved by the Director and may be appealed to the Planning Commission through the procedures set out in CBJ 49.20.

7. *New Review Processes for Certifying Legal Nonconforming Status*

The proposed ordinance creates two new review processes to address legal nonconforming situations: Certification of Legal Nonconforming Status and Nonconforming Situation Review.

Certification of Legal Nonconforming Status

Certification of legal nonconforming status provides the property owner the opportunity, and responsibility, for providing evidence proving that the nonconforming situation was allowed when it was established and has been continuously maintained over time. Examples of standard evidence to prove the nonconforming situation are provided in the ordinance, as are examples for proving the situation was maintained over time. The Certification review also determines the number of non-conforming dwelling units on sites that exceed the maximum residential density standards.

A certificate of legal nonconforming status is approved by the Director and may be appealed to the Planning Commission through the procedures set out in CBJ 49.20. An approved certificate of legal nonconforming status runs with the land. The fee proposed is the same as a certification of zoning compliance letter (\$150).

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Nonconforming Situation Review

Nonconforming Situation Review (NCSR) allows the Board of Adjustment to review, limit, or deny the following:

- A change of use to a different use which is prohibited by the zoning district;
- A change from a nonconforming, nonresidential use to an allowed residential use that exceeds the allowed density in RR, D1, D3, D5, D10SF, D10, D15, and D18 zones;

The NCSR provides for a public hearing before the Board of Adjustment. Public notice requirements are the same as for a Non-Administrative Variance or a Conditional Use Permit. The fee proposed is the same as for a Non-Administrative Variance (\$400). The Board of Adjustment may apply conditions to approvals. Findings must be made that consider the appropriateness of the proposal to the area, impacts to future development, external impacts of proposals, and neighborhood characteristics.

COMPLIANCE WITH THE COMPREHENSIVE PLAN

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

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

The City and Borough of Juneau is a vibrant State Capitol that values the diversity and quality of its natural and built environments, creates a safe and satisfying quality of life for its diverse population, provides quality education and employment for its workers, encourages resident participation in community decisions and provides an environment to foster state-wide leadership.

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

- ***A safe place to raise a family.*** *Maintain safe neighborhoods and circulation systems; provide public spaces and facilities that foster community interaction and cohesiveness.*
- ***Quality education from Pre-school to University levels.*** *Promote quality educational programs and experiences in the schools and lifelong learning for our residents as well as a healthy lifestyle with adequate recreational facilities, resources and programs. Support a vital arts community, celebrating our diverse cultural heritage and unique historic resources.*
- ***A balanced economy.*** *Ensure a balanced, sustainable, and diverse economy, actively encouraging employment opportunities for residents of all levels and ages that provide a livable wage and a dependable municipal tax base.*

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- **Natural resources.** *Highlight and protect our scenic beauty, protect our streams and fish and wildlife habitat and foster the sustainable use of our natural resources.*
- **A balanced community.** *Ensure a balance between natural resource protection and the built environment, the efficient provision of infrastructure and goods and services, and housing affordable to all income levels.*
- **Neighborhood livability and housing.** *Maintain the identity and vitality of our neighborhoods, actively pursuing affordable housing for a diversity of households while promoting compatible livability and high quality design in new buildings.*
- **Mobility.** *Provide an accessible, convenient and affordable transportation system that integrates vehicle, vessel, rail and aircraft transport with sustainable and innovative transportation options— including convenient and fast public transit service, particularly for commuters to work, and bicycle and pedestrian networks throughout the community.*
- **Involved citizenry.** *Solicit resident participation and leadership in implementing the Plan policies and actions from all sectors of the community, encouraging mutual understanding and cooperation among all.*

CHAPTER 2 - SUSTAINABILITY:

POLICY 2.1 TO BUILD A SUSTAINABLE COMMUNITY THAT ENDURES OVER GENERATIONS AND IS SUFFICIENTLY FAR-SEEING AND FLEXIBLE TO MAINTAIN THE VITAL AND ROBUST NATURE OF ITS ECONOMIC, SOCIAL, AND ENVIRONMENTAL SUPPORT SYSTEMS.

CHAPTER 4 – HOUSING:

POLICY 4.2. TO FACILITATE THE PROVISION OF AN ADEQUATE SUPPLY OF VARIOUS HOUSING TYPES AND SIZES TO ACCOMMODATE PRESENT AND FUTURE HOUSING NEEDS FOR ALL ECONOMIC GROUPS.

Implementing Action

4.2IA5 Encourage preservation of rental housing and avoid its conversion to transient housing or non-residential uses.

POLICY 4.4. TO FACILITATE THE PRESERVATION AND REHABILITATION OF EXISTING HOUSING, PARTICULARLY HOUSING AFFORDABLE TO LOW-INCOME RESIDENTS.

POLICY 4.7. TO ENCOURAGE PRESERVATION OF RESIDENTIAL STRUCTURES THAT ARE ARCHITECTURALLY AND/OR HISTORICALLY SIGNIFICANT TO THE CBJ AND WHICH CONTRIBUTE TO THE HISTORIC AND VISUAL CHARACTER AND IDENTITY OF THE NEIGHBORHOOD.

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CHAPTER 10 – LAND USE:

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

Implementing Action

10.2 - IA Continue to revise the land use code to define and allow, where appropriate, a variety of housing types and to facilitate their location in suitable locations. A diverse mix of housing types should be accommodated and facilitated in the community, including, but not limited to single room occupancy (SRO) units or their equivalent compact living unit type; loft housing; live-work units; artist studio housing in commercial or industrial structures; float homes, houseboats, and live-aboards; panelized, modular, “kit” and man fact red homes on permanent foundations; and other types of housing suitable to diverse residents’ lifestyles and budgets.

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

POLICY 10.7 TO DESIGNATE ON LAND USE AND ZONING MAPS, AND TO PROVIDE SERVICES TO, SUFFICIENT VACANT LAND WITHIN THE URBAN SERVICE AREA APPROPRIATELY LOCATED TO ACCOMMODATE FUTURE COMMERCIAL AND INDUSTRIAL USES.

Development Guideline 10.7 - DG2- D Residential, retail, office, personal service and similar non-industrial uses should not be permitted within heavy industrial districts, although light industry such as building contractors, repair services, storage yards, and similar business and household services would be compatible with heavy industrial uses.

10.7 - DG2- F Residential uses, other than caretaker units, should be prohibited in industrial zones.

Additionally, the Housing Action Plan, adopted by resolution 2780 in December 2016, indicates that for Juneau’s housing market to become “unstuck” more units of all types must be added. One of the plan’s recommendations is the preservation of existing affordable housing. Creating the nonconforming residential density situation, and allowing those units to be reconstructed, implements this recommendation.

The 2015 Juneau Economic Development Plan found that Juneau’s housing supply does not meet demand in terms of housing type, size, price, or location. One of its ten initiatives is to “Promote Housing Affordability and Availability”. The Juneau Economic Development Plan further

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strengthened the case for the critical need of housing for all ages and income groups in order to obtain and maintain a strong and stable economy.

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

COMPLIANCE WITH TITLE 49

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

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

The proposed amendment was drafted with the purpose and intent of Title 49 taken into account. If it is approved as drafted, then it will be found to be consistent with the above purposes.

FINDINGS

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

RECOMMENDATIONS

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

Presented by: The Manager
Introduced:
Drafted by: R. Palmer III

ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 2019-37

An Ordinance Amending the Land Use Code to Repeal and Replace the Nonconforming Development Code.

BE IT ENACTED BY THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU, ALASKA:

Section 1. Classification. This ordinance is of a general and permanent nature and shall become a part of the City and Borough of Juneau Municipal Code.

Section 2. Amendment of Chapter. Chapter 49.30 Nonconforming Development is repealed and replaced to read:

Chapter 49.30 - NONCONFORMING SITUATIONS

ARTICLE I. GENERAL

49.30.110 Purpose and intent.

This chapter provides standards for the review and development of legally nonconforming property, including a process for obtaining certification of legal nonconforming status by the Director, and a process for obtaining a nonconforming situation review by the Board of Adjustment. The intent is to reduce the negative or less desirable impacts of nonconforming situations; promote public health, safety and general welfare; and avoid unnecessary and unreasonable burdens to the use and development of property impacted by zoning changes. Alteration of nonconforming nonresidential situations in residential zones may be reviewed more strictly than nonconforming nonresidential situations in commercial or industrial zones,

to protect the livability and character of residential neighborhoods. Similarly, nonconforming residential situations in residential zones may be reviewed more leniently to the extent they are less likely to present a major disruption to the neighborhood and may provide desirable housing opportunities.

49.30.120 Application.

(a) This chapter applies to the following nonconforming situations, whether existing alone or in any combination:

- (1) nonconforming lots,
- (2) nonconforming structures,
- (3) nonconforming uses,
- (4) nonconforming residential densities,
- (5) nonconforming onsite parking spaces.

(b) This chapter does not apply to nonconforming signage, which is addressed in chapter 49.45.

A nonconforming situation is one that was allowed when created but became illegal by a subsequent change in the law and/or by the adoption or amendment of this title, and has been continuously maintained without interruption as specified in this chapter.

ARTICLE 2. STANDARDS

49.30.210 Nonconformities in general.

(a) *Continuation of nonconforming situations.* Except as otherwise provided in this chapter, nonconforming situations may continue.

(b) *Change of nonconforming situation to conforming situation.* Any nonconforming situation may be changed to a conforming situation by right. Once a nonconforming situation becomes

conforming, the nonconforming rights of that specific situation are lost and the nonconforming situation may not be re-established.

(c) *Ownership.* Nonconforming situations run with the land. A change in ownership does not affect the status of a nonconforming situation.

(d) *Routine maintenance and repair.* Nothing in this chapter prohibits normal maintenance and routine repairs. Examples of routine maintenance include, but are not limited to: roofing repair or replacement, window replacement, and structural repairs.

(e) *Discontinuation of nonconforming situation.* Except as otherwise provided in this chapter, the discontinuation of, or failure to maintain, a nonconforming situation for 365 consecutive days creates a presumption of abandonment of the nonconforming situation.

(f) *Certification of legal nonconforming status.* A property owner or agent may seek a certification of legal nonconforming status review and determination at any time, pursuant to the procedures set out in section 49.30.310.

(g) *Certification of legal nonconforming status prior to issuance of permit.* Prior to the issuance of a permit for work or development on the site where a nonconforming situation exists, certification of legal nonconforming status, pursuant to the procedures set out in section 49.30.310, is required.

(h) *Certification of legal nonconforming status prior to nonconforming situation review.* Certification of legal nonconforming status, pursuant to the procedures in section 49.30.310, is required to request a nonconforming situation review under section 49.30.320.

(i) *Structure deemed destroyed.* A nonconforming structure or structure containing a nonconforming use shall be deemed destroyed when the structure is damaged by any means to an extent of more than 75 percent of the cost of the replacement of the entire structure,

exclusive of foundations, using new materials. The extent of the damage shall be determined by the building official.

(j) *Intentional damage, destruction or demolition.* All nonconforming development rights provided by this chapter are lost when a nonconforming situation is intentionally damaged, destroyed or demolished by any means within the control of the owner or agent of the owner.

49.30.220 Abandonment of a nonconforming situation.

(a) The abandonment of a legal nonconforming situation extinguishes all nonconforming rights and any subsequent development of the property shall comply with all applicable provisions of this title.

(b) A nonconforming situation will be presumed to be abandoned if:

- (1) The owner has indicated in writing that the nonconforming situation is being permanently discontinued or abandoned;
- (2) A nonconforming situation is replaced with a conforming situation;
- (3) A nonconforming situation, approved through section 49.30.320 nonconforming situation review, has replaced a prior nonconforming situation;
- (4) An approved conditional use, has replaced the nonconforming use; or
- (5) The building or structure that houses the nonconforming situation has been intentionally destroyed, demolished or removed.
- (6) The owner has taken one or more actions showing an intent to abandon the nonconforming situation.
- (7) The structure(s) associated with the nonconforming situation has been vacant or the nonconforming use or situation has been inactive or discontinued for a period of 365 days.

49.30.225 Overcoming presumption of abandonment.

(a) A presumption of abandonment is rebuttable and may be overcome upon a finding by the director that the evidence submitted establishes all of the following:

- (1) The owner has been maintaining the land and structure in accordance with all applicable regulations, including applicable building and fire codes;
- (2) The owner has been maintaining or pursuing all applicable permits and licenses;
- (3) The owner has filed all applicable tax documents;
- (4) The owner has been engaged in activities that would affirmatively prove there was no intent to abandon, such as actively and continuously marketing the land, business or structure for sale or lease; and
- (5) The owner has applied for a nonconforming situation review in accordance with section 49.30.320.

(b) The burden of proof for overcoming a presumption of abandonment is on the applicant.

(c) The director's decision under this section may be appealed to the Planning Commission pursuant to CBJ 49.20.110.

49.30.230 Nonconforming uses.

(a) *Change of nonconforming use to another nonconforming use.* A nonconforming use may be changed to another nonconforming use if approved through a nonconforming situation review, pursuant to section 49.30.320, including a change from a nonconforming nonresidential use to an allowed residential use that exceeds the allowed density in a RR, D1, D3, D5, D10SF, D10, D15 and D18 zones.

(b) *Change of nonconforming use to conditional use.* A nonconforming use may change to a conditional use if approved through the conditional use permit process pursuant to 49.15.330.

(c) *Expansion of nonconforming use.* A nonconforming use within a structure may be extended to any portion of the existing structure, but may not be expanded to other structures or to other land outside of the original structure. A nonconforming use of land may not be increased or extended to occupy a greater area of land.

(d) *Operational modifications to nonconforming use.* Operational modifications to a nonconforming use are permissible and do not constitute a change or expansion of the nonconforming use, as long as the external impacts of such modification, if any, are nominal and do not impose a significant, new impact that is out of harmony with the neighborhood as determined by the director.

(e) *Nonconforming residential uses in industrial and waterfront industrial zoning districts.* When there is a nonconforming residential use in the industrial and waterfront industrial zoning districts, and the structure containing the dwelling unit(s) is damaged or destroyed by fire or other causes beyond the control of the owner the following applies:

- (1) Nonconforming residential use rights are maintained and the structure may be rebuilt within 3 years if:
 - (A) Nonconforming residential use is accepted as legally nonconforming with a certification of legal nonconforming status, pursuant to the procedures set out in section 49.30.310.
 - (B) Written notice of intent to reconstruct is provided to the department within 365 days.
 - (C) The structure is not deemed destroyed by the building official.

- (D) The reconstruction complies with existing associated district-specific dimensional, development and design standards such as setbacks, parking, landscaping etc. that would apply to new development.
- (2) If a temporary certificate of occupancy has not been obtained for the structure within three years, the nonconforming residential use rights are lost, and all existing and future development on the site must comply with all provisions of current CBJ Code.
- (3) The director, with the concurrence of the building official, may approve one 18-month extension for the reconstruction of the nonconforming residential use upon written request showing good cause.

49.30.240 Nonconforming residential densities.

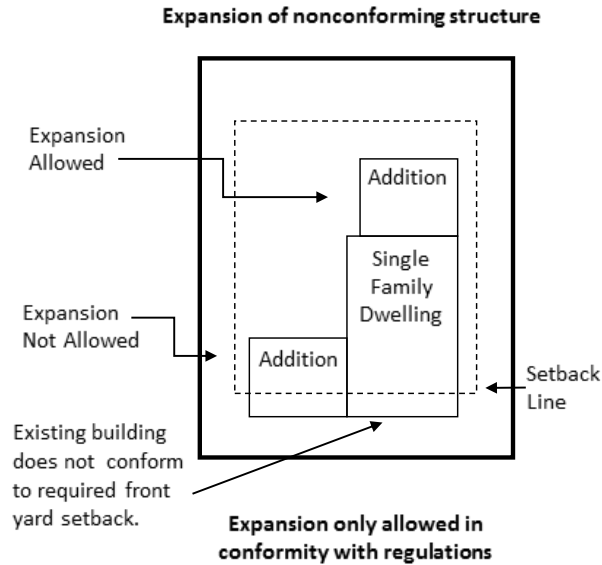
- (a) *Modification or improvement to existing dwelling units.* Existing dwelling units that constitute a nonconforming residential density may be modified or improved, subject to the following:
 - (1) Nonconforming residential density is accepted as legally nonconforming with a certification of legal nonconforming status, pursuant to the procedures set out in section 49.30.310 prior to commencing any modification or improvement that requires a building permit.
 - (2) The current dimensional lot requirements such as setbacks and lot coverage, and on-site parking requirements are met unless otherwise provided in this chapter.
- (b) *Accidental destruction.* A structure containing nonconforming residential densities damaged by fire or other causes beyond the control of the owner may be reconstructed, regardless of the cost of replacement, subject to the following:

- (1) Nonconforming residential density is accepted as legally nonconforming with a certification of legal nonconforming status, pursuant to the procedures set out in section 49.30.310 prior to any work that requires a building permit.
 - (2) Written notice of intent to reconstruct is provided to the department within 365 days.
 - (3) The total number of dwelling units established by the certificate of legal nonconforming status may not be increased.
 - (4) Reconstruction may be in the existing footprint, with the exception of encroachments into public rights-of-way or adjacent property.
 - (5) If a temporary certificate of occupancy has not been obtained for the structure within three years, the nonconforming residential use rights are lost, and all existing and future development on the site must comply with all provisions of current CBJ Code.
 - (6) The director, with the concurrence of the building official, may approve one 18-month extension for the reconstruction of the nonconforming residential use upon written request showing good cause.
- (c) *Occupancy status.* Nonconforming density rights continue even when a building has been unoccupied for any length of time.

49.30.250 Nonconforming structures.

- (a) A nonconforming structure may be enlarged or altered as long as the enlargement or alteration does not increase the nonconformity. See: Illustration #1.

Illustration #1



- (b) A certification of legal nonconforming status pursuant to section 49.30.310 must be obtained prior to any enlargement, alteration or reconstruction of a nonconforming structure.
- (c) A nonconforming structure may add additional stories through the conditional use process, pursuant to CBJ 49.25.430(4)(M),
- (d) Tenant improvements or renovations within an existing structure shall not be considered an enlargement or an alteration for purposes of this section.
- (e) This subsection shall not be construed to allow the expansion of a nonconforming density or use of structure, which is governed by sections XXXX.
- (f) With or without legal nonconforming status certification, if a nonconforming structure is moved for any distance whatsoever it shall thereafter conform to the code provisions applicable to the zone in which it is relocated.

(g) *Accidental destruction.* When a nonconforming structure or nonconforming portion of a structure is damaged by fire or other causes beyond the control of the owner and deemed destroyed by the building official, it shall not be reconstructed except in conformity with the provisions of this code. This does not preclude the reestablishment of nonconforming residential density and its footprint as allowed by subsection 49.30.240(b).

49.30.260 Nonconforming lots and lot fractions.

A lot rendered substandard in area, depth or width by the adoption of, or amendments to, this title may be developed in conformity with all other provisions of this title even though such lot fails to meet currently applicable minimum area, width, and/or depth requirements, subject to the following provisions:

- (1) The lot is accepted as legally nonconforming with certificate of legal nonconforming status, pursuant to the procedures set out in section 49.30.310;
- (2) The use does not have a minimum lot size requirement greater than the minimum lot size required by the underlying zoning district unless otherwise authorized by this title;
- (3) Any associated district-specific, dimensional, and development and design standards such as setbacks, parking, landscaping, etc. are met;
- (4) When a nonconforming lot or lot fraction contains a dwelling unit that is damaged or destroyed for any reason, the structure may be reconstructed in the existing footprint, with the exception of encroachments into public rights-of-way or adjacent lots;
- (5) When an undeveloped nonconforming lot adjoins and has continuous frontage with one or more other undeveloped lots under the same ownership, each lot may be developed with single-family dwellings, unless located in the industrial or waterfront industrial

zoning districts. The manner in which the lots were acquired or the fact that the lots were separately described on a deed shall not be considered.

49.30.270 Nonconforming on-site parking spaces.

A structure may be replaced or reconstructed under this subsection with the same number of off-street parking spaces as were provided for the original building. Any use that had nonconforming on-site parking and later became more conforming for on-site parking spaces provided, may not revert to the original, lesser, nonconforming parking unless they qualify for and obtain a parking waiver in accordance with subsection 49.40.210(d) Exception (5) Fee-in-Lieu or (6) Parking Waivers.

ARTICLE 3. REVIEWS

49.30.310 Certification of legal nonconforming status.

- (a) *Purpose.* This review is intended to determine whether legal nonconforming situation rights exist. In addition, it is intended to determine the current legal use, based on the use categories in section 49.25.300. In the case of a nonconforming density, this review is also intended to determine the maximum legal nonconforming density.
- (b) *When to seek certification of legal nonconforming status.* At any time, a property owner may apply for certification of legal nonconforming status. A property owner must apply for and obtain a certificate of legal nonconforming status prior to applying for a nonconforming situation review. A property owner must also apply for certification of legal nonconforming status prior to applying for a permit required by this title for activity on a lot or in a structure containing a nonconforming situation.
- (c) *Certification.* A nonconforming situation will be certified as having legal nonconforming status, if the Director finds the applicant's evidence establishes all of the following:

- (1) The nonconforming situation is present on or with the property because the law allowed or did not prohibit the situation when it was created or established.
 - (2) The nonconforming situation has been continuously maintained without interruption.
 - (3) The nonconforming situation has not been abandoned.
- (d) *Contents of application.* An application for certification of legal nonconforming status shall be filed with the department on forms approved by the Director, with evidence establishing the factors set out in (c) above. The application must identify and include each nonconforming situation believed to exist on the subject property.
- (e) *Relevant evidence.*
- (1) Evidence that may be relevant to legal nonconforming status may include, but is not limited to:
 - (A) Building, land use, or development permits;
 - (B) Zoning codes or maps;
 - (C) Recorded plats;
 - (D) Dated photographs;
 - (E) Sanborn Maps.
 - (2) Evidence that may be relevant to whether the nonconforming use or other situation has been continuously maintained over time may include but is not limited to:
 - (A) Utility bills;
 - (B) Income tax records;
 - (C) Business licenses;
 - (D) Telephone listings,
 - (E) Advertisements in dated publications;

- (F) Building, land use, or development permits;
 - (G) Insurance policies;
 - (H) Leases;
 - (I) Dated aerial photos;
 - (J) Insurance maps that identify use or development, such as the Sanborn Maps; or
 - (K) Land use and development inventories prepared by a government agency.
- (f) *Decision.* The Director shall review the applicant's evidence and issue a written decision that includes separate certification findings on each nonconforming situation included in the application. The director's decision under this section may be appealed to the Planning Commission pursuant to section 49.20.110.
- (g) *Burden of proof.* The burden of proof to establish legal nonconforming status is on the applicant.
- (h) *Fee.* An application for a certification of legal nonconforming status shall include a fee as established by chapter 49.85.

49.30.320 Nonconforming situation review.

- (a) *Purpose.* A nonconforming situation review provides an opportunity for the Board of Adjustment to review, limit, approve or deny proposed changes to certain nonconforming situations.
- (b) *Applicability.* The following may be allowed through a nonconforming situation review:
- (1) The change of a nonconforming use to a different use, also prohibited by the base zone.
 - (2) In RR, D1, D3, D5, D10SF, D10, D15 and D18 zones, a change from a nonconforming nonresidential use to an allowed residential use that exceeds the allowed density.

- (c) *Submittal.* An application for a nonconforming situation review shall be submitted to the board of adjustment through the department on forms approved by the Director.
- (d) *Fee.* An application for a nonconforming situation review shall include a fee as established by 49.85
- (e) *Public Notice.* Upon determination the application for a Nonconforming Situation Review is complete, the public notice according to section 49.15.230, shall be given prior to a public hearing on the application by the board of adjustment.
- (f) *Approval criteria.* An application for a nonconforming situation review shall be reviewed by the Board of Adjustment at a public hearing; upon review of the nonconforming situation, the Board of adjustment shall issue a decision supported by written findings. The decision may include special restrictions or conditions deemed necessary to further the intent of this code.
 - (1) All nonconforming situation review approvals require the following finding:
 - (A) The value of the adjoining property will not be negatively affected greater than that anticipated from other permitted or conditionally permitted uses in this district.
 - (B) Public services and facilities are or will be, prior to occupancy, adequate to serve the proposed use, density and structure.
 - (C) Considering harmony in scale, bulk, coverage and density, generation of traffic, the nature and intensity of the proposed use, and other relevant effects, the proposal will not cause undue harmful effect upon desirable neighborhood character and harmony.
 - (D) The proposal will not materially endanger the public health or safety;

(2) Additional findings required for approving nonconforming use proposals:

- (A) The proposed nonconforming use is more appropriate to the district than the existing nonconforming use and does not significantly jeopardize future development of the area in compliance with the intent of the zoning district;
- (B) Any characteristics of use that are out of compliance with this title are not changed to become less compliant with the requirements of this title;
- (C) The nonconforming use will not result in the creation of additional nonconformities or the need for any variances;
- (D) With mitigation measures, there will be no net increase in overall detrimental impacts (over the impacts of the last legal use or development) on the surrounding area taking into account factors such as:
 - (i) The hours of operation;
 - (ii) Vehicle trips to the site and impact on surrounding on-street parking;
 - (iii) Noise, vibration, dust, odor, fumes, glare, and smoke;
 - (iv) Screening, public safety, neighborhood harmony;
 - (v) The amount, location, and nature of any outside displays, storage, or activities.
- (E) If the nonconforming use is in a single-family or multi-family residential zone, and if any changes are proposed to the site, the appearance of the new use or development will not lessen the residential character of the area. This is based on taking into account factors such as:
 - (i) Building scale, placement, and facade;
 - (ii) Parking area placement;

- (iii) Buffering or screening and the potential loss of privacy to abutting residential uses; and
 - (iv) Lighting and signs.
 - (F) Any characteristics of use that are out of compliance with this title are not changed to become less compliant with the requirements of this title.
- (3) Additional findings required for approving nonconforming residential density proposals
 - (A) When a nonconforming use will become a nonconforming residential density it will have no net increase in overall detrimental impacts on the surrounding area taking into consideration factors such as:
 - (i) Vehicle trips and impact on surrounding on street parking;
 - (ii) Lot coverage, vegetative cover;
 - (iii) Nonconforming residential density shall not exceed 1.5 times the base density permissible for the underlying zoning district in RR, D1, D3, D5, and D10SF zoning districts, and 1.25 times the base density permissible for the underlying zoning district in the D10, D15, D18, and LC zoning districts, rounded to the nearest whole number.

Section 3. Amendment of Section. CBJ 49.80.120 Definitions, shall be amended to incorporate the following definitions in alphabetical order:

49.80.120 Definitions.

...

Nonconforming parking means the provision of less than the number of on-site spaces required

under this title but met the number of on-site spaces required at the time the use was established.

Nonconforming residential density means a residential use that is an allowed use in the zoning district and that was constructed at a lawful density, but which subsequently, due adoption, revision or amendment of a zoning ordinance, now has greater density than is allowed in the current zoning district.

Nonconforming situation means a situation that was lawful prior to the adoption, revision or amendment of a zoning ordinance, but which fails by reason of such adoption, revision or amendment to conform to present requirements. A nonconforming lot, use, number of on-site parking spaces, structure or density, or any combination thereof.

Nonconforming use means a use that was allowed by right when established or a use that obtained a required land use approval when established, but that subsequently, due to a change in the zoning district or zoning regulations, the use, or the amount of area devoted to the use, is now not permitted under the current zoning designation.

Abandon includes the following:

- (a) with respect to a use, the cessation of such use for any length of time, combined with intent to indefinitely cease such use, or;
- (b) with respect to a structure, the cessation of occupancy of such structure for any length of time, combined with intent to indefinitely cease occupancy of such structure.

Change means, with respect to a nonconforming use, that the nonconforming use has been converted to a different use for any period of time, regardless of intent.

Discontinued means that a nonconforming use has ceased, and has not substantially resumed, for a period of 365 consecutive days regardless of intent.

Occupy or occupancy means actual physical occupancy of a structure or lot, regardless of intent.

Primary use means the primary activity actually conducted in a serious, substantial, and ongoing manner on a lot or in a structure, and for which the lot or structure is actually and primarily occupied and maintained, regardless of intent.

Use means activity actually conducted on a lot or in a structure, and for which the lot or structure is actually occupied and maintained, regardless of intent.

...

Section 4. Amendment of Section. CBJ 49.85.100 Generally, is amended to read:

49.85.100 Generally.

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

...

(10) Board of Adjustment.

(A) Administrative variance, \$120.00;

- (B) Non-administrative variance, \$400.00;
- (C) Alternative development permit, \$400.00-;
- (D) Nonconforming situation review – to Planning Commission \$400.00.

...

- (20) Certification of legal nonconforming status – staff review \$150.00.

Section 5. Effective Date. This ordinance shall be effective 30 days after its adoption.

Adopted this _____ day of _____, 2019.

Beth A. Weldon, Mayor

Attest:

Elizabeth J. McEwen, Municipal Clerk



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

November 27, 2018

Memorandum

To: Planning Commission Committee of the Whole

From: Beth McKibben, AICP, Senior Planner

A handwritten signature in black ink, appearing to be 'BMc', is located to the right of the 'From' field.

RE: AME2018 0009 Proposed amendments to 49.30 – Nonconforming Development

Attachments:

A – Proposed language

B – Title 49 minutes –10/9/18

C – October 5, 2018, memorandum to Title 49 Committee with following attachments:

- Title 49 minutes – 07/19/17, 08/16/17, 09/20/17, 10/11/17
- June 21, 2017, memorandum to Planning Commission and attachment - American Planning Association Planning Advisory Service Quick Notes

D – Real Estate Law Journal article – “Abandonment, Discontinuance and Amortization of Nonconforming Uses: Lessons for Drafters of Zoning Regulations”

Introduction

The Title 49 Committee met on October 9, 2018, to further consider the proposed amendments to 49.30, Nonconforming Development. The background and summary information provided at that meeting are not revisited in this memorandum.

Discussion

The proposed language would repeal and replace all of 49.30. The proposed language clarifies and defines the following non-conforming situations:

- Nonconforming use,
- Nonconforming residential density,
- Nonconforming structure,
- Nonconforming lot, and
- Nonconforming parking.

Nonconforming signs are addressed in 49.45. Staff proposes to address signs when that section of Title 49 is amended. Language for nonconforming development in stream buffers will be developed with the work on stream buffers.

It is possible for a site to have more than one nonconforming situation or a combination of several nonconforming situations.

The regulations apply only to those nonconforming situations that have established “legal nonconforming status”. Nonconforming situations which were not allowed, have not been approved, or have not been maintained over time have no legal right to continue. Nonconforming situations may be changed to a conforming situation through the appropriate permitting process (by right). Once that happens, the nonconforming rights are lost and the nonconforming situation may not be reestablished.

Nonconforming Use

Nonconforming use, in general, is a use that was allowed or legally permitted when established but due to changes in zoning or zoning regulations is no longer allowed. The proposed language allows for nonconforming uses to continue to operate. Following the October 2018 Title 49 Committee meeting, changes were made to allow changes in the operation so long as the external impacts of the changes comport or harmonize with the neighborhood. A nonconforming use could be changed to another nonconforming use through a nonconforming situation review (discussed later). In the previous draft, this was to be approved by the Director. Additionally, in the residential zoning districts, through a nonconforming situation review a nonconforming, nonresidential use could be changed to an allowed residential use that exceeds the allowed density. This is one method to remove more egregious nonconforming uses from residential areas and promote more housing. A nonconforming use may change to a conditional use allowed in the zoning district with an approved Conditional Use Permit. In this case, the nonconforming rights would then be lost. Nonconforming uses may be expanded within the existing original building but may not be expanded to other buildings or take up a greater area of land. New language has been added that addresses the loss of nonconforming use status. Once a nonconforming use is abandoned, subsequent uses must comply with current code unless the use is reestablished through the nonconforming situation review. When a nonconforming use is accidentally destroyed and the cost of repair is more than 75% of the cost of replacement, then the nonconforming use cannot be reestablished. At the October Title 49 Committee meeting, there was some discussion about the 75% threshold. This is what is currently in code. This will be discussed in more detail later in this report.

Nonconforming Residential Density

Nonconforming residential density is a new concept introduced in the proposed language. This is when a residential use is an allowed use in the zoning district and was constructed at a lawful density at the time but due to changes in the zoning or zoning regulations now has greater density than is currently allowed in the district. This nonconforming situation is not currently recognized by code. The addition of this concept implements the Housing Action Plan by preserving existing housing. Additionally, it addresses the problem of owners of nonconforming densities struggling to sell their homes because lenders are reluctant to lend money when the units cannot be reconstructed in the event of a catastrophe. The reconstruction of nonconforming residential densities may be approved with approved proof of nonconforming status. Nonconforming densities may not be altered or reconstructed until proof of nonconforming status is established. Nonconforming residential density rights continue even if a building is unoccupied for any amount of time. If the building is accidentally destroyed or damaged, as long as it is reconstructed within three years the nonconforming density rights are maintained. Furthermore, this reconstruction can be in the same footprint on the original location if the structure was nonconforming for setbacks or lot coverage. However, the reconstructed building cannot encroach into rights-of ways or across property lines. There is no threshold for the cost repair as there is for reconstruction of nonconforming uses or nonresidential structures. If the reconstruction is not substantially complete within three years, nonconforming density rights are lost, the site is considered vacant, and redevelopment must comply with current codes. For sites with only one unit that are nonconforming for density, the nonconforming dwelling unit may not be reconstructed when the cost of repairs exceeds 75% of the cost of replacement.

of the building. Currently only the Industrial and Waterfront Industrial zoning districts would have a situation of a nonconforming single dwelling unit. These are treated more strictly than other nonconforming residential densities because there is a need for industrial land in Juneau, and residential uses are generally incompatible with industrial uses. Nonconforming residential density rights are lost when the structure is intentionally destroyed.

Nonconforming Structure

Nonconforming structures are those that do not meet one or more of the dimensional standards such as height, setbacks, or lot coverage. These structures can be continued and maintained. They may be expanded, but only if the change does not increase the nonconformity. An example of this is a structure that is nonconforming because it does not meet the current front yard setback. An addition to the rear or side of the building could be added if it complies with the current setback requirements. CBJ 49.25.430(4)(M) provides that nonconforming structures may add additional stories with an approved Conditional Use Permit. No amendments are proposed to this. If a nonconforming structure is moved, it must conform to current code requirements. As discussed above, a nonconforming structure with nonconforming density may be reconstructed on the original location. All other nonconforming structures must be reconstructed in compliance with current regulations when they are accidentally damaged and the cost of repair is greater than 75% of the cost of replacement. If a nonconforming structure is intentionally destroyed, it may only be reconstructed in accordance with current codes. This is the same as nonconforming uses and a nonconforming single residential dwelling, which can only be reconstructed when the damage is accidental. It is different than nonconforming density (more than one unit) which can be reconstructed regardless of the cost of replacement when it is damaged accidentally. When a nonconforming structure is abandoned or brought into conformity, the nonconforming status is lost. Previous drafts provided for the reconstruction of nonconforming structures to be the same whether the damage was accidental or intentional. Staff recommends that nonconforming rights be lost when the damage is intentional.

Nonconforming Lot

A nonconforming lot is one that does not comply with the minimum lot area, depth or width, or other lot requirements for the district in which it is located. The current language reflects the discussion of the Title 49 Committee in October. Any nonconforming lot can be used for any permitted use in the district if the use does not require a minimum lot size greater than the minimum lot size required by the zoning district. The concepts currently under discussion for the Auke Bay area zoning project include the concept of a minimum lot size for certain uses that is larger than the minimum lot area for the district. Additionally, nonconforming lots may be developed for any use permitted in the district if any associated district requirements can be met, such as setbacks and parking. In order for these lots to be developed, they must be accepted as legally nonconforming. Structures on these lots may be reconstructed on the same footprint, except they may not encroach onto rights-of-ways or onto adjacent property. As current code allows, when an undeveloped nonconforming lot adjoins and has continuous frontage with one or more undeveloped lots and they are under the same ownership, each lot may be developed with a single family dwelling.

Nonconforming Parking

As currently provided for in code, a use may be replaced or reconstructed with the same number of off street parking spaces as were provided for the original building. New language is proposed that clarifies that when a use had nonconforming parking and later becomes more conforming for parking, it may not revert back to the less conforming parking. An example of this is a single family home that was built prior

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to the requirement for two off street parking spaces. Later, a single car garage was added to the site, providing one off street parking space. The garage cannot now be converted to living space and thereby eliminate the one off street parking space, unless another off street parking space is provided or a parking waiver is approved.

Overcoming the Presumption of Abandonment

New language has been added since the Title 49 Committee's last review. This provides a method for a property owner to "overcome" a determination that a nonconforming situation has been abandoned. This would be approved by the Director and could be protested to the Board of Adjustment through a nonconforming situation review.

Nonconforming Status

The proposed language creates a process called "proof of nonconforming status". This is a review process to establish legal nonconforming status. It places the responsibility on the property owner to provide evidence proving that the nonconforming situation was allowed when it was established and has been continuously maintained over time. Legal nonconforming status is approved by the Director and may be protested to the Board of Adjustment through the nonconforming situation review. Examples of standard evidence to prove the nonconforming situation is listed, as are examples for proving the situation was maintained over time.

Nonconforming Situation Review

A nonconforming situation review (NCSR) is a new process that allows the Board of Adjustment to review, limit, or deny the following:

- A change of use to a different use which is prohibited by the base zone.
- Expansion of nonconforming use.
- A change from a nonconforming, nonresidential use to an allowed residential use that exceeds the allowed density in RR, D1, D3, D5, D10SF, D10, D15 and D18 zones.
- Reconstruction of the non-conforming dwelling units on sites that exceed the maximum residential density standards when an applicant does not provide standard evidence for a Proof of Nonconforming Situation or when the Director does not find the evidence to be satisfactory.
- A Director determination that the evidence provided did not satisfactorily overcome the presumption of abandonment when the Director does not find the evidence to be satisfactory.

The procedure for the NCSR has not yet been worked out. It likely will be based on the variance process, requiring a pre-application conference and public notices, including the on-site public notice sign. The Board of Adjustment may apply conditions to approvals. Findings must be made that consider the appropriateness of the proposal to the area, impacts to future development, external impacts of proposals, and neighborhood characteristics.

Miscellaneous

CBJ 49.15.590 addresses right-of-way acquisitions. Prior to the adoption of Ordinance 2015-03(AM), CBJ could not approve right-of-way acquisitions that created nonconforming situations such as lots less than the minimum lot size or buildings that would no longer meet required setbacks. The adoption of this ordinance provides the opportunity for the Planning Commission to approve right-of-way acquisitions that create nonconforming situations if each lot has at least one practical building site that can be reasonably developed. The proposed nonconforming regulations will not affect this section of code. The

nonconforming situations created by these acquisitions will be considered legally nonconforming and should be documented as such.

Staff was asked if CBJ has powers separate from the nonconforming section of code to address uses that are deemed a public hazard. In general, a legally nonconforming use that is well operated and maintained has the right to continue operating. Some nonconforming codes provide for amortization of nonconforming uses, meaning the nonconforming use is given a period of time, such as three or five years, to become conforming or move. If a nonconforming use is not being maintained or well operated, there are other processes outside of Title 49 that can be used to address these uses.

At the October Title 49 Committee meeting there was discussion about language currently in code stating "...the repair cost of the structure is more than 75 percent of the cost of the replacement of the entire building, exclusive of foundations, using new materials. The extent of building damage shall be determined by the building official." The current proposal addresses reconstruction as follows:

- Nonconforming use – If intentionally destroyed, nonconforming rights are lost, and the redevelopment must comply with current regulations. If accidentally destroyed to the 75% threshold, then the nonconforming use cannot be reconstructed/developed.
- Nonconforming density for more than one dwelling unit – If intentionally destroyed, nonconforming density rights are lost. If accidentally destroyed, there is no replacement cost threshold, and nonconforming density may be reconstructed.
- Nonconforming density for one dwelling unit – If intentionally destroyed, nonconforming density rights are lost. If accidentally destroyed to 75% cost threshold, the nonconforming density cannot be reconstructed.
- Nonconforming structure – If intentionally destroyed, nonconforming rights are lost and the new structure must comply with current regulations. If accidentally destroyed to the 75% threshold, the reconstruction must comply with the current dimensional standards.

In general, the goal is when a nonconforming situation is destroyed, it is to be replaced in conformity with the current regulations. If the nonconformity that was destroyed was a use, the objective is to have it redeveloped in an area where it could legally be permitted. Research show that communities use different values for determining when nonconforming rights are lost, with 50% being the most common. Juneau's 75% is on the high end of the range. At the October Title 49 Committee meeting, there was also discussion about using a different criterion than the cost of reconstruction. Cost of reconstruction is not difficult to obtain and is not subjective. It was suggested we consider the cost of making the site useful for something else. This would be challenging information to obtain because of the wide variation of future development options.

1
2 **Purpose**

3 When a zoning ordinance or other land use regulation is adopted or amended, or when the
4 zoning district designation applicable to a lot changes, then as a result a previously lawful lot,
5 structure, density or use may no longer be allowed. Such previously lawful use, density,
6 structure or lot shall be considered a nonconforming use, density, structure or use. Such
7 nonconformities may continue, subject to the requirements of this chapter and any other
8 provisions of this Code that expressly apply to nonconforming lots, structures, density or uses.

9 This chapter provides methods to determine whether situations have legal nonconforming
10 status. This is based on whether they were allowed when established, and if they have been
11 maintained over time. This chapter also provides a method to review and limit nonconforming
12 situations when changes to those situations are proposed. The intent is to protect the character
13 of the area by reducing the negative or undesired impacts from nonconforming situations. The
14 regulations ensure that the uses and development may continue and that the zoning
15 regulations will not cause unnecessary burdens to property impacted by the zoning change.

16 Nonconforming situations that have a lesser impact on the immediate area have fewer
17 restrictions than those with greater impacts. Nonconforming nonresidential uses in residential
18 zones are treated more strictly than those in commercial or industrial zones to protect the
19 livability and character of residential neighborhoods. In contrast, nonconforming residential
20 developments in residential zones are treated less strictly because they do not represent a
21 major disruption to the neighborhood and they provide needed housing opportunities.

22 **Nonconforming Situations**

23 A specific site may be nonconforming because it contains a nonconforming use, a, an allowed
24 residential use that exceeds the allowed density, nonconforming structure, nonconforming lot,
25 or a combination of these. Nonconforming uses, nonconforming residential densities,
26 nonconforming structures and nonconforming lots are defined in Chapter 49.80, Definitions.

27 **Applicability**

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The nonconforming situation regulations apply only to those nonconforming situations which were allowed when the situation was established or which were approved through a land use review. Additionally, they must have been maintained over time. These situations have legal nonconforming status. Nonconforming situations which were not allowed when established or have not been maintained over time have no legal right to continue and must be removed.

Ownership. The status of a nonconforming situation is not affected by changes in ownership.

Change to a conforming situation. A nonconforming situation may be changed to a conforming situation by right. Once a conforming situation occupies the site, the nonconforming rights are lost and a nonconforming situation may not be re-established.

Maintenance. Normal maintenance and repair of nonconforming situations is allowed.

Nonconforming Uses

Continued operation. Nonconforming uses may continue to operate. Changes in operations, such as changes in ownership, hours of operation and the addition or subtraction of permissible accessory uses, are allowed provided exterior changes, and changes in hours of operation, or other external impacts of such changes comport with the neighborhood.

Change of use. Any nonconforming use may be changed to another nonconforming use through the nonconforming situation review.

In RR, D1, D3, D5, D10, D15 and D18 zones, a change from a nonconforming nonresidential use to an allowed residential use that exceeds the allowed density may be allowed through a nonconforming situation review.

Comment [BM1]: An example of this is conversion of a storefront in a D5 zone (nonconforming use) to a triplex (allowed use, nonconforming residential density).

Change to conditional use. A nonconforming use may change to a conditional use if approved through a conditional use review. Once an approved conditional use occupies the site, the nonconforming rights are lost and a nonconforming use may not be re-established.

Expansions. A use made nonconforming due to a change in the zone or zoning regulations may be expanded throughout any portion of the existing building.

A nonconforming use may not be expanded to other buildings or to land outside the original building and a nonconforming use of land may not be enlarged or increased or extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of the regulations that make the use nonconforming except when such expansion is approved through a nonconforming situation review. Expansion of nonconforming uses, land or structures, cannot be considered until proof of nonconforming status is established.

Loss of nonconforming use status.

A nonconforming use shall be presumed abandoned and its nonconforming rights extinguished where any one of the following has occurred:

The owner has indicated, in writing intent to abandon the use.

A conforming use has replaced the nonconforming use.

A different nonconforming use has been approved by the Board of Adjustment through the Nonconforming Situation Review.

The building or structure that houses the nonconforming use has been removed.

The use has been discontinued, has been vacant, or has been inactive for a continuous period of at least one year, unless the owner can demonstrate that the owner has been making substantial efforts to continue the use.

Discontinuance. Once abandoned, the prior legal nonconforming status of the use shall be lost and any subsequent use of the property shall comply with all applicable provisions of this title, unless the nonconforming use is reestablished through the nonconforming situation review.

A nonconforming use that has been discontinued may request re-establishment through a nonconforming situation review. Such request must be made within 365 days of cessation of the use.

Accidental destruction. When a nonconforming use is damaged by fire or other causes beyond the control of the owner, the re-establishment of the nonconforming use is prohibited if the repair cost of the structure is more than 75 percent of the cost of the replacement of the entire building, exclusive of foundations, using new materials. The extent of building damage shall be determined by the building official.

Intentional destruction. When a structure containing a nonconforming use is intentionally damaged by fire or other causes by the owner, the reestablishment of the nonconforming use is prohibited.

Nonconforming Residential Densities

Changes to dwellings.

Generally. Existing dwelling units may continue, may be removed or enlarged, and amenities may be added to the site provided that existing dimensional requirements such as setbacks and lot coverage are met.

Sites that exceed the maximum residential density standard. On sites that exceed the maximum residential density standards, reconstruction of the non-conforming dwelling units may be approved once proof of nonconforming status is established.

Nonconforming densities may not be altered or reconstructed until proof of a nonconforming status is established.

No increase in the number of units from that established through the proof of nonconforming status.

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113 The Director's decision on number of dwelling units established by the proof of nonconforming
114 status may be protested to the Board of Adjustment through a nonconforming situation review.

115 **Discontinuance and damage.**

116 **Building unoccupied but standing.** Nonconforming residential density rights continue even
117 when a building has been unoccupied for any length of time.

118 **Accidental damage or destruction.**

119 **More than one dwelling unit.** When there is more than one dwelling unit on a site, and when
120 the site is nonconforming for residential density, the following applies if a structure containing
121 dwelling units is damaged or destroyed by fire or other causes beyond the control of the owner:

122 If the structure is substantially complete within 3 years, nonconforming residential
123 density rights are maintained;

124 If the structure is not substantially complete within 3 years, the nonconforming
125 residential density rights are lost, and the site is considered vacant;

126 If the structure is also nonconforming such building may be replaced or reconstructed to
127 the same footprint on the original location with the exception of encroachments into public
128 rights-of-way or adjacent property.

129

130 **One dwelling unit.** When there is only one dwelling unit on a site, and when the site is
131 nonconforming for residential density, the following applies if the structure containing the
132 dwelling unit is damaged or destroyed by fire or other causes beyond the control of the owner:

133 If the repair cost is more than 75, percent of the cost of the replacement of the entire
134 structure, exclusive of foundations, using new materials, nonconforming residential density
135 rights are maintained and the structure may be rebuilt within 3 years if it complies with the
136 existing associated district-specific, dimensional, and development and design standards such
137 as setbacks, parking, landscaping, etc. (except for density) that would apply to new

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138 development on the site. The extent of building damage shall be determined by the building
 139 official. If the structure is not rebuilt within 3 years, the nonconforming residential density
 140 rights are lost, and the site is considered vacant.

141 Nonconforming densities may not be altered or reconstructed until proof of
 142 nonconforming status is established. Density shall not be increased from that established
 143 through the proof of a nonconforming status, except in accordance with this title.

144 **Intentional damage, destruction or demolition.** When a structure that is nonconforming for
 145 residential density is intentionally damaged, destroyed or demolished by fire or other causes
 146 within the control of the owner, the nonconforming residential density rights are lost, and the
 147 new development must meet all development standards for the site.

148 **Nonconforming structures**

149
 150 **Nonconforming structures.** A nonconforming structure may be continued so long as it remains
 151 otherwise lawful, subject to the following provisions:

152 A nonconforming structure may be enlarged or altered, but only if it does not increase
 153 its nonconformity.

154 A nonconforming structure may add additional stories in accordance with
 155 49.25.430(4)(M).

156 If a nonconforming structure is moved for any reason for any distance whatsoever it
 157 shall thereafter conform to the code provisions applicable in the zone in which it is located after
 158 it is moved;

159 Nonconforming structures with nonconforming density may reconstructed in
 160 accordance with XX.XXX (section above in nonconforming density)

161
 162 **Accidental destruction.** When a nonconforming structure or nonconforming portion of a
 163 structure is damaged by fire or other causes beyond the control of the owner to an extent of
 164 more than 75 percent of its replacement cost at time of the damage, it shall not be
 165 reconstructed except in conformity with the provisions of this code. The extent of building

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166 damage shall be determined by the building official. This does not preclude the reestablishment
 167 of nonconforming residential density as allowed by 49.XX.XXX.

168

169 **Intentional destruction.** When a nonconforming structure or nonconforming portion of a
 170 structure is intentionally damaged by fire or other causes by the owner, the reestablishment of
 171 the nonconforming use is prohibited.

172 If at any time a nonconforming structure is abandoned or brought into conformity with
 173 this title, the structure shall thereafter conform to all the regulations of the zone in which it is
 174 located.

175 Tenant improvements or renovations within an existing structure shall not be
 176 considered an enlargement or an alteration as described in subsection XX above.

177 This subsection shall not be construed to allow the expansion of a nonconforming
 178 density or use of structure, which is governed by sections XXXX.

179 A nonconforming structure may not be enlarged, altered or reconstructed until proof of
 180 nonconforming status is established.

181

182 **Nonconforming Lots and Lot Fragments**

183 A lot rendered substandard in size by the adoption of this title may nonetheless be used
 184 provided if all of the following can be met:

185 The use does not have a minimum lot size greater than the minimum lot size required
 186 by the underlying zoning district;

187 Any associated district-specific, dimensional, and development and design standards
 188 such as setbacks, parking, landscaping, etc. are met; and

189 The lot is accepted as legally nonconforming with proof of nonconforming status.

190

191 When a nonconforming lot or lot fragment contains a dwelling unit that is damaged or
 192 destroyed for any reason the structure may be rebuilt to the same footprint on the original
 193 location with the exception of encroachments into public rights-of-way or adjacent property.

194 When an undeveloped nonconforming lot adjoins and has continuous frontage with one or
195 more other undeveloped lots under the same ownership, each lot may be developed with
196 single-family dwellings.

197 The manner in which the lots were acquired or the fact that the lots were separately described
198 on a deed shall not be considered.

199
200 **Nonconforming parking.** A building may be replaced or reconstructed under this subsection
201 with the same number of off-street parking spaces as were provided for the original building.
202 Any use that had non-conforming parking and later became more conforming may not revert to
203 the original, lesser, non-conforming parking. Such uses may apply for a parking waiver in
204 accordance with 49.40.210(d) Exceptions (6) Parking Waivers.

205
206 **Nonconforming signs.** 49.45.400

207
208 **Overcoming presumption of abandonment.** A presumption of abandonment based on
209 evidence of abandonment may be rebutted. The Director will determine that all of the
210 following have been met:

211 The owner has been maintaining the land and structure in accordance with all applicable
212 regulations, including applicable building and fire codes;

213 The owner has been maintaining or pursuing all applicable permits and licenses;

214 The owner has filed all applicable tax documents; and

215 The owner has been engaged in activities that would affirmatively prove there was no
216 intent to abandon, such as actively and continuously marketing the land or structure for sale or
217 lease.

218 The Director's determination may be protested to the Board of Adjustment through a
219 Nonconforming Situation Review.

220

221 **Proof of nonconforming status**

222

223 **Purpose.** This review will determine if a use or site has legal nonconforming situation rights. In
 224 addition, it will determine what the current legal use is, based on the use categories in Chapter
 225 49.XX.XXX. It is the responsibility of the owner to produce evidence proving the nonconforming
 226 situation was allowed when established and has been continuously maintained or used over
 227 time.

228

229 Upon presentation of such proof the Director may formally approve each nonconforming
 230 situation. If approved, the Director shall issue a written decision that includes a complete
 231 description of each approved nonconforming situation.

232 No permit may be issued under 49.15 for any activity on a lot prior to Director approval of each
 233 nonconforming situation existing on the lot.

234 Standard evidence that the situation was allowed when established includes:

- 235 1. Building, land use, or development permits;
- 236 2. Zoning codes or maps;
- 237 3. Recorded plats;
- 238 4. Sanborn Maps.

239

240 **Situation maintained over time.** Standard evidence that the use has been maintained over
 241 time includes but is not limited to:

- 242 1. Utility bills;
- 243 2. Income tax records;
- 244 3. Business licenses;
- 245 4. Listings in telephone (record? books?), business;
- 246 5. Advertisements in dated publications;
- 247 6. Building, land use, or development permits;
- 248 7. Insurance policies;
- 249 8. Leases;
- 250 9. Dated aerial photos;

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10. Insurance maps that identify use or development, such as the Sanborn Maps; or

11. Land use and development inventories prepared by a government agency.

Nonconforming Situation Review

Purpose. A nonconforming situation review provides an opportunity for the Board of Adjustment to review, limit, or deny proposed changes to certain nonconforming situations.

Applicability. The following may be allowed through a nonconforming situation review:

A change to a use in a different use which is prohibited by the base zone.

Expansion of nonconforming use.

In RR, D1, D3, D5, D10SF, D10, D15 and D18 zones, a change from a nonconforming nonresidential use to an allowed residential use that exceeds the allowed density.

Sites that exceed the maximum residential density standards, reconstruction of the nonconforming dwelling units when an applicant does not provide standard evidence for a Proof of Nonconforming Status or when the Director does not find the evidence to be satisfactory.

Overcoming the presumption of abandonment when the Director does not find the evidence to be satisfactory.

Procedure. A nonconforming situation review is processed..... Refer to public notice section – red sign, newspaper, mailing to property owners...

Approval criteria. The request for a non-conforming situation review will be approved if the requirements of this subsection are met. Any non-conforming situation review granted under this subsection shall be in writing and shall include the following required findings and any conditions, such as public amenities, imposed by the Board of Adjustment that are consistent with the purpose of this title:

276 The proposed nonconforming use is more appropriate to the district than the existing
277 nonconforming use and does not significantly jeopardize future development of the area in
278 compliance with the intent of the zoning district;

279 Any characteristics of use that are out of compliance with this title are not changed to
280 become less compliant with the requirements of this title;

281 The nonconforming use will not result in the creation of additional nonconformities or
282 the need for any variances.
283

284 With mitigation measures, there will be no net increase in overall detrimental impacts (over the
285 impacts of the last legal use or development) on the surrounding area taking into account
286 factors such as:

- 287 a. The hours of operation;
- 288 b. Vehicle trips to the site and impact on surrounding on-street parking;
- 289 c. Noise, vibration, dust, odor, fumes, glare, and smoke;
- 290 d. Screening, public safety, neighborhood harmony;
- 291 e. The amount, location, and nature of any outside displays, storage, or
292 activities.

293 If the nonconforming use is in a D1, D3, D5, D10SF, D10, D15 or D18 zone, and if any changes
294 are proposed to the site, the appearance of the new use or development will not lessen the
295 residential character of the area. This is based on taking into account factors such as:

- 296 a. Building scale, placement, and facade;
- 297 b. Parking area placement;
- 298 c. Buffering (screening?) and the potential loss of privacy to abutting residential
299 uses; and
- 300 d. Lighting and signs.

301 Nonconforming residential density will have no net increase in overall detrimental impacts on
302 the surrounding area taking into consideration factors such as:

- 303 a. Vehicle trips and impact on surrounding on street parking

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304 b. Lot coverage, vegetative cover, anything else? Conformity with future land
305 use maps maybe?

306 The proposed expansion of a nonconforming use

307 Will not result in the creation of additional nonconformities or the need for any
308 variances.

309 Any characteristics of use that are out of compliance with this title are not changed to
310 become less compliant with the requirements of this title;

311
312 When located in a D1, D3, D5, D10SF, D10, D15 or D18 district the proposed expansion
313 will not lessen the residential character of the area.

314

315 **49. 80 Definitions**

316 Nonconforming building or structure. A building or structure that does not meet one or more
317 height, setback, building coverage, , or other dimensional requirements for the land use district
318 in which it is located.

319 Nonconforming lot. A lot which legally existed prior to the adoption, revision, or amendment of
320 this Code does not comply with current minimum lot size, lot depth, lot width requirements or
321 other lot requirements of the district in which the lot is located.

322 Nonconforming Residential Density. A residential use that is an allowed use in the zone and
323 that was constructed at a lawful density, but which subsequently, due to a change in the zone
324 or zoning regulations, now has greater density than is allowed in the zone.

325 Nonconforming Situation means a nonconforming lot, use or structure, density, or any
326 combination thereof.

327 Nonconforming Use. A use that was allowed by right when established or a use that obtained a
328 required land use approval when established, but that subsequently, due to a change in the
329 zone or zoning regulations, the use or the amount of area devoted to the use is now not
330 permitted under the current zone designation.

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331 Abandon means (a) with respect to a use, the cessation of such use for any length of time,
332 combined with intent to indefinitely cease such use, or (b) with respect to a structure, the
333 cessation of occupancy of such structure for any length of time, combined with intent to
334 indefinitely cease occupancy of such structure.

335 Change means, with respect to a nonconforming use, that the nonconforming use has been
336 converted to a different use for any period of time, regardless of intent.

337 Discontinued means that a nonconforming use has ceased, and has not substantially resumed,
338 for a period of 365 consecutive days regardless of intent.

339 Occupy or occupancy means actual physical occupancy of a structure or lot, regardless of
340 intent.

341 Primary use means the primary activity actually conducted in a serious, substantial, and
342 ongoing manner on a lot or in a structure, and for which the lot or structure is actually and
343 primarily occupied and maintained, regardless of intent.

344 Substantially resumed means substantial and continuous resumption of the use as the primary
345 use for a period of at least 60 consecutive days. Activity that does not meet this standard is not
346 sufficient to interrupt a period of discontinuance.

347 Use means activity actually conducted on a lot or in a structure, and for which the lot or
348 structure is actually occupied and maintained, regardless of intent.

349 **49.85 Fees**

350 Proof of Nonconforming Situation – staff review \$200 (similar to letter of zoning compliance)

351 Nonconforming Situation Review – to PC \$400 (similar to variance and ADOD) plus public notice
352 fees...NOTE NSR should refer to public notice section.

353

354

Meeting Agenda of the City and Borough of Juneau
Title 49 Committee of the Planning Commission

Tuesday, October 9, 2018
City Hall Assembly Chambers
5:30 – 7:00 pm

Members Present:

Nathaniel Dye, Michael Levine, Dan Miller, Paul Voelckers, Benjamin Haight

Members Absent:

Carl Green

Staff Present:

Laura Boyce (CDD Planner), Jill Maclean (CDD Director), Jane Mores (CBJ Attorney), Beth McKibben (CDD Planning Manager), Marjorie Hamburger (CDD Admin)

Public Present:

Marna McGonegal

I. Call to Order

Meeting called to order at 5:39 pm.

II. Approval of Agenda

The agenda was approved as is.

III. Approval of Minutes

A. September 17, 2018 Draft Minutes

MOTION: *by Mr. Voelckers to approve the September 17, 2018 minutes.*

The motion passed with no objection.

IV. Agenda Topics

A. AME2018 0009: Proposed amendments to 49.30, Nonconforming Development

Ms. McKibben walked committee members through the memo and said most of the content was to refresh their memories. It was not new information. The nonconforming section in code is not well written, is difficult to use or explain, and does not differentiate between different types of nonconforming situations. Repealing and replacing this section of code is what is proposed, creating processes to evaluate nonconforming uses, nonconforming lots, nonconforming structures and nonconforming density.

Ms. McKibben said that nonconforming density is a category not previously found in code. The language for this was borrowed from Portland, Oregon.

Zoning is a policing power intended to protect public health, safety, and welfare, said Ms. McKibben. Nonconforming is something that was legal when it was created, built, etc. but a zoning change has now made it not legal. This is seen most noticeably in the historic areas of Juneau. Lot sizes have become too small and don't conform to setback requirements in the zoning areas. Also a property may have more dwelling units than the new zoning allows and so has become nonconforming in terms of density. Aurora Arms, a condominium property on Glacier Highway, is one such situation, she said. The city is figuring out how to help them continue to finance sales of these units, since the current nonconforming code makes this difficult. Another example is a 4-plex in the Valley that under current code could not be rebuilt as is.

The language in the draft ordinance provides a process for a property owner to establish that a given nonconforming situation was legal when it was created, which if true may allow for development. This places the burden on the property owner rather than the Community Development Department, said Ms. McKibben. This is a significant change from any process now in place and it helps appraisers to show that a property is legally nonconforming.

Ms. McKibben said that another thing created in this new ordinance is a nonconforming situation review process, to take place in front of the Planning Commission. Nonconforming densities or uses could be reestablished via this process. She said her favorite example was Amerigas on Mendenhall Loop Road which was permitted but is located in a residential zone.

Nonconforming situation review is appealable to the Planning Commission to consider changes of use within the same use category which do not comply with zoning standards or when the director determines that an increase in off-site impacts can reasonably be anticipated. An example might be an office building in a D1 zone that wants to become a 4-plex residence.

Ms. Maclean said she wanted to clarify that what was before the committee was not the ordinance but was draft language. She asked that members look to getting the concepts clear so Law can draft the ordinance. Stick to policy or concept at this point, she cautioned.

Page 4 of the memo includes the key policies for discussion, said Ms. McKibben. The committee needs to resolve the definition of "normal maintenance", and she put some sample language on this page from Anchorage. She pointed out that this language was different from the committee's previous conversation, however it allows for flexibility. She said that the concept about violating setbacks needs to be worked on. Existing code allows reconstruction on an existing footprint when damaged up to 75%. Is that the right number, she asked the committee? Would we want to go to 100% to make it easier for a property owner to reconstruct?

Purpose

Mr. Haight asked if the creation of nonconforming lots which occur when roads are reconstructed should be addressed here or is this situation already incorporated into the concepts? Ms. McKibben said that when a lot becomes nonconforming by an expansion of a right-of-way then it is a legally nonconforming lot and this language would apply. New lots that are created via a subdivision are not allowed to be nonconforming.

Ms. Maclean said that if part of a property is lost that will effect setbacks or lot size and make the situation nonconforming, this might impact density but would be cared for within this ordinance and be legally nonconforming.

Mr. Dye said that Mr. Miller discussed lots becoming nonconforming with the installation of a new road such as Glacier Highway or Fritz Cove Road. There was not a process to address this for the Planning Commission. Ms.

Boyce said that the Department of Transportation gave additional land behind the houses to offset the loss and there should have been a lot consolidation which did not happen. However now there is language that addresses this type of situation.

Mr. Dye said that in Fritz Cove some lots are now nonconforming and asked how these are being utilized? Ms. Maclean said any substandard lot is allowed at to have at least one single family home and Fritz Cove is zoned D1. Ms. McKibben said that this will be preserved with this concept. She also made a note to clarify with Law that this ordinance and right-of-way acquisition methods play nicely together.

Mr. Voelckers said he thought paragraph 3 (lines 16-21) was not useful; there was not a specific utility to it. What are we trying to get at, he asked? Ms. McKibben said it is useful to explain the code to the public and provide some reference to future planners to understand how to read it and what the intent is. It helps the public understand why it is the way it is.

Nonconforming Situations

Mr. Voelckers asked if a “situation” is always just a site rather than a building. Ms. McKibben said that a site could have a nonconforming lot that was too small and could contain a nonconforming structure that did not meet setbacks as well as a nonconforming use or density. The site could have all of these but each would be evaluated independently.

Mr. Miller asked if the ordinance was titled “nonconforming situations”. He suggested that Line 24 ought to list all of the types of situations that could be nonconforming. Line 23 says “contains a nonconforming use” but these are not listed one after the other. Line 25 does have them all listed but he suggested starting the paragraph with that sentence. Mr. Voelckers asked if the title is *Nonconforming Situations*. Ms. McKibben said she did not know. Ms. Boyce said the working title is *Nonconforming Development* now. Mr. Voelckers said he felt the word “situation” worked better for use than “development”. There was more discussion about the language for the title. Ms. McKibben pointed out that there are other nonconforming situations like signs and vegetative cover.

Applicability

Mr. Voelckers and Mr. Dye asked if the statement “a nonconforming situation may be changed” (Line 35) meant by a Planning Commission hearing? Ms. McKibben said that an example might be if a nonconforming propane store wants to become a childcare facility, a Conditional Use Permit might need to be obtained. Mr. Voelckers asked if they are not appropriate for the zoning as a propane store, why would there be any action for a different use. Ms. Maclean said this could also be the same situation as a 4-plex on Star Hill that wants to become a single family home. Now the property owner just obtains a building permit but this language states that once a situation becomes conforming, nonconforming rights are lost. The property cannot go backwards.

Mr. Dye asked if once a permit is pulled, the property owner loses it all, not just after 365 days. Ms. McKibben said yes, there is no clock; once the change is done it is done. Mr. Dye said that it seemed contrary to him that if someone can cease nonconforming operations but after 200 days decide the new use is not working, they cannot go back to the original use. Ms. Maclean confirmed that no, at that point the owner has relinquished the grandfathered rights. On other hand, she said, if the business were to close up shop for up to 365 days, for example due to personal hardship, but they did not choose to become a different business that was conforming, this would not be abandoning the rights to remain legally nonconforming. Ms. McKibben said that over time the city wants things to become conforming if possible.

Mr. Dye asked what happens if a Conditional Use Review is not approved? Mr. Voelckers asked if when there is an application for a change of use does that include the nonconforming review? Ms. McKibben said no, nonconforming review is a new process. If a nonconforming propane store wants to change to a conforming use a nonconforming review is not needed. Mr. Voelckers asked if during a nonconforming situation review someone requests greater density and it is approved, does that become a conforming use thereafter? Ms. McKibben said that if the fundamental status is changed, the density can be a 4-plex into perpetuity. Mr. Dye asked if for something like the nonconforming propane store, can they apply for a Conditional Use Permit for something else which is not allowed in that zoning area? Ms. Maclean said that a nonconforming review is to make a nonconforming situation legally nonconforming. Ms. McKibben said she sensed that the next time this topic was discussed, she needs to walk the committee through these processes using hypothetical examples to help explain.

Mr. Miller asked if something is made legally nonconforming and burns down, can it be rebuilt? Ms. McKibben said yes, if it is rebuilt within 365 days. Mr. Miller asked if there is a nonconforming lot, containing a nonconforming use, taking place in a nonconforming structure is that legally nonconforming? Ms. McKibben said that would trigger two processes. The applicant/owner would need to provide information showing that the situation was legally nonconforming such as a plat created in 1958 when the area was zoned differently. This would prove that the situation was created legally. Mr. Miller asked if the structure is burnt or abandoned can it be rebuilt? Yes, if it is determined to be a legally nonconforming structure, said Ms. McKibben. However, she said, the use happening inside is a different nonconforming situation. Proof would need to be provided to demonstrate that a business had been operating at the location and evidence such as tax returns could prove the length of time of the nonconforming use. In other words, there would need to be proof of each nonconforming situation individually. Mr. Miller asked if the use was abandoned for a year, can it be lost? Yes, said Ms. McKibben. However the building could remain as a nonconforming structure.

Mr. Voelckers asked if the city has powers separate from the ordinance language so that if a use is deemed to be a public hazard that use can be removed. The example of propane in a residential zone is close to that type of situation; should there be a mechanism for this sort of authority, he asked? Ms. McKibben said that some situations are regulated by other agencies for example an asphalt plant is regulated by DEC, however she was not sure of the answer. Mr. Voelckers gave an example of the fuel tanks which were located where the SLAM building is now. He said there was a time when the neighborhood had to be evacuated. He said he felt that this topic should be explored.

Continued Operation

Mr. Dye wondered where the “hours of operation between 11 pm to 6am” came from in this section. Ms. McKibben said that this was open for discussion. The concept is that nonconforming uses in residential zones might need to have limited hours in order to limit impacts on the neighborhood. Mr. Dye wondered how this might work for a use currently operating in the evening. Ms. McKibben said there was flexibility to change this language. Mr. Dye asked if noise was the intent because there is already a noise ordinance elsewhere in code. Ms. McKibben said that it could depend on the use; truck deliveries happening at 5 am might not be appreciated by the neighbors. Mr. Voelckers said he also found this kind of weird and also the phrase “may not extend” is imprecise. He felt that this was in need of clarification.

Mr. Levine noted that there is a possibility that creating this time limit might deprive someone of their use. He felt it was better to phrase it more generally as in “must comport to the neighborhood” because otherwise the language could run afoul. Mr. Miller proposed the idea that nonconforming uses in places where it is benign ought to become legal. There might be a situation where the use only operates from 11 – 6 am and is completely benign. Perhaps the proof is on the owner, he suggested.

Mr. Dye asked for clarification asking if the city cares about a legally nonconforming status if a review process is not initiated? Ms. Maclean said typically there is enforcement, especially if there has been a complaint.

Change in Use

Mr. Levine addressed the issue of a use being “allowed by right” and asked why the language should not include the ability to review it? Mr. Dye asked if this section alluded to the Table of Permissible Uses. Yes, said Ms. McKibben. Mr. Levine said he thought the ordinance should give the Planning Commission the opportunity for review. For Lines 58-62, you want them all to receive that determination, asked Ms. McKibben? Mr. Levine said he thought that if there is an unusual situation or a problem, the language should not surrender the right to have a conversation. Mr. Voelckers said he thought it appropriate to keep the burden of proof on whoever is proposing the changes.

Ms. McKibben asked if the committee members felt the review should be done by the director or the Planning Commission. Should the director review first with the option for an appeal to the Planning Commission or should all come before the Planning Commission? Ms. Maclean said she was in favor of a first review by the director and the second level being the Planning Commission or the Board of Adjustment. Mr. Levine said he thought it should just be the director; he did not see the need to come to the Planning Commission. Ms. McKibben said for changes of use in the same category, the director would review in order to confirm there would be no increase in off-site impacts. If such impacts were discovered, then the issue could come before the Planning Commission.

Mr. Voelckers said that Line 60 included an implied “where”.

Change of use in a different category

Ms. McKibben pointed out the new ideas in this section, but Mr. Dye said he did not understand them. Ms. McKibben gave an example of a nonconforming use – a dog grooming business in the middle of a residential neighborhood decides to discontinue the business but does not want to become a single family home. The owner wants the building to be converted to a 4-plex structure. The property owner could be allowed to have more density than the zoning allows. Mr. Dye asked why. Mr. Voelckers said perhaps this might be a way to talk the owner out of a greater nuisance; it may be better to add more density than more commercial activity in the neighborhood. Ms. Maclean said yes. Mr. Levine asked if there was a real-world example of this in Juneau. None that she was aware of, said Ms. McKibben. One goal is to provide more opportunities for more density. Ms. Maclean said that when the NOAA lab closed in the D1 zone is Auke Bay, is it reasonable to tell them they can only have a single family home on the property now that it is not a laboratory? Mr. Miller said he wanted to think about this idea and see it again next time. It is a powerful thing, he said, for a person in a D1 or D3 zone who has a nonconforming use to get an opportunity that no one else in the borough gets. He said he was trying to wrap his head around this type of situation. Mr. Dye said that it brought to his mind the efforts to rezone Auke Bay. This language seemed contrary to that effort, to him. It felt like a get-out-of-jail-free card, and so he was struggling with this paragraph. Mr. Levine said he was not adverse to this idea but felt it may need some limits in terms of increasing density. He suggested that a disincentive might be created so that people would be unlikely to seek out nonconforming situations to take advantage of. There needs to be some sort of sideboards, he felt. Ms. McKibben said she might feel comfortable with a nonconforming review including the consideration of these things.

Expansions

Mr. Dye addressed the phrase “manifestly designed” and asked if there is to be no change to the exterior, does it matter? He asked if CDD would want to argue with people about this. He suggested putting a period after “existing building” and leaving it at that. Mr. Levine asked how much concern is there about this? Ms. McKibben

said the concept is not wanting nonconforming uses to get bigger. Ms. Maclean said that a neighbor might care. Mr. Levine said he could imagine a situation where someone comes in with a great idea involving their shed but is not allowed to do it. Mr. Voelckers suggested chopping “manifestly” to imply junk shed. Ms. McKibben said a situation of this sort is Gastineau Humane Society, which is a nonconforming use and cannot expand their dog runs out back of the building. Mr. Levine said he also wanted sideboards here. Mr. Dye asked about the zoning of the doctor’s office which is next door to Gastineau Humane Society? He said his concern is if the nonconforming section is too liberal, it might be better to get a rezone. Ms. McKibben said the best fix is having zoning that works, but over time zoning is how the community changes and becomes the community we want. When Amerigas was permitted, the valley was undeveloped and so it seemed ok, but the plans were for a developed residential area. Mr. Dye said that if there is allowance for too much nonconforming in code, this does not allow the code to fix itself.

Mr. Voelckers said this needed to be clarified, by right or by situational review. Is the committee happy with it being by right? Situational review is firmer, he said.

Discontinuance

Mr. Dye asked why a year was selected as the amount of time. Isn’t the burden of proof on the applicant to convince the city that the nonconforming use should be continued? What if they work 1 day out of a year just to keep this open, he asked? Mr. Miller suggested if the use ceases operation for 365 days, the use can be discontinued but the last sentence says the review must take place within 3 years. He said he did not understand how someone could lose their use in a year but come back in 3 years for review. Does this mean they can get it back? Ms. McKibben said yes. Mr. Miller said the reason to have the 3 years is to allow someone to get back on their feet if they need to close for a year due to illness or something. Mr. Levine said it made sense to him but that he did not like uncertainty with the dates and does not want to fight with the director about that. A better way could be to say the right can be preserved by notice within 365 days instead of arbitrary deadlines, he said. Ms. Maclean asked how people will know that. Mr. Levine asked what the importance was of 3 years, if the business plans to resume when the owner gets back to town. Ms. McKibben said the only nonconforming uses are those that can show they are legally nonconforming but she is not sure that language is in there. In Homer there was a situation where operations ceased for period of time and a complaint was filed when the business reopened. Time was spent to showing it was not closed for 365 days. So, she looks at this as if the nonconforming uses ceases and then neighbors complain, there would be a need to explain that the owners can apply for the use to be reestablished. Ms. McKibben said she did not know how this works in practice in other communities but this draft ordinance asks for documentation in order to move on to review. Mr. Miller said the concern remains that people likely won’t know this option. A year later when they start back up they might come up against new neighbors who were not aware of a business operating next door. Had the business owners known about the 365-day drop dead deal, they might have made a different decision. Mr. Voelckers said he thinks this section is well written and is close, philosophically. After a year of non-use the owner does not have the right to continue but there is a reasonable comfort zone to reclaim it by making their case.

Accidental destruction

Mr. Voelckers asked why do we care if the destruction happened by fire or arson or whatever. If there is a need to rebuild why differentiate? Ms. McKibben said we care if something happens which is unintentional. In that case we want them to be able to rebuild. However intentional destruction is different. The list is not intended to be exhaustive. Mr. Voelckers said he did not feel the need to list the causes if the dividing knife blade is unintentional or intentional. Mr. Miller said he did not agree with Mr. Voelckers; some people might not realize what they are looking at in their building, such as rot. He described a job he did where the bottom row of siding was buckling and it turned out that when the crawl space was insulated, the contractor used bad materials and

an incorrect method so all the moisture from the dirt had condensed in the rim joints for 2 years resulting in lots of rot. There was no way to prove intention when the owner hired people to insulate her basement.

Mr. Levine has a comment about the two different categories. It seemed clear to him the situations where the city would not want to allow the owner to rebuild, like in the case of arson, but others seemed to him more difficult to pinpoint. It might help if the default is if it can't be proven to be intentional, then it was not. Ms. McKibben pointed out that this language is for nonconforming use but later in the document there is language that fits. Mr. Levine said that someone has to determine the status – intentional or maybe it could be ordinary lax care of a house resulting in significant damage. Mr. Levine said he was in favor of not letting people rebuild if they have not been taking care of their house at all. Mr. Dye asked what happens when a property changes hands and the previous owner was the culprit. Mr. Levine said a buyer would need to figure out the condition of a building before buying.

Mr. Miller pointed out that the percentage of 75% keeps coming up. He said he thought this was too low a number because people can't rebuild at that percentage. Ms. Maclean said there were important distinctions to point out. This is section about uses and so 75 % is appropriate here, she said. Ms. McKibben said that in the example of the propane store if a fire destroyed 50% of the store, under this section the owner could rebuild and continue this nonconforming use. Ms. Maclean said that nonconforming uses are the things the city really wants to make conforming. It is not so much the size of a lot that is egregious to neighbors, rather uses are. If it costs more than 75% to reconstruct for a nonconforming use, it might be better to relocate the nonconforming use to an appropriate zoning area. Mr. Levine asked if the whole thing blows up and leaves an empty property, does this mean the owner cannot rebuild the business there. Yes, said Ms. Maclean. Mr. Dye said the owner could get a density bonus and rebuild apartments instead, but he has heartache about this thinking that due to a catastrophic incident an owner would not be able to rebuild his/her livelihood. Mr. Haight suggested moving on saying it might make more sense as the discussion plays through the other categories. Mr. Levine said 75% makes less sense; he felt there was a cost inequality. Ms. McKibben said that 50% is common, and she has not seen more than 75%. Mr. Levine said it was worthwhile to think about the cost of making the site useful for other purposes.

Nonconforming residential densities

Ms. McKibben said this was a brand-new concept and a new nonconforming situation. An example is a 4-plex in a D5 zone that could be reconstructed even though the current zoning only allows for a duplex; even if the structure was vacant for 5 years the nonconforming density would not be lost. Mr. Dye asked why nonconforming density should run with the land. Ms. Maclean said the city created quite a few nonconforming situations through applied zoning which might not have been appropriate. Valley zoning placed downtown does not work. Aurora Arms was a conforming density when it was built but after valley zoning was in place it became nonconforming. To add to that, housing is needed so this is an easy way to keep housing in a neighborhood without getting complaints about the density. Mr. Dye asked why, if Aurora Arms were to be abandoned for a number of years, can the property resume that density later? Nonconforming density runs with the land, said Ms. Maclean. If a property owner can prove that the land once had a higher density, they can reclaim that density, but if it becomes conforming, then they cannot go back to nonconforming. The current situation is that many places cannot get mortgages and can't sell or rebuild which is why there is this attempt to address these situations. There are little to no complaints about residential uses, she said. Mr. Levine said that there was an inconsistency between lines 99 and 108. This is the section that needs a guarantee that the property owner can rebuild, he said.

Ms. Maclean said that a property such as Aurora Arms could come in the day after the adoption of this ordinance and apply for a nonconforming review. Mr. Levine said that made sense but was not what he read

here. He said he likes the concept but it is not understood via the language in this section. Ms. McKibben said she assumed tighter lending practices have caused trouble but the APA service has not heard about this problem which indicates it might not be a national lending challenge. She is interested to hear about Portland's practice. Mr. Levine said that the situation had more to do with words in the code rather than interpretation and practice, so the words need to be totally clear in order to assist people who are trying to get financing. Ms. McKibben said that the nonconforming code is pretty generous, so it is interesting that this problem exists. Ms. Maclean said that the number of 75% is a trigger on mortgages; people don't have the absolute assurance that they can rebuild. Mr. Dye asked why nonconforming density is not sunsetted? How does this help? Lending practices are about rebuilding in the event of a catastrophic and have nothing to do with keeping density in perpetuity. Why is nonconforming use valued differently than nonconforming density? Why limit the code in shaping the future, he asked?

Ms. Maclean said that the reason may be the need for housing and zoning that does not fit the area or has been misapplied like downtown. Some locations have not been up-zoned even if sewer/water has been extended. The Comprehensive Plan has not caught up. Mr. Miller said that fixing this is not shaping future; it is fixing the past and trying to make it all legal because it once was. He said that he likes the density part of it but he was confused about lines 111-117 where it says more than 1 dwelling unit, but line 118 says one dwelling unit then returns to the 75% figure. He said he thinks that ought to go away. If a building is destroyed by fire, lending institutions need to know the structure can be rebuilt. In 2009, it cost 115% of appraised value to build a new home, after the 2008 crash. He felt that the percentage in this section should be deleted. Ms. McKibben said this only applies to buildings in WI and I zoning. All other zones get at least a single family home, she said. Ms. Maclean said if a single family home in an Industrial district burns down, this is the only time it applies because the city wants to transition away from residential uses in an industrial zone. Mr. Miller asked why can't an owner rebuild a family house? Mr. Levine asked what does it matter about the costs? The language says an owner can only rebuild if more than 75% of the cost to rebuild? If the city wants to make it more difficult to rebuild a family home, there should be reasons listed, like to save WI zones for other uses. He said he felt the language included the wrong criterion. He said he was inclined to go the other way and say if a cabin in WI burns down, that is too bad but now the owner must use that parcel for something else. He felt this was a better way to achieve the zoning aims, rather than the 75% figure; it would be more direct. Maybe the issue is more about harmony in a location, rather than cost.

Mr. Miller commented that he did not understand until just now that the only zones not conforming are WI and I, and he has been on the Planning Commission for 11 years. This indicated to him that the language is not clear. If the language states that it applies only to WI or I where residential uses are not allowed, that takes the ambiguity out. Ms. Maclean said that this might be true for today at least, but it could change.

Mr. Levine asked why on line 105 is it stating just that one way something can be illegal when there are more ways to be illegal? Ms. McKibben said maybe it was not self-evident when she was writing it and suggested this be crossed out.

Mr. Levine suggested including "damaged by owner", because it could be damaged by someone else.

Mr. Miller said he liked the way lines 132-135 were written, but on page 4 he wanted to use similar language as on page 5.

Nonconforming structures

Ms. McKibben said that a lot of this section is already in current code.

One concept not in here, said Ms. McKibben, is nonconforming structures with residential uses and allowing them to be reconstructed on the existing footprint. She asked the committee members what they wanted to do about that. Mr. Miller said yes, these should be allowed. In Anchorage, he said, there is flat land everywhere and in Portland too but here we need to make every piece of buildable land count. Ms. McKibben said this would not allow encroachments into ROWs and adjacent property, and she will work on incorporating that language. Mr. Dye said he sees references to other code sections and was concerned about that if those other sections change. Mr. Levine said he wanted to incentivize creating more conformance on a lot.

Mr. Miller asked where the maintenance discussion comes in. Ms. McKibben said it is in here somewhere, and this was talked about quite a bit before.

Mr. Miller said that the non-bearing part needs more definition. Ten percent is normal maintenance. Mr. Dye asked about the purpose of defining "maintenance". Ms. McKibben said there is a distinction between maintenance and reconstruction. Ms. Maclean said an example is an historic building where all but one wall is demolished but the project is labeled "maintenance" when, in fact, it was demolition. Having a definition of normal is useful. Ms. McKibben said more work is needed in this section.

Nonconforming lots and lot fragments

Ms. McKibben said that any nonconforming lot can have a single family home. There are situations of two nonconforming lots under the same ownership existing side-by-side, but one home is vacant and so this is treated as one property. The proposed language provides some options, lines 171-184. If there is a house on one lot with a vacant lot next to it, together they become conforming or almost so and shall be treated as one lot. The language says that in order to be treated as separate lots, the owner would have to go through the director process. Mr. Levine said he lived on exactly this situation in the Casey Shattuck neighborhood; he had a giant lot in the middle of the flats. He did not think this criteria should have been used to determine if he could put a second house on his front lawn since having two dwellings on these parcels would be in harmony with the neighborhood. Why put these criteria here, he asked? He said he was not adverse to the director process but thought these were not the right conditions, especially when the city wants to incentivize housing, especially small, affordable housing.

Ms. McKibben said if an owner wanted to build separate detached garage they would be asked to consolidate the lots or make the garage be attached to the house. Mr. Miller said he felt the potential should not be taken away. Mr. Levine said his vote was to allow this with director approval and other conditions like neighborhood harmony. Ms. Maclean said the idea is striving to get to conformity and so unless someone can prove there is intention to keeping the lots separate, the lots should be combined to be conforming. Mr. Dye said that if the argument is that density should remain in perpetuity, slap it right on here. Ms. Maclean said this has to do with property tax. Mr. Dye asked what this has to do with Title 49 or density. Mr. Miller said that in Mr. Levine's situation, he knew the potential for building a second structure which could be money in the bank to sell later. If a platted as a separate lot, he shouldn't have to prove that. Mr. Levine pointed out that he should not be able to build a nonconforming house on the second lot; he should meet legal setbacks even if it is a legally nonconforming lot. Ms. McKibben said that under current code, he could build a second house on that lot, but how would an appraiser give it second tax ID number? This language provides a process so an owner can have the choice to consolidate or keep as two separate lots and go through a process to establish the intent to keep as two separate. Mr. Levine said that this only comes up when the owner wants to sell and separate them. Mr. Miller said if I own 3 lots, who cares if there is one tax bill or 3? I can sell at any time I want, he said. These are platted lots, and I cannot be prevented from selling. Mr. Levine said if an addition to the house were to be built, the owner would have had to consolidate to conform.

Ms. McKibben asked if the committee wanted to go through the conceptual language again or see a draft ordinance. Mr. Dye said he needed to go through the remaining section and understand about percentages of the cost of rebuilding, so he wanted to see it again. Mr. Levine and Mr. Miller agreed.

B. Alternative Residential Subdivision (ARS)

Ms. Maclean reminded the commissioners that it was left to staff to work on the language in this ordinance, but a minimum was never set. It cannot be zero. She said she proposed 25% of the setback. Mr. Miller asked if the minimum should be 5 feet. Ms. Maclean said the base starting point is the underlying zoning but asked what should be the absolute minimum? Mr. Dye said he liked the idea of 25% of street side setback on all sides. Ms. Maclean said that might be more than the underlying zoning setback in some areas, but 25% across all works. Mr. Miller asked if all four sides could be different minimums. Yes, said Ms. Maclean. This might not be approved, but that would be the absolute minimum. Mr. Levine asked if 2 feet should be a minimum? Ms. Maclean said she did not think it should be zero. Mr. Dye said he did not care.

V. Next Meeting

- Monday, October 15, 2018, 12:00 – 1:30 pm, Urban Agriculture

VI) Adjournment

The meeting adjourned at 8:03 pm.



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October 5, 2018

Memorandum

To: Title 49 Subcommittee

A handwritten signature in black ink, appearing to read 'BMc', is placed over the 'To:' line of the memorandum.

From: Beth McKibben, AICP, Planning Manager

RE: AME2018 0009 Proposed amendments to 49.30 – Nonconforming Development

Attachments:

A – Proposed Language

B – Title 49 Minutes – 07/19/17, 08/16/17, 09/20/17, 10/11/17

C – June 21, 2017, Memorandum to Planning Commission and attachment - American Planning Association
Planning Advisory Service Quick Notes

Introduction

The Planning Commission referred the consideration of amendments to CBJ 49.30, Nonconforming Development, to the Title 49 Committee. The Title 49 Committee reviewed and considered a complete revision to CBJ 49.30. The Committee discussed the proposed amendments at four meetings in 2017 (see Attachment B).

Staff previously identified this section of code as needing revisions to provide clarity. More critically, prospective buyers have been encountering challenges in financing non-conforming developments that previously have been financed, which has raised the level of urgency to improve this chapter.

Discussion

The existing purpose of the non-conforming section of code is to provide standards for the continued use of property made non-conforming by adoption of revisions to Title 49. Four categories of nonconformity are identified in 49.80.120, Definitions:

Nonconforming lot means a lot, the area, dimensions or location of which was lawful prior to the adoption, revision, or amendment of this Code, but which fails by reason of such adoption, revision or amendment to conform to present requirements.

Nonconforming structure means a structure, the size, dimensions or location of which was lawful prior to the adoption, revision, or amendment of this Code, but which fails by reason of such adoption,

revision, or amendment, to conform to present requirements.

Nonconforming use means a use or activity which was lawful prior to the adoption, revision or amendment of a zoning ordinance, but which fails, by reason of such adoption, revision or amendment, to conform to the present requirements of the zoning district.

Nonconforming situation means a nonconforming lot, use or structure, or any combination thereof.

Zoning nonconformities are existing uses, structures, or lots that were legally established prior to a change in zoning provisions, which do not comply with new ordinance standards. As communities revise land use policies and zoning regulations, they are faced with questions regarding the continued use, replacement, or expansion of such nonconformities. How we answer these questions will affect acceptance of new zoning standards and whether local land use objectives can be fully realized.

Communities implement land use plans using a variety of strategies including regulations, public investment, education, and incentives. Zoning is one of the regulatory tools available. Zoning is a valid use of police power intended to protect public health, safety, and welfare. Specific reasons for zoning include:

- Ensuring that new development and redevelopment are located according to the community plan;
- Matching development to the environmental limitations of the landscape;
- Promoting quality development to maintain property values and the quality of life by stabilizing the character of neighborhoods and business districts;
- Controlling densities to avoid overcrowding while developing housing and promoting land conservation;
- Providing predictability for property owners and efficiency related to demands for public services and facilities; and
- Moving traffic safely and efficiently based on road standards and layout.

The Alaska Constitution and Alaska State Statutes provide maximum jurisdiction to municipalities to adopt and implement planning and zoning powers to protect public health, safety, and general welfare. The use of zoning police power must be reasonable and fair.

With this background in mind, CBJ 49.30 is sorely in need of revision. The various non-conforming situations are blended into single paragraphs and the reconstruction section is poorly written, which makes it challenging to understand. Staff proposed a complete rewrite of the chapter rather than attempting to edit the existing code.

Zoning ordinances vary considerably in how they treat nonconformities. There are four general options:

- Phase them out over time;
- Maintain the status quo;
- Allow limited modification and expansion;
- Change zoning standards to make certain uses, structures or lots conforming.

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The American Planning Association Planning Advisory Service Quick Notes attached to the June 21, 2017, memorandum to the Planning Commission discusses the management of nonconformities (Attachment C). The article suggests, and staff agrees, that not all nonconformities are the same. Some nonconformities are benign while some have significant detrimental effects. In some instances, continuance or expansion of a benign nonconformity may not threaten public health or safety, may have little impact on the long term land use objectives, and may even be preferable to the alternative of disinvestment. For this reason, it makes sense for communities to treat benign nonconformities differently than those likely to have significant detrimental effects. Staff recommends an approach that mixes the phasing out of detrimental nonconformities and recommends maintaining the status quo or allowing limited modification and expansion to benign nonconformities. Additionally, over time and separate from this project, the Commission and staff will work to review and revise zoning standards and will continue to consider the impacts of those proposed changes on various nonconforming situations. The downtown zoning project mandated by the adoption of the ADOD is a step in this direction.

The proposed language provides a process for a property owner to establish that a given nonconforming situation was legal when it was created, which if true may allow for development. This places the burden on the property owner rather than the Community Development Department, which is fair and consistent with the burden for other permits. The Director would then make a nonconforming determination, and that decision could be appealable to the Commission. The process is spelled out in the proposed language (see p. 9, line 230 in Attachment A). By allowing the Director to approve proof of nonconforming status, time will be saved by applicants, the Commission, and staff. The proposed language also includes a process called “a nonconforming situation review”, which is undertaken by the Planning Commission and explained below.

The proposed language provides for this nonconforming situation review for the following:

- As an alternative to an appeal of a director’s decision on a “proof of nonconforming status”;
- An alternative to staff review of a “proof of non-conforming status” when non-standard proof is provided by the applicant. The code contains a list of standard proof.
- For changes of use within the same use category that do not comply with associated district-specific, dimensional, and development and design standards such as setbacks, parking, landscaping, etc., or the Director determines that an increase in off-site impacts can reasonably be anticipated;
- A change to a use in a different use category which is prohibited by the underlying zoning district;
- In RR, D1, D3, D5, D10, D15 and D18 zones, a change from a nonconforming, nonresidential use to an allowed residential use that exceeds the allowed density;
- Re-establishment of a nonconforming use that has been discontinued for 365 days.

The proposed amendment would repeal and replace all of 49.30.

The proposed language clarifies the following non-conforming situations:

- Nonconforming uses,
- Nonconforming residential densities,
- Nonconforming structure,

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- Nonconforming lot, and
- Nonconforming parking.

Nonconforming signs are addressed in 49.45. Staff proposes to address signs when that section of Title 49 is amended.

Key Policies for Discussion

Normal maintenance and repair of nonconforming situations is allowed. The Title 49 Committee discussed this concept and agreed that it should be allowed. Staff recommends defining what constitutes “normal maintenance and repair”.

Example language from Anchorage: ...ordinary repairs, or on repair or replacement of nonbearing walls, fixtures, wiring or plumbing, to an extent not exceeding ten percent of the current replacement cost of the nonconforming structure or nonconforming portion of the structure as the case may be. Nothing in this chapter shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

The proposed language requires nonconforming lots in common ownership to be treated as one lot and provides a process for the Director to allow the nonconforming lots to be used as separate lots. This concept provides the flexibility for property owners to use the lots as separate lots but in most cases requires the lots to be treated as one.

A concept proposed by the Title 49 Committee would allow a building that is violating a setback (i.e. a nonconforming structure) the ability to expand up to the existing nonconforming location. Staff recommends against the proposed language to preserve the legality of setbacks and to avoid fairness problems. While staff recognizes the desire to allow nonconforming structures the ability to expand, such an expansion should only be allowed where it complies with the setbacks. In this way, the legality of the setbacks is maintained and owners of *conforming* structures are not penalized because they would not be allowed to encroach into a setback. Additionally, older areas where there may be a higher percentage of nonconforming structures currently have the option to apply for relief under the Alternative Development Overlay Districts. The upcoming area plans may identify zoning revisions in areas where zoning is not seen to fit the character of the existing neighborhoods, and these revisions may also provide relief for property owners.

The existing code allows for residential uses in nonconforming structures to be reconstructed on the existing footprint (except for encroachments into public ROW and adjacent properties) when damaged (75%) by means beyond the control of the owner. This percent includes the cost of the replacement of the entire structure, exclusive of foundations, using new materials, and is determined by the Building Official. Staff recommends this remain available and that the Committee consider, for residential structures only, allowing for reconstruction when repair cost is up to 100 percent of the cost of the replacement of the entire structure, exclusive of foundations, using new materials.

The proposed language allows for a nonconforming use to be re-established within 365 days of being

destroyed or ceasing operation. The proposed language also allows for a nonconforming use to be re-established after 365 days through a nonconforming situation review. However, the re-establishment of a nonconforming use through the nonconforming situation review must take place within 3 years of the use no longer being in operation. This assures that a nonconforming use cannot retain the opportunity to re-establish the use in perpetuity, thus allowing for the integration of the current and future zoning, while still maintaining some flexibility within the code.

The proposed language provides that nonconforming densities will not be enlarged, altered, or reconstructed until proof of a nonconforming situation is established. Additionally, density cannot not be increased from the density established through the proof of the nonconforming situation, except in accordance with Title 49. Nonconforming residential densities can be reconstructed to the density determined through the proof of nonconforming review. This is intended to specifically retain the residential character of the residential zoning districts, while supporting the need for housing in Juneau.

1
2 **Purpose**

3 When a zoning ordinance or other land use regulation is adopted or amended, or when the
4 zoning district designation applicable to a lot changes, then as a result a previously lawful lot,
5 structure, density or use may no longer be allowed. Such previously lawful use, density,
6 structure or lot shall be considered a nonconforming use, density, structure or use. Such
7 nonconformities may continue, subject to the requirements of this chapter and any other
8 provisions of this Code that expressly apply to nonconforming lots, structures, density or uses.

9 This chapter provides methods to determine whether situations have legal nonconforming
10 status. This is based on whether they were allowed when established, and if they have been
11 maintained over time. This chapter also provides a method to review and limit nonconforming
12 situations when changes to those situations are proposed. The intent is to protect the character
13 of the area by reducing the negative or undesired impacts from nonconforming situations. The
14 regulations ensure that the uses and development may continue and that the zoning
15 regulations will not cause unnecessary burdens to property impacted by the zoning change.

16 Nonconforming situations that have a lesser impact on the immediate area have fewer
17 restrictions than those with greater impacts. Nonconforming nonresidential uses in residential
18 zones are treated more strictly than those in commercial or industrial zones to protect the
19 livability and character of residential neighborhoods. In contrast, nonconforming residential
20 developments in residential zones are treated less strictly because they do not represent a
21 major disruption to the neighborhood and they provide needed housing opportunities.

22 **Nonconforming Situations**

23 A specific site may be nonconforming because it contains a nonconforming use, a, an allowed
24 residential use that exceeds the allowed density, nonconforming structure, nonconforming lot,
25 or a combination of these. Nonconforming uses, nonconforming residential densities,
26 nonconforming structures and nonconforming lots are defined in Chapter 49.80, Definitions.

27 **Applicability**

The nonconforming situation regulations apply only to those nonconforming situations which were allowed when the situation was established or which were approved through a land use review. Additionally, they must have been maintained over time. These situations have legal nonconforming status. Nonconforming situations which were not allowed when established or have not been maintained over time have no legal right to continue and must be removed.

Ownership. The status of a nonconforming situation is not affected by changes in ownership.

Change to a conforming situation. A nonconforming situation may be changed to a conforming situation by right. Once a conforming situation occupies the site, the nonconforming rights are lost and a nonconforming situation may not be re-established.

Change to conditional use. A nonconforming use may change to a conditional use if approved through a conditional use review. Once an approved conditional use occupies the site, the nonconforming rights are lost and a nonconforming use may not be re-established.

Maintenance. Normal maintenance and repair of nonconforming situations is allowed.

Nonconforming Uses

Continued operation. Nonconforming uses may continue to operate. Changes in operations, such as changes in ownership, hours of operation and the addition or subtraction of permissible accessory uses, are allowed. Nonconforming uses in residential zones may not extend their hours of operation into the period between 11pm to 6am.

Change of use in the same use category. A change to a different use in the same use category, such as a change from one type of Sales and Rental Goods, Merchandise or Equipment use to another type of Sales and Rental Goods, Merchandise or Equipment use, is allowed by right, provided that the use complies with associated district-specific, dimensional, and development and design standards such as setbacks, parking, landscaping, etc.

57

58 For changes of use within the same use category, which do not comply with associated district-
 59 specific, dimensional, and development and design standards such as setbacks, parking,
 60 landscaping, etc. or the director determines that an increase in off-site impacts can reasonably
 61 be anticipated, the change may be allowed through a nonconforming situation review.

62

63 **Change of use in a different category.** A change to a use in a different use category which is
 64 prohibited by the base zone may be allowed through a nonconforming situation review. In RR,
 65 D1, D3, D5, D10, D15 and D18 zones, a change from a nonconforming nonresidential use to an
 66 allowed residential use that exceeds the allowed density may be allowed through a
 67 nonconforming situation review.

68

69 **Expansions.** A use made nonconforming due to a change in the zone or zoning regulations may
 70 be expanded throughout any portion of the existing building manifestly designed or arranged to
 71 accommodate such use. A nonconforming use may not be expanded to other buildings or to
 72 land outside the original building.

73

74 **Loss of nonconforming use status.**

75

76 **Discontinuance.** If a nonconforming use ceases operations for 365 consecutive days, even if
 77 the structure or materials related to the use remain, the use has been discontinued. A
 78 nonconforming use that has been discontinued for more than 365 continuous days may request
 79 re-establishment through a nonconforming situation review. The non-conforming situation
 80 review must take place within 3 years of the discontinuation of the non-conforming use.

81

82 **Accidental destruction.** When a nonconforming use is damaged by fire or other causes beyond
 83 the control of the owner, the re-establishment of the nonconforming use is prohibited if the
 84 repair cost of the structure is more than 75 percent of the cost of the replacement of the entire

Comment [BM1]: An example of this is a conversion of a store in a D5 zone to an office in D5 –both nonconforming.

Comment [BM2]: An example of this is conversion of a storefront in a D5 zone (nonconforming use) to a triplex (allowed use, nonconforming residential density).

85 building, exclusive of foundations, using new materials. The extent of building damage shall be
86 determined by the building official.

87

88 **Intentional destruction.** When a structure containing a nonconforming use is intentionally
89 damaged by fire or other causes within the control of the owner, the reestablishment of the
90 nonconforming use is prohibited.

91

92 **Nonconforming Residential Densities**

93

94 **Changes to dwellings.**

95 Generally. Existing dwelling units may continue, may be removed or enlarged, and amenities
96 may be added to the site provided that existing dimensional requirements such as setbacks and
97 lot coverage are met.

98

99 **Sites that exceed the maximum residential density standard.** On sites that exceed the
100 maximum residential density standards, reconstruction of the non-conforming dwelling units
101 may be approved through a nonconforming situation review.

102

103 Nonconforming densities may not be increased, altered or reconstructed until proof of a
104 nonconforming situation is established.

105 No increase in the number of units from that established through the nonconforming situation
106 review is allowed.

107 **Discontinuance and damage.**

108 **Building unoccupied but standing.** Nonconforming residential density rights continue even
109 when a building has been unoccupied for any length of time.

110 **Accidental damage or destruction.**

111 **More than one dwelling unit.** When there is more than one dwelling unit on a site, and when
 112 the site is nonconforming for residential density, the following applies if a structure containing
 113 dwelling units is damaged or destroyed by fire or other causes beyond the control of the owner:

114 If the structure is substantially complete within 3 years, nonconforming residential
 115 density rights are maintained;

116 If the structure is not substantially complete within 3 years, the nonconforming
 117 residential density rights are lost, and the site is considered vacant;

118 **One dwelling unit.** When there is only one dwelling unit on a site, and when the site is
 119 nonconforming for residential density, the following applies if the structure containing the
 120 dwelling unit is damaged or destroyed by fire or other causes beyond the control of the owner:

121 If the repair cost is more than 75 percent of the cost of the replacement of the entire
 122 structure, exclusive of foundations, using new materials, nonconforming residential density
 123 rights are maintained and the structure may be rebuilt within 3 years if it complies with the
 124 existing associated district-specific, dimensional, and development and design standards such
 125 as setbacks, parking, landscaping, etc. (except for density) that would apply to new
 126 development on the site. The extent of building damage shall be determined by the building
 127 official. If the structure is not rebuilt within 3 years, the nonconforming residential density
 128 rights are lost, and the site is considered vacant.

129 Nonconforming densities may not be enlarged, altered or reconstructed until proof of
 130 nonconforming situation is established. Density shall not be increased from that established
 131 through the proof of a nonconforming situation, except in accordance with this title.

132 **Intentional damage, destruction or demolition.** When a structure that is nonconforming for
 133 residential density is intentionally damaged, destroyed or demolished by fire or other causes
 134 within the control of the owner, the nonconforming residential density rights are lost, and the
 135 new development must meet all development standards for the site.

136 **Nonconforming structures**

137

138 **Nonconforming structures.** A nonconforming structure may be continued so long as it remains
139 otherwise lawful, subject to the following provisions:

140 A nonconforming structure may be enlarged or altered, but only if it does not increase
141 its nonconformity.

142 A nonconforming structure may add additional stories in accordance with
143 49.25.430(4)(M).

144 If a nonconforming structure is moved for any reason for any distance whatsoever it
145 shall thereafter conform to the code provisions applicable in the zone in which it is located after
146 it is moved;

147 If a nonconforming structure or nonconforming portion of a structure is damaged by any
148 means to an extent of more than 75 percent of its replacement cost at time of the damage, it
149 shall not be reconstructed except in conformity with the provisions of this code. The extent of
150 building damage shall be determined by the building official. This does not preclude the
151 reestablishment of nonconforming residential density as allowed by 49.XX.XXX.

152 If at any time a nonconforming structure is abandoned or brought into conformity with
153 this title, the structure shall thereafter conform to all the regulations of the zone in which it is
154 located.

155 Tenant improvements or renovations within an existing structure shall not be
156 considered an enlargement or an alteration as described in subsection XX above.

157 This subsection shall not be construed to allow the expansion of a nonconforming
158 density or use of structure, which is governed by sections XXXX.

159 A nonconforming structure may not be enlarged, altered or reconstructed until proof of
160 nonconforming situation is established.

161

162 **Nonconforming Lots and Lot Fragments**

163 A lot rendered substandard in size by the adoption of this title may nonetheless be used
164 provided if all of the following can be met:

165 The use does not have a minimum lot size greater than the minimum lot size required
166 by the underlying zoning district;

167 Any associated district-specific, dimensional, and development and design standards
168 such as setbacks, parking, landscaping, etc. are met; and

169 The lot is accepted as legally nonconforming.

170

171 When a nonconforming lot or lot fragment contains a dwelling unit that is damaged or
172 destroyed for any reason other than fire or other catastrophe beyond the owner's control the
173 structure may be rebuilt to the same footprint on the original location with the exception of
174 encroachments into public rights-of-way or adjacent property.

175

176 Undeveloped nonconforming lots that adjoin and have continuous frontage with one or more
177 undeveloped lots under the same ownership shall be treated as a single lot for zoning purposes
178 in order to minimize nonconformities with the dimensional requirements. Nonconforming,
179 adjacent lots in common ownership may be treated as separate lots for zoning purposes if the
180 Director finds that the owner of said lots has demonstrated the intent to maintain the lots as
181 separate. The Director shall rely on the following factors:

- 182 a. The existence and maintenance of walls or fences along the original lot lines;
- 183 b. The lots are separately assessed for tax purposes;
- 184 c. The placement of structures on the various lots.

185

186 The manner in which the lots were acquired or the fact that the lots were separately described
187 on a deed shall not be considered.

188

189 **Nonconforming parking.** A building may be replaced or reconstructed under this subsection
190 with the same number of off-street parking spaces as were provided for the original building.
191 Any use that had non-conforming parking and later became more conforming may not revert to
192 the original, lesser, non-conforming parking. Such uses may apply for a parking waiver in
193 accordance with 49.40.210(d) Exceptions (6) Parking Waivers.

194

195 **Nonconforming signs.** 49.45.400

196

197 **Proof of nonconforming situation**

198

199 **Purpose.** This review will determine if a use or site has legal nonconforming situation rights. In
200 addition, it will determine what the current legal use is, based on the use categories in Chapter
201 49.XX.XXX. It is the responsibility of the owner to produce evidence proving the nonconforming
202 situation was allowed when established and has been continuously maintained or used over
203 time.

204

205 Upon presentation of such proof the Director may formally approve each nonconforming
206 situation. If approved, the Director shall issue a written decision that includes a complete
207 description of each approved nonconforming situation.

208 No permit may be issued under 49.15 for any activity on a lot prior to Director approval of each
209 nonconforming situation existing on the lot.

210 Standard evidence that the situation was allowed when established includes:

- 211 1. Building, land use, or development permits;
- 212 2. Zoning codes or maps;
- 213 3. Recorded plats;
- 214 4. Sanborn Maps.

215

216 **Situation maintained over time.** Standard evidence that the use has been maintained over
217 time includes but is not limited to:

- 218 1. Utility bills;
- 219 2. Income tax records;
- 220 3. Business licenses;
- 221 4. Listings in telephone (record? books?), business;

5. Advertisements in dated publications;
6. Building, land use, or development permits;
7. Insurance policies;
8. Leases;
9. Dated aerial photos;
10. Insurance maps that identify use or development, such as the Sanborn Maps; or
11. Land use and development inventories prepared by a government agency.

Nonconforming Situation Review

Purpose. A nonconforming situation review provides an opportunity for the Board of Adjustment to consider nonconforming uses changes of use within the same use category, which do not comply with associated district-specific, dimensional, and development and design standards such as setbacks, parking, landscaping, etc. or the director determines that an increase in off-site impacts can reasonably be anticipated, the change may be allowed through a nonconforming situation review.

Applicability. A change to a use in a different use category which is prohibited by the base zone may be allowed through a nonconforming situation review. In RR, D1, D3, D5, D10, D15 and D18 zones, a change from a nonconforming nonresidential use to an allowed residential use that exceeds the allowed density may be allowed through a nonconforming situation review. On sites that exceed the maximum residential density standards, reconstruction of the non-conforming dwelling units may be approved through a nonconforming situation review when an applicant does not provide standard evidence for a Proof of Nonconforming Situation or when the Director does not find the evidence to be satisfactory.

Comment [BM3]: An example of this is conversion of a storefront in a D5 zone (nonconforming use) to a triplex (allowed use, nonconforming residential density).

Procedure. A nonconforming situation review is processed..... Refer to public notice section – red sign, newspaper, mailing to property owners...

249 **Approval criteria.** The request will be approved if the Planning Commission finds that the
250 applicant has shown that all of the following approval criteria are met:

251 With mitigation measures, there will be no net increase in overall detrimental impacts (over the
252 impacts of the last legal use or development) on the surrounding area taking into account
253 factors such as:

- 254 a. The hours of operation;
- 255 b. Vehicle trips to the site and impact on surrounding on-street parking;
- 256 c. Noise, vibration, dust, odor, fumes, glare, and smoke;
- 257 d. Screening, public safety, neighborhood harmony;
- 258 e. The amount, location, and nature of any outside displays, storage, or
- 259 activities.

260 If the nonconforming use is in a D1, D3, D5, D10, D15 or D18 zone, and if any changes are
261 proposed to the site, the appearance of the new use or development will not lessen the
262 residential character of the area. This is based on taking into account factors such as:

- 263 a. Building scale, placement, and facade;
- 264 b. Parking area placement;
- 265 c. Buffering (screening?) and the potential loss of privacy to abutting residential
- 266 uses; and
- 267 d. Lighting and signs.

268 Nonconforming residential density will have no net increase in overall detrimental impacts on
269 the surrounding area taking into consideration factors such as:

- 270 a. Vehicle trips and impact on surrounding on street parking
- 271 b. Lot coverage, vegetative cover, anything else? Conformity with future land
- 272 use maps maybe?

273 **49. 80 Definitions**

274 Nonconforming building or structure. A building or structure that does not meet one or more
275 height, setback, building coverage, , or other dimensional requirements for the land use district
276 in which it is located.

277 Nonconforming lot. A lot which legally existed prior to the adoption, revision, or amendment of
278 this Code does not comply with current minimum lot size, lot depth, lot width requirements or
279 other lot requirements of the district in which the lot is located.

280 Nonconforming Residential Density. A residential use that is an allowed use in the zone and
281 that was constructed at a lawful density, but which subsequently, due to a change in the zone
282 or zoning regulations, now has greater density than is allowed in the zone.

283 Nonconforming Situation means a nonconforming lot, use or structure, density, or any
284 combination thereof.

285 Nonconforming Use. A use that was allowed by right when established or a use that obtained a
286 required land use approval when established, but that subsequently, due to a change in the
287 zone or zoning regulations, the use or the amount of area devoted to the use is now not
288 permitted under the current zone designation.

289 Abandon means (a) with respect to a use, the cessation of such use for any length of time,
290 combined with intent to indefinitely cease such use, or (b) with respect to a structure, the
291 cessation of occupancy of such structure for any length of time, combined with intent to
292 indefinitely cease occupancy of such structure.

293 Change means, with respect to a nonconforming use, that the nonconforming use has been
294 converted to a different use for any period of time, regardless of intent.

295 Discontinued means that a nonconforming use has ceased, and has not substantially resumed,
296 for a period of 365 consecutive days regardless of intent.

297 Occupy or occupancy means actual physical occupancy of a structure or lot, regardless of
298 intent.

299 Primary use means the primary activity actually conducted in a serious, substantial, and
 300 ongoing manner on a lot or in a structure, and for which the lot or structure is actually and
 301 primarily occupied and maintained, regardless of intent.

302 Substantially resumed means substantial and continuous resumption of the use as the primary
 303 use for a period of at least 60 consecutive days. Activity that does not meet this standard is not
 304 sufficient to interrupt a period of discontinuance.

305 Use means activity actually conducted on a lot or in a structure, and for which the lot or
 306 structure is actually occupied and maintained, regardless of intent.

307 **49.85 Fees**

308 Proof of Nonconforming Situation – staff review \$200 (similar to letter of zoning compliance)

309 Nonconforming Situation Review – to PC \$400 (similar to variance and ADOD) plus public notice
 310 fees...NOTE NSR should refer to public notice section.

311

312

Meeting Agenda of the City and Borough of Juneau
Title 49 Committee of the Planning Commission

Wednesday, July 19, 2017
Community Development Department, Large Conference Room
3:15 p.m. to 4:30 p.m.

Members Present:

Dan Miller, Paul Voelckers, Kirsten Shelton, Dan Hickok (Alternate)

Members Absent:

Carl Greene

Staff Present:

Laura Boyce (CDD), Beth McKibben (CDD), Marjorie Hamburger (CDD)

Public Present: Scott Rinkenberger (Airport Superintendent)

Mr. Rinkenberger stated that it seems the airport is under different types of scrutiny regarding tree limbing on anadromous streams. Mr. Rinkenberger wanted to be sure the airport is involved and keeps an ear to the ground regarding this topic. He hopes to be present at Title 49 meetings that address the topic of streamside setbacks. Ms. Boyce assured Mr. Rinkenberger that she would keep him in the loop for when the Committee addresses the topic.

I) Call to Order

Meeting called to order at 3:18 pm.

II) Approval of Minutes

June 28, 2017 Draft Minutes

MOTION: *by Mr. Miller to approve the June 28, 2017 minutes.*

The motion passed with no objection.

III) Old business:

a) Panhandles

Ms. McKibben remembered that she had work to do on panhandles as previously requested by the committee.

Mr. Voelckers reminded her that she was going to share graphics and other adjustments for panhandles with the committee. Then the issue is expected to move on to Committee of the Whole. Ms. McKibben suggested putting this as a discussion item on the August 8th agenda, not for public hearing.

IV) New Business

a) Review of Title 49's Nonconforming Development Policies

Ms. McKibben started by reviewing the memo on nonconforming development policies that she had prepared for the committee. When analyzing non conformities, she stated, it is essential to clarify if the lot, the structure and/or the use is

non-conforming. While it is possible to have all three areas meet the definition of non-conforming, it is better for staff, commissioners and the public to understand these three dimensions as separate entities.

Mr. Voelckers said it is helpful to know if one type or another of non-conformance is of particular concern to lending institutions. Ms. McKibben said she believes that banks are mostly concerned with use. An example is Aurora Arms where the zoning doesn't support the use, at present, she said.

Mr. Voelckers said that another item that got on the community's radar was a parcel with a triplex where zoning only supports a duplex. Ms. McKibben said there are numerous examples of this type of situation in the borough.

For discussion today, Ms. McKibben said she intended to review with the committee the existing code and focus on the simpler things – lot and structure. She suggested leaving the more complicated piece – use – for a second discussion. It will take some time to parse out the question of benign and non-benign uses, she said. Perhaps the non-benign uses are on a case by case basis. Ms. McKibben asked if this was a good approach to the topic.

Mr. Voelckers asked if the whole process of determining benign use was an active or passive decision. Do we want to bring attention when there is a complaint or a problem presented, he asked? Ms. McKibben offered as an example a gas station located in a residential area. If it has been there since 1964, the business gets to continue its operations. Complaints about it would receive the response that it is legally non-conforming and gets to continue. However, she said, the gas station couldn't expand its business under current code. The issue of non-conforming comes up most often when there is a change of ownership. Another question is, can it be rebuilt if it is destroyed? Can it be expanded or moved? Zoning codes historically try to amortize out non-conforming uses to make them go away over time, said Ms. McKibben. That is the concept.

Mr. Voelckers said regarding the gas station example, if a person wants to sell the business but can't get financing from a bank, does this come to the Planning Commission? Ms. McKibben suggested deferring discussion on this question to the committee's next meeting, as it is the more difficult facet of the topic. She said she will collect a variety of tools for the committee to use while considering.

The discussion refocused regarding non-conforming properties. Ms. McKibben noted that in her June 27 memo, the final section is a discussion of work to do as follow up to the recently approved overlay districts to get the work done regarding zoning in historic districts.

Ms. McKibben suggested that the ordinance be repealed and replaced, not amended. But, she said, the committee still needs to review the policies to see what to keep, rework, etc.

Ms. McKibben said that non-conforming lots are the most simple to address. In the case of a non-conforming lot due to width or depth, current code says you can have a single family home on a non-conforming lot, meeting current setback requirements. It is pretty clear and simple except for in the industrial zone where single family homes are not allowed, she said. Ms. McKibben said she was not suggesting this be changed. Mr. Voelckers asked committee members if they agree with this suggestion.

Ms. McKibben stated that for accessory apartments there now is a process to apply with a non-conforming lot and bring the case to the Planning Commission. Mr. Miller asked if in the industrial zone, can someone build a structure with a caretaker apartment. Yes, said Ms. McKibben, if you can comply with setbacks then any use that is allowed in a district can be built provided it can meet current setbacks, parking, lot coverage, vegetative coverage, etc.

There will be challenges in older, historic districts, said Ms. McKibben. Juneau currently has some lots in these districts where the ownership has been fractured. In such situations, in the event one building is destroyed, under current code it can be replaced. Can it be subdivided further, asked a commissioner? No, said Ms. McKibben. She used as an example a lot on Sixth Street which was broken up into 3 lots, sometime in the past.

Mr. Miller wondered if a person might not want to lock themselves into a property if it is a non-conforming lot with a non-conforming use. In order to fix the mortgage problem, it is not the duplex or triplex that is non-conforming, it is the zoning, he said. Ms. McKibben said it was not quite that simple. For a 1500 square foot lot downtown, we don't want to take away usage by holding to current setbacks, etc., she said. This could make the lot unusable to build a home whereas we said "any use in the district". The zoning in that area requires a larger lot size for a duplex, so an application for this type of development would be denied. But the owner can apply for an accessory apartment in that case, said Ms. McKibben. Mr. Miller said that if he bought a duplex downtown and then discovered that more than 75% of the building needs rehabilitation when he attempts to remodel. If he went to the bank, they would not loan him money to upgrade the duplex because it is non-conforming.

Allowed use and dimensional criteria is the most important policy, said Mr. Voelckers. Ms. Shelton said she understands that for a rebuild but wonders about an initial purchase. The bank says it won't loan to purchase an already existing duplex because that type of structure would not be allowed as a new build, she said. As an example, Ms. Shelton could not get a loan on her house on Sixth Street because of the size of the lot, which has two single-family structures on it. Ms. McKibben said it was not the lot size but the use that prevented the loan.

Ms. McKibben said that non-conforming structures are ones not meeting setbacks, height requirements or parking. She said she would talk about parking later. The variance that was denied recently by the Planning Commission is a great example (VAR2017 0002 on 12th street) because the proposed structure did not have the required setbacks. If a catastrophe happened to destroy the original building, it could be rebuilt on the footprint, but since the applicants wanted to tear down the old structure and replace it, they were required to meet the setbacks. Mr. Miller noted that the house was less expensive to rebuild than to restore/remodel, since it was in such poor shape.

Mr. Voelckers said a slow-roll calamity versus a single event have two different attitudes i.e. slow rot versus an earthquake. Ms. McKibben said the 75% recovery line is for a catastrophic event and lack of maintenance is not such an event. Theoretically termites or something could have been prevented or mitigated with maintenance, she said. This is the way most non-conforming codes are written. Do you like the term in code "involuntary change", asked Mr. Voelckers? Ms. McKibben shrugged.

Ms. McKibben read from code concerning change to a building such as the one on 12th street which continued with a description of catastrophic change. What is the magic with the 75% number, asked Ms. Shelton? Ms. McKibben said it was a policy call and was hard to talk about. There is no magic number; some prior somebody came up with this, she said. Mr. Miller said he thinks the advantage is for people who are trying to rebuild their homes. He would agree with Mr. Voelckers that the intent is to not let people let their building deteriorate and then claim calamity. Mr. Miller agrees with that intent as it offers the possibility to rebuild if there truly is a calamity. Mr. Voelckers suggested the language could include some unknowable calamity that is not a one-time event like a fire. Ms. McKibben read some other examples of code with ideas of changes such as for health and safety. Mr. Voelckers suggested that staff mess around with this language. Ms. Shelton said another wording could be "involuntary change". Ms. McKibben said the code defines that as catastrophic, but staff can work on some draft language.

Mr. Miller said that on the 12th street property, there was a feeling that the bad shape of the foundation was just cause for a variance, but it turned out not to be.

Ms. Shelton said she was still confused about the purpose of having 75% as the number. Mr. Voelckers and Mr. Miller both felt the 75% number was justifiable. Here in Juneau, the cost of doing business requires being closer to the high end, they said.

Going back to the topic of non-conforming structures, you can put additions on the building if they meet setbacks, said Ms. McKibben. Now we have the Alternative Development Overlay District (ADOD) for this purpose, she noted. Also we have the process of up-fill conditional use; for example if an applicant wants to add height to a building, the conditional use process can be used. This is for a property owner who has a building already encroaching into setback but wants to add another story, for example, she said. Ms. Shelton asked, if you have a non-conforming structure with a non-conforming use, can you add to it? Mr. Voelckers drew a case on the whiteboard showing a situation where a portion of a house stuck out

into a setback and the owner wants to fill in the notch. The narrow interpretation, he said, is that this is not allowed, however other interpretation could be that it just fills in along the line that already exists. In such a case, he said, the structure does not get any closer to the property line than the portion that is already there – it is just an extension of that line. Mr. Voelckers said his own house has a similar situation that was denied by one planning commission and allowed by another.

Mr. Voelckers asked about Ms. McKibben statement on page 3 of her July 27 memo suggesting that additions to non-conforming situations should not aggravate. This was followed by a discussion about aggravated use. Ms. McKibben said that currently if the gas station from the earlier example wanted to add another bay to their business, this would be denied. What about widening the bay they already have, asked Mr. Miller?

Ms. McKibben said that the question before the group is regarding the extension of the front encroachment of the house, creating a greater encroachment. Mr. Voelckers said the code is unclear what “greater” means in this case. Mr. Miller said at some point that house was built legally. So the old setback ought to be considered legal, if it currently is considered legally non-conforming, and therefore that would be a valid reason to extend the house to fill in the notch. Mr. Hickok said he would like to be able to approve something like that. Mr. Voelckers said it is tricky when the design is fine and seems benign yet other times the proposed development seems less desirable because we don’t “like” it. “Additions to non-conforming structures that don’t add density or don’t expand non-allowed uses” could be new language here, suggested Ms. McKibben. Commissioners liked the notch infill as not further increasing the encroachment and felt this sort of infill should not be dismissed outright.

Ms. McKibben said that staff has been working for the last few years to reduce the number of applications coming to the Planning Commission because it takes longer for the applicant and is more of a gamble. For example, applications for accessory apartments used to come to before the Planning Commission. Mr. Voelckers and Ms. Shelton said they felt there needs to be some oversight. Ms. McKibben suggested that the director have some discretion to approve some of applications involving non-conforming situations while others would need to come before the Planning Commission.

Would you want this sort of non-conforming structure in any district, asked Ms. McKibben? We’ve focused on residential district so far, she said. A good example is the new bank by the Bill Ray Center which required 3 variances for that building, said Ms. McKibben - variances for parking and for the drive-through window. Today this would not have met the unique threshold. That is an example of a building built that is legally non-conforming. Mr. Voelckers asked if the variance lives with the land. Yes, said Ms. McKibben. Why would the triplex not follow, asked Mr. Hickok? Because of the use, said Ms. McKibben.

Committee members felt that a similar event in another district – filling in a notch for example – was the same difference as the residential example. Ms. McKibben said some things come to the Planning Commission, versus the director, because it then becomes a public process with 9 decision makers, and the public can participate.

What is the process to repeal the ordinance, asked Mr. Hickok? Ms. McKibben said it is a repeal and replace action and is fairly easy.

V) Next Meeting

Wednesday, August 16, 3:15 pm

At this meeting, we will dive into discussion about non-conforming uses, said Ms. McKibben, and she will suggest some language. The committee needs to discuss the issue of benign – what is and what is not. Ms. Shelton asked for some examples. Ms. McKibben said she would bring examples from the finance world.

Mr. Voelckers said he felt that we are dancing around the big issue, which is the sudden, instantaneous change of ownership. This is when the bank suddenly refuses to loan and owners did not even know they had an issue. When the appraiser pulls up info on a property which says it is non-conforming, said Mr. Miller, there needs to be a way to say that it is legally non-conforming or have some sort of a process to make it legal and satisfy the lender.

Ms. McKibben used the example of Homer where the burden of proof is on the owner to show that the non-conforming use is rooted in history. Mr. Voelckers said it is more than just the owner proving it was legal back in the day; they also have to prove it continues to be in the public interest to remain so. Mr. Miller said once the designation is set, he thinks it should be done. The bank loans for 30 years. Mr. Voelckers said that there are tons of properties in Juneau that are non-conforming but that get loans all the time. The bank asks can this building be rebuilt, said Ms. McKibben. Yes, we say, a single family can be rebuilt, but not the triplex as it stands today.

Ms. McKibben said that conversation needs to be had concerning Aurora Arms. Is it OK to have such a building here for 50 years but now is not conforming to zoning, remain in place as such, asked Ms. McKibben?

VII. Adjournment

The meeting adjourned at 4: 35pm.

Meeting Agenda of the City and Borough of Juneau
Title 49 Committee of the Planning Commission

Wednesday, August 16, 2017
Community Development Department, Large Conference Room
3:15 p.m. to 4:30 p.m.

Members Present:

Dan Miller, Paul Voelckers, Kirsten Shelton, Dan Hickok (Alternate)

Members Absent:

Carl Greene

Staff Present:

Laura Boyce (CDD), Beth McKibben (CDD), Marjorie Hamburger (CDD), Tim Felstead (CDD)

Public Present:

I) Call to Order

Meeting called to order at 3:19 pm.

II) Approval of Minutes

July 19, 2017 Draft Minutes

Mr. Voelckers commented that on page 4, 3rd paragraph add "Commissioners liked the notch infill as not further increasing the encroachment. This sort of infill should not be dismissed outright."

MOTION: *by Mr. Miller to approve as amended the July 19, 2017 minutes.*

The motion passed with no objection.

III) Old business:

a) Review of Title 49's Nonconforming Development Policies

Ms. McKibben is not totally prepared to dive deep into the use discussion. She has an example of nonconforming code from Portland, OR that she thinks represents the direction our code want to go. It has very clear parameters, although it might be more complicated than we want. She said this will help with challenges in this section of code for example to separate use from density. She pointed out other concepts that she finds useful in this example and will share this document with the committee members at a later meeting.

She also recently learned that different lending institutions will take on different amounts of risk. Most strict, for example, is the HUD 180 loaning program. Ms. McKibben talked about Aurora Arms as an example, and she found evidence of a loan that was processed in 2011 and flew through with no problem. If we say the building can be rebuilt to the existing footprint, the loan goes through. Mr. Miller noted that yes, it could be a single-family rebuild.

Mr. Miller said there have been many changes from 2011 to today with housing loans. Now there is much more paperwork and scrutiny and this has been gaining steam since 2008.

Ms. McKibben said the American Planning Association (APA) service told her they had not seen many communities revising their sections of nonconforming code since the Great Recession. Ms. McKibben said we need to focus on the issues to make a code that works for the community and not just focus on the lending institutions. If this is clear, likely it will improve things for the lenders.

Mr. Voelckers asked if committee members want a copy of the Portland model. Ms. McKibben said for her, reading through it gave her a framework for thinking through concepts. She handed paper copies to the attending members. She suggested they read this for homework. The way the language is framed, what is ok to continue and what is not will help to group things into various kinds of uses, she said.

Mr. Voelckers suggested the committee have two weeks to read the document and then give their comments to Ms. McKibben so that the topic can come back at the September committee meeting.

IV) New Business

a) Review of Planned Unit Development Code (PUD)

Mr. Felstead came in to talk about a developer who wants to build in the West Montana Creek PUD. Each plat says 1 dwelling unit per lot. He explained that we don't include accessory apartments counting towards density. There is nothing in the staff reports that says allowed or not allowed, he said, and it was not talked about in the minutes for permits for the PUD.

Ms. McKibben said whether an accessory apartment is allowed or not is one question. Another question is do they need a permit or not. The density of the entire property is a D3 density.

Mr. Voelckers asked what these apartments trigger for parking. One additional space, replied staff. As part of a review we would insure 3 parking spaces for each property with an apartment, said Ms. Boyce. Montana Creek lots are designed like a D5 neighborhood in a D3 zoning area, said Mr. Felstead. Ms. McKibben said housing is clustered in these lots.

Ms. Boyce has no qualms about saying it is an over the counter permit because overall this meets density requirements. But planners are all over the place with this, she said. Mr. Felstead has done forensic planning on this topic, said Ms. McKibben. What we can't discern is whether one dwelling per lot included accessory apartments or not. We don't know the intention from the past, said Ms. McKibben. They count as dwelling units but not density, said Ms. Boyce.

Mr. Miller said the reason is we took full acreage and figured out how many lots could fit in there. We were not using zoning as the framework. Then we were blindsided by the flood plain trigger for rezoning and so it was determined that the wetlands there could not be built upon, he said. We were forced into the PUD situation; trying to make the best of it. The question never came up when Mr. Miller built the first houses in that area. No clients wanted an accessory apartment at that time, although he said he thought it would have been allowable, said Mr. Miller.

There is a plat note that says zoning allowances allowed for the entire PUD parcel can be transferred over to the smaller sub lots, said Mr. Felstead. This means each small PUD lot is effectively bigger in terms of zoning allowance since it can 'borrow' lot area from the large conservation lot. Each lot is effectively 12,000sq ft. in size in terms of zoning rights. This was my interpretation as well, said Ms. Boyce. This was the first PUD I took from start to finish, said Mr. Miller, so not every eventuality was thought through.

When we changed the code so that accessory apartments could be permitted over the counter if conventionally conforming, I noticed Low Pete offering these options to clients, said Ms. McKibben.

About PUD, is the only issue regarding setbacks is that they only have to stay within 10 feet from another building, asked Mr. Voelckers? Montana Creek subdivision is a little different, said Ms. McKibben. So, I think we can do it as a single blob with 8 units. A subdivision within a PUD is not the same, said Ms. McKibben. Mr. Voelckers argued that setbacks are still minimal.

I threw my hat into the ring to be a commissioner after this experience and seeing how tough it was, said Mr. Miller. Forty percent is a big huge number and stops a lot of PUDs, said Mr. Miller. Land is priceless in Juneau. He said it only can work if there are so many wetlands that already can't be built on, for example.

What if a PUD was four 8-plexes, asked Mr. Voelckers? Montana Creek West has something like that, said Mr. Miller. But then, said Mr. Voelckers, this may color our perception of accessory apartments. Multi-family can't have them, said Ms. Boyce, only a single-family dwelling. A 12-unit PUD on North Douglas collectively owns the land; dwellings are not sitting on their own lots, so they can't have accessory apartments.

Mr. Miller stated that common wall dwellings are single-family and duplexes are not. This has to do with the situation of the structure on the lot and where the lot line runs. Mr. Miller asked, if there is a single owner and the lot is big enough, why not allow an accessory for a duplex?

Changes made for these apartments has been great these past years, said Ms. McKibben

Mr. Voelckers asked committee members if they have enough info about PUDs and accessory apartments to make some suggestions.

Plat notes added to Montana Creek were required by the Planning Commission, said Mr. Felstead. Ms. Boyce pointed out that 49.15.12 talks about number of dwellings in a PUD. Mr. Voelckers asked if it was the thought to amend PUDs with some language that would help clarify something like Montana Creek. We probably want to deal fast with this particular question, said Mr. Voelckers. Ms. McKibben said that staff at CDD hopes to find an answer but planners are not all of one mind. The hope is that someone would have history in order to help clarify the intent.

Mr. Miller hopes to fix PUD code to make it friendlier. Mr. Voelckers said he thinks we should allow accessory apartments because this quacks like D5 zoning in terms of lot size. Who knows where the note came from as this was started some years ago, he said. Ms. Shelton said her gut tells her it makes sense to allow accessory apartments. Allowed outright or with a Conditional Use Permit (CUP), asked Ms. McKibben. It would be so for anyone else with the minimum lot size to receive a permit over the counter, said Ms. McKibben. Mr. Voelckers clarified that this is a single case we are approving now, but not setting precedent. Yes, however this means the next time someone in Montana Creek West asks, we would say yes to that as well said Ms. McKibben.

Mr. Felstead said planners would look at lot size in combination with the common space of the entire development - this is still at D3 density. Mr. Miller examined the comparison of D3 and D5 and overall density. Ms. Boyce is concerned that people who bought into the development might have thought that it would only be a single-family community, not understanding the situation that accessory apartments would not be considered adding density.

If we brought this to the Planning Commission, we could notice everyone in the PUD about this, said Ms. Boyce. PUDs are the beginning of a subdivision, is this correct asked Mr. Hickok? A clustered subdivision, said Ms. Boyce. Give some flexibility suggested Mr. Miller. Ms. McKibben gave examples of how the zoning flexes under a PUD such as putting 4-plexes in a D3 zone. Mr. Voelckers said it is a progressive way to work with difficult lots or afford residents more green space.

So, this should go before the Planning Commission, asked Ms. Boyce? Mr. Miller said it will probably be the residents immediately outside of the Montana Creek PUD who will be most concerned; that was the biggest meeting I've ever seen. But he thinks this is the best way to go nevertheless. Maybe beginning with a public hearing would have an eye towards moving to an over the counter permit process, but for this first time let the public have their say, said Mr. Voelckers. This would then say this new rule would apply to existing PUDs, said Mr. Miller. One option is to go through a CUP for this one and have the Commission say that the CUP is not necessary, said Mr. Felstead. Have a public hearing and have the Commission make an interpretation, he suggested. Commissioners in attendance nodded their heads, and Ms. Boyce stated she liked this idea. We should err on the side of over-noticing and explaining at this point. Who pays for the CUP, asked Mr. Felstead? We will need to talk to Mr. Steedle (Department Director), said Ms. McKibben. We will vet that option, she said. So it appears we are of a mind to get to a process that involves the Planning Commission, stated Mr. Voelckers. Staff can game it out, he said.

Ms. Boyce brought up another situation related to PUDs. Rich Harris has a condo project with units owned individually but the land is owned collectively, she said, sort of a cottage housing concept. The project is under construction already, but the developer wants to make it a PUD. However he can't make the 25-foot greenbelt requirement and a few others requirements, yet Ms. Boyce wants help reviewing the project to see if the developer can make this work somehow. There is some "shall" language in the code that makes it hard to modify, she said.

Mr. Voelckers said that the Planning Commission should figure out what is right for PUDs first and then see if Mr. Harris' project can be accommodated.

Mr. Miller stated that he has a laundry list of modifications concerning PUDs. There should be discussion about prioritizing things to be fixed in code from the builders' perspective, he said.

- 40% common open space is fine if underlying D1 zoning but 30% for D3 – Mr. Miller feels the code ought to start lessening the percentage sooner than it does at present. Once the developer gets into planning a multi-family project, it gets easier to set aside more land again. There ought to be some scale to make PUDs a more useful option for development.
- 25 foot buffer – ought to be more flexibility with this requirement.

Mr. Voelckers asked if the PUD is in a D3 or D5 zone, can it be developed as though it were D18. Yes, said Ms. Boyce. It is the underlying district that sets the tone, said Mr. Miller. If D1 and 10 acres, a developer would need a 25 foot buffer all around and 40% greenspace, leaving 6 acres to build the 10 dwellings. A developer buys land, pays for road, sewer, etc. and then gives this to the city to maintain, said Mr. Miller. It becomes unfriendly for the developer to lose all that land to recoup expenses. Ms. Boyce thinks the sliding scale is an interesting idea.

Mr. Miller said when he did Montana Creek West, the selling point was having less road to build and he could save development costs with the same amount of lots and houses because it was more dense. The level of difficulty for the construction went up, however. Also the design was more difficult.

What about the requirement for building separation of 10 or 6 feet, asked Mr. Voelckers, side setback for D10-SF is 3 feet in code, why not here?

We are hoping there is enough existing language to make a process flexible but now with the “shalls” this makes it less so, said Ms. Boyce. There is a need for language to be clearer between PUD and subdivisions, she said. PUD talks about a density bonus up to 15 %, but another section of code offers a 50% bonus. On the to-do list is work on the bonus section, said Ms. McKibben.

Maybe there is opportunity for mitigated judgements like a fence. Probably we will have to address the utility hook ups, said Ms. McKibben. The high school house-build is an example of a lot with multiple units owned by a Land Trust and with only a master water meter for all the properties. Housing Trust doesn’t want to function that way and allow for individual meters. There needs to be an avenue to have a discussion with utilities to see what flexibility there can be in such a situation. When not subdividing, what are options for utilities, asked Ms. McKibben?

V) Next Meeting

Wednesday, September 20, 3:15 pm

VI) Adjournment

The meeting adjourned at 4:34 pm.

Meeting Agenda of the City and Borough of Juneau
Title 49 Committee of the Planning Commission

Wednesday, September 20, 2017
Community Development Department, Large Conference Room
3:15 p.m. to 4:30 p.m.

Members Present:

Dan Miller, Paul Voelckers, Dan Hickok (Alternate)

Members Absent:

Carl Greene, Kirsten Shelton

Staff Present:

Laura Boyce (CDD), Beth McKibben (CDD), Rob Steedle (CDD), Marjorie Hamburger (CDD)

Public Present:

I) Call to Order

Meeting called to order at 3:21 pm.

II) Approval of Minutes

August 16, 2017 Draft Minutes

MOTION: *by Mr. Hickok to approve the August 16, 2017 minutes.*

The motion passed with no objection.

III) Agenda Topics

a) Language for Nonconformities

Ms. McKibben explained that document before the committee was a patchwork of concepts - some from existing code, some from Homer and Anchorage and Portland, OR. There are a number of categories and processes for nonconforming situations. A nonconforming situation could be any one or a combination of these things.

Is it the intent of these meetings to convert this document into Title 49 language, asked Mr. Voelckers? We will plan to repeal and replace from 49.30.500, said Ms. McKibben, rather than try to amend what we have. The idea is to put in new language. We also want to provide a process to determine legally nonconforming status and we need to discuss which decisions can be done administratively or need to happen through the Planning Commission process.

Discussion of Proof of Nonconforming Situation (Lines 33-80)

Mr. Steedle said this puts the burden on the applicant or the property owner to demonstrate nonconforming status and there is not a definition of this at present.

What about the purchase of the triplex on Sixth Street recently, does this situation apply, asked Mr. Hickok? Did the bank not get confirmation on the legally nonconforming status? So we don't know if the buyer made the

purchase of the building considered as nonconforming, asked Mr. Hickok. I don't know, said Ms. McKibben. He may have found a workaround with owner financing, said Mr. Voelckers. But this language we are drafting could provide a process for an owner to show us, in the future, said Ms. McKibben.

Lines 37, Option A and Option B present an option for whose decision it should be. Mr. Hickok asked what the director wants. Mr. Steedle said he did not have an opinion but thinks this determination could be handled administratively. Mr. Voelckers said he liked having it be a director decision with the option for an appeal to the Planning Commission or if the determination gets too complicated. Mr. Steedle says he would rather keep the noise away from the Planning Commission and direct things to them that are necessary only. It is also cleaner if things happen at the director level, said Mr. Voelckers. But something can be said for making decisions in the public eye, said Mr. Steedle. This could be where the appeal comes in if the neighbors are unhappy, for example.

We have tried to make it a trend for more applications to be approved at the director level, said Ms. McKibben. We are trying to be more responsive.

Ms. McKibben said the language concerning evidence of nonconformity is borrowed from other code, and she thinks it is pretty good. There is in this document a lot of clarifying language that is not currently in our code, such as on Line 63 (Ownership). Other language here is not addressed in our code but she thinks is useful such as Line 69 (Change to conditional use). We have the opportunity to talk about maintenance (Line 73). Do we need to define it, asked Ms. McKibben? I put in some language borrowed from Anchorage, she said. She has not talked to building official yet but thinks it would be good to run this language by him.

Mr. Miller said there can be a situation, for example rebuilding a staircase where the stairs could be built to the new standards even though the building as a whole is nonconforming. Do you think we should have language here about such a situation, asked Ms. McKibben? I think most people would want or need to do this when replacing their staircase but doing so might affect the nonconforming status of their building, replied Mr. Miller. You are correct, said Ms. McKibben, if a building owner was going to reconstruct stairs, this should be done to code, and so should we say here that repair or maintenance should be done to code? I think it is implicit, said Mr. Steedle, and a building official would determine this requirement so it is not needed to be spelled out here. Mr. Voelckers said he likes the last section (Lines 75-80) where it says fixing a rotten stair, for example, does not interfere with nonconforming status. However, while it mentions a percentage, it is not specific about the 10 percent. What if someone breaks a project into smaller chunks and has ten 10% projects? This is of concern, said Mr. Voelckers.

Discussion of Nonconforming Lots and Lot Fragments in ??? Zones (Lines 82-113)

I think nonconforming status should not be specific to a particular zone but borough wide, said Ms. McKibben. Mr. Voelckers said the first sentence in this section (line 84-85) should be broader. Mr. Miller asked about Line 86. Wouldn't a lot already have gone through the land use review process to establish use and so it wouldn't have to meet a minimum lot size if it is determined to be nonconforming? Ms. Boyce could not recall a specific use that requires a specific land size (minimum lot size requirement). Ms. McKibben said that in Homer there was a minimum lot size for use, but Juneau doesn't have one so this could be eliminated in that sentence. Mr. Voelckers agreed.

Regarding district standards, Juneau does not have any so this can be taken out said Ms. McKibben. Basically we can keep the same policy we have now - if you can meet all the requirements. And the lot needs to go through the process of determining that it is legally nonconforming, said Ms. McKibben. It might be that for different categories of nonconforming, some are determined administratively while others are brought before the Planning Commission.

Ms. McKibben said that Line 92 contains a concept staff suggests - that lots sharing ownership must be combined into one lot. Should the language say one conforming lot, asked Mr. Voelckers? What if there are five lots? Does the committee want to consider when nonconforming lots have common ownership that the lots should be required to be combined, asked Ms. McKibben? North Douglas Highway and 9 Mile Road is an example, said Ms. Boyce. Is there anything external to this section that says a legally nonconforming lot can have a house on it, asked Mr. Voelckers? Yes, said Ms. McKibben, and if you want to make this come forward there is merit. She suggested committee members think about it.

In the Casey Shattuck area, an owner could have two nonconforming lots and today could build two houses, one on each lot, said Mr. Steedle. But the rub is that we want to encourage the development of more housing, he said, and so if code requires the owner to combine the two lots and then only be able to build one house, that is in conflict. Mr. Voelckers said that if someone can meet setbacks, we have had the attitude to allow for a build and sometimes give a variance regarding the setbacks. Ms. McKibben said all this is fine, but it is a discussion we need to have. Ms. McKibben recalled a property owner of 4 legal lots on Douglas Island, with one single family home w/accessory apartment. But with a density change, the 4 lots only have one tax id number and one parcel number which is of concern to the CBJ assessors.

Ms. McKibben suggested removing "must be" in Line 94— keep the language simple. She next suggested taking out everything after the "OR". Commissioners agreed saying that less is more.

Ms. McKibben said that Line 96 is a concept from existing code. Mr. Miller questioned the 75% replacement cost concept. He said what if something happens and the house is destroyed to 76%, why shouldn't the owner be allowed to rebuild if they are willing and have the money? He said he does not see the reason. If an unintentional event happened and they want to rebuild, even if it might cost 120% of the replacement cost, why not allow them to do that if it was a legally nonconforming use? Mr. Miller was also concerned with the definition of catastrophic damage. He said he has been in situations where an owner sets out to replace a window and then discovers a ton of rot. This is a catastrophic event although initially was simply considered "maintenance", said Mr. Miller. Stepping away from the discussion of percentage, said Ms. McKibben, we want nonconformities to go away over time and be replaced with things that conform. This code provides more opportunities to extend nonconforming situations. But that is the concept behind percentages. Committee members might want to think about this as we go though, said Ms. McKibben.

Mr. Miller said that in the neighborhoods downtown, for example, with nonconforming use, these lots and buildings are completely a part of the fabric of the neighborhood. Mr. Voelckers agreed but reminded members that with the Planning Commission's reworking of the zoning in these historic neighborhoods, whole swaths of nonconforming situations might disappear. If we get the underlying zoning right, then there will be less need for nonconforming determinations, he said.

Ms. McKibben said a home that unintentionally burns to the ground could be rebuilt, according to this language. But poor maintenance would not be supported.

Do we need to say explicitly (Line 97) that something can be rebuilt, asked Mr. Voelckers? The language implies this for a catastrophic situation but maybe it is not explicit. Mr. Voelckers said his point regarding Lines 96-97 is that it talks about structures destroyed due to a reason other than a catastrophic one. But the language does not address what is allowed if it is. Mr. Miller suggested it should say if it IS a fire. The word "other" is what is wrong, said Mr. Voelckers. Take out the word "other" and add "such as". If there is a shed or garage, could they

rebuild that, asked Mr. Hickok? Yes, that is current code, said Ms. McKibben, but the committee may want to think about that.

Mr. Steedle said we need to get back to the point about percentage brought up by Mr. Miller. The Alternative Development Overlay District (ADOD) is only temporary, but it would not have helped Trinity Church. Lines 96-97 do not cite a percentage, is this correct asked Mr. Miller? Lines 103-104 discuss intentional damage and I am ok with the percentage there, said Mr. Miller.

Line 103 concerns intentionally damaged dwellings; everyone is fine with this said Ms. McKibben. What about negligence, when things just rot asked Mr. Voelckers? This is a can of worms, said Mr. Miller. Many people just don't know about rot until it is discovered, said Mr. Hickok. I think the phrase "exclusive of the foundation" has to go, said Mr. Miller.

Discussion of Nonconforming Structures (Lines 115-141)

It says here that nonconforming structures can continue and I've added the concept discussed in the July meeting about additions to buildings not encroaching into setbacks, said Ms. McKibben. This is about it being okay to fill in a little cut, as discussed previously, said Mr. Hickok. Yes, when infill doesn't aggravate the nonconformance, is not further into setback, etc. said Mr. Voelckers. Ms. McKibben said this language is trying to articulate this concept but would be improved with an explanatory drawing. I am advocating for more illustrations in our code book, she said. Line 123 is better than Line 121, said Mr. Voelckers. I can get Lisa to help me with a drawing, said Ms. McKibben.

Ms. McKibben pointed out Line 124 which allows for additional stories on a building, which is in code. An applicant would apply for an upfill CUP. We are not suggesting a change, but this should be referred to in the language, said Ms. McKibben. There should be language about this being permissible as long as it doesn't negatively impact the neighbors; also language for the footprint infill. Mr. Voelckers suggested that this could be a CUP process so that neighbors could have the opportunity to comment. But this would come up in a building permit review, said Mr. Miller. Maybe this should rise to the Planning Commission level, suggested Mr. Voelckers.

Ms. McKibben moved onto Line 127 which discusses structures damaged by any means. The language here says it is not to be reconstructed except for the provisions of this code. What does this talk about, asked Mr. Steedle? This breaks down into lots, structures and uses, and I think that is good, said Mr. Voelckers. Mr. Miller said he received a call from a woman who came to town to move her father into a home. The father had been living on 4th street for 40 years, there was lots of trash, and the woman needed help to move things. When Mr. Miller arrived, he pointed out things that had gone unnoticed; the house was basically falling down the hill. Now it is up for sale, and someone is going to buy it, said Mr. Miller. But to fix it right it will be considered more than a 75% rebuild. This is an example of someone who wants to live in a particular building and location and wants to put the money in to fix it up, but they might get shot down. Ms. McKibben said that the current policy is we would allow for a rebuild in the existing footprint except for encroachments into the right-of-way. Do you want to keep that, she asked? But the 75% thing is still there, said Mr. Miller.

Mr. Voelckers asked for a nonconforming structure example. Ms. McKibben said the variance requested recently on Twelfth Street is one where the setbacks did not conform for a complete rebuild on the property.

Mr. Voelckers asked Mr. Miller his thoughts. Mr. Miller said maybe it doesn't really matter and the structures in our town are important enough that if they are legally nonconforming then it is ok. The potential is that a legally nonconforming structure, damaged by any mean (not just catastrophic), any new building except one built on

encroachments is ok; this is what I am hearing, said Ms. McKibben. Mr. Voelckers said the thing he is concerned about is the neighbors. Maybe we are bending over backwards to accommodate a homeowner but the structure has been problematic for years for the neighbors, he said. Also there is a concern about health and well-being. Mr. Hickok said he doesn't like the idea of property owner losing out. Ms. McKibben said to get back to Mr. Voelckers' reminder, we have the ADOD process and active plans to work towards a new zoning district which will more accurately reflecting the historic nature of the neighborhoods. These are things to think about, she said, and a decision is not needed today. We will flag this topic to come back to later.

Ms. Boyce asked if height is a factor for a nonconforming structure. Mr. Miller said for a building that is already in place, neighbors can't be purchasing property with the intention that this tall building will someday come down.

Just have a situation with the recent fire on Sixth Street where the house will need to be totally rebuilt, said Mr. Steedle.

Line 134 – no disagreement here. Density or use is governed somewhere else in the code.

Discussion on Nonconforming Uses (Lines 143-215)

Nonconforming use is a big, tough area, said Ms. McKibben. Beginning with Line 150 is a whole new concept, the change of use in the same category, borrowed from Portland. Portland has code for off-site impacts while we do not, said Ms. McKibben. I like the language, she said, so staff has the ability to document in some way showing we have done an evaluation of this in our review.

For Line 147, I would suggest that they don't operate between 11 and 6, said Mr. Voelckers. What about the conex containers we just approved with noise happening beyond the operating hours, asked Mr. Hickok. Ms. McKibben said, if this was a nonconforming use, then it would go before the Planning Commission. And then it would no longer be nonconforming, with a CUP, said Mr. Miller.

Mr. Voelckers suggested matching the operating hours to the noise ordinance.

For changes of use (Line 165) the example is the conversion of a storefront in a D5 zone, and my suggestion here is that these are reviewed on a case-by-case basis, said Ms. McKibben. An example is AmeriGas which is situated in a residential district, said Ms. McKibben in response to a query from Mr. Hickok.

Ms. McKibben explained that at Line 172, expansions, there is current code here with Portland language in italics, below. This could be simplified, she said. I thought we already decided not to allow expansion for nonconforming uses, said Mr. Hickok. Mr. Voelckers said what if AmeriGas wants to add more tanks on their property? We would want to decide that on a case by case basis, he suggested. How does that compare to Rainbow Foods expanding their grocery to more parts of the building (interior)? Ms. McKibben postulated about a small, nonconforming grocery in a residential district. This fits with CBJ policies about walkability for the neighborhood. Maybe more eyeballs will be on it if it goes through the Planning Commission process, said Mr. Steedle. I think Juneau is lucky because other communities have things like a strip club that are more emotional and controversial, so this is a great time to get this language into place, said Mr. Voelckers.

The intent for language beginning with Line 195 is to reinstate use. Ms. McKibben said it is interesting because the language is used in other communities but the intention is not explained. What if AmeriGas closes for a time to repair the building? I don't know what would be permissible, said Ms. McKibben. It is tricky and worth thought, said Mr. Voelckers. Maybe pull the director into the question to determine if there is legitimate reason

versus gaming the system, said Mr. Voelckers. Maybe proof goes back to the owner, suggested Mr. Miller. There are other concepts in Lines 199 and 200), is the committee okay with them, said Ms. McKibben? Mr. Voelckers said in Line 196 it says used discontinued for 365 days, does this apply here as well? How many people in Juneau know about filing a change of use application, asked Mr. Steedle? I think idea is legitimate, said Mr. Miller, but the reality is what if owners have a little grocery store which is accepted by the neighborhood and no one has ever said it is nonconforming. But then another large, cheaper grocery store opens nearby and the small store owners replace groceries with bicycles. Should they lose their ability to make a living when competition opens nearby driving them to sell bicycles instead of groceries, asked Mr. Miller? It seems difficult to determine what “different” use is; we might need more definition of changed use, said Mr. Voelckers.

Less than 365 days is considered unfriendly to property owners, said Ms. McKibben. But changing to a different thing is instantaneous, said Mr. Voelckers. I like the part about asking permission to reestablish, said Mr. Voelckers. This might clarify the variety of things that cause a stoppage – selling, moving, whatever – he said.

In Line 206 it was suggested to add an example.

Discussion on Nonconforming Residential Densities (Beginning Line 217)

It was decided that the committee will pick up here next time they meet.

IV) Next Meeting

Wednesday, October 11, 3:15 pm

VI) Adjournment

The meeting adjourned at 4:41 pm.

Meeting Agenda of the City and Borough of Juneau
Title 49 Committee of the Planning Commission

Wednesday, October 11, 2017
Community Development Department, Large Conference Room
3:15 p.m. to 4:30 p.m.

Members Present:

Dan Miller, Paul Voelckers, Carl Greene, Dan Hickok (Alternate)

Members Absent:

Kirsten Shelton

Staff Present:

Laura Boyce (CDD), Beth McKibben (CDD), Rob Steedle (CDD), Amy Liu (CDD), Marjorie Hamburger (CDD)

I) Call to Order

Meeting called to order at 3:20 pm.

II) Approval of Minutes

September 20, 2017 Draft Minutes

Ms. McKibben pointed out that on Page 2, second to last paragraph, it was she who talked about the minimum lot size in Homer, not Ms. Boyce.

MOTION: *by Mr. Miller to approve the September 20, 2017 minutes as amended.*

The motion passed with no objection.

III) Agenda Topics

a) Update on Committee Topics and Actions

Mr. Voelckers reminded staff that the committee would like to start each Title 49 meeting with an update on legislative topics and actions. Ms. Boyce reviewed:

- Privately Maintained Access Roads Amendment is scheduled for the Assembly's Lands Committee meeting agenda on October 23. If the committee wants to move it forward, they will then schedule a hearing with the Planning Commission.
- Variances (AME2016 0002) is scheduled to be heard at the November 14 Planning Commission meeting.
- Eagles (AME2016 0019), Panhandles (AME2017 0003) and Essential Public Facilities (AME2017 0006) are scheduled to be introduced at Assembly meetings in October and November.
- Urban Agriculture (AME2017 0011) is in internal review with plans to come before the Committee of the Whole (COW) soon.
- Staff is working on a clean up to Junk and Salvage Yards (AME2016 0014) and will bring this to a COW, not back to the Title 49 Committee.

Mr. Miller asked how sure staff was about November 14th for variances. This date coincides with the American Planning Association (APA) training in Anchorage, but he doesn't want to miss that hearing. Mr. Steedle

concurred and said staff will push back the hearing date. Mr. Voelckers suggested the commission may even want to consider not having a meeting at all that night, since three commissioners will miss it.

b) Language for Nonconformities - Continued

Discussion on Nonconforming Residential Densities (Beginning Line 217)

Ms. McKibben said this is a whole new concept borrowed from Portland as they have similar challenges for housing, therefore it may be useful to use these concepts. The language creates new nonconforming situations. When use is residential, a triplex in a D5 zone for example, the dwelling is legally nonconforming. While the use conforms, the density does not, she said. In this case we are separating density from use. Is Aurora Arms an example, asked Mr. Voelckers? Yes, said Ms. McKibben. This building is a challenge in the world of finance; if Aurora Arms burnt to the ground, they would not be able to rebuild all 18 units – only 5 of them according to the zoning. Property owners of these condominiums would suffer a loss – 13 of them. The language in this section creates a new way of looking at that type of nonconforming, said Ms. McKibben.

Ms. McKibben said that Line 219, “Existing dwelling units may continue” needs more definition and description about what is meant by “amenities” so planners can understand the intent. There is a new process suggested in this section which is a nonconforming review. Would this be done by the department or the Planning Commission? She suggested maybe a departmental review with the option to kick it up higher. Mr. Voelckers asked about the overlay zone as now we have the Alternative Development Overlay District (ADOD) in place.

Does Aurora Arms meet the height requirement for the zoning, asked Mr. Miller? It is close, said staff. What is the point, then, he asked? If it has to meet underlying requirements maybe that could also be reviewed. Ms. McKibben suggested that maybe in such a case Aurora Arms could be rebuilt to meet height restrictions but still include the same number of units.

Mr. Voelckers said that on Line 219 the word “enlarged” seems tricky if the dwelling is already above density. Ms. McKibben said she reads it to mean that if the owner wants to take out one unit, such as to combine two units into one larger one, s/he can do that. So for a triplex in a D5 zone the owner can add another room but not add another unit.

People are nodding with intent, said Mr. Voelckers. This is about existing dwelling units, not the creation of new units, said Mr. Steedle. Ms. McKibben said for legislative history, new units added is a no, modifications to existing units is a maybe. If at Aurora Arms an owner combines two units into one, is the density now 17 units for the building into the future or can this be undone and returned to the original 18, she asked? In Portland if a unit is removed, the building can’t get it back. Staff and the commissioners need to think about this.

Discontinuance and Damage (Line 228)

This is interesting, and we have some of these buildings in Juneau, said Ms. McKibben. A building that is unoccupied but standing is a big policy question. Juneau has policies about housing and so having density rights continue despite being unoccupied is something we might want to support. Mr. Voelckers stated that the committee already talked about timelines for removing nonconforming structures in other categories and so why not be consistent? Mr. Miller said he thinks differently. If an owner discontinues a nonconforming use, then they lose that status in a year but in this situation, for example with a triplex that is nonconforming that suffers a fire which makes all units uninhabitable it might take more than a year to sort out insurance and contractors and so forth. Mr. Voelckers asked how fundamentally different density is to other nonconforming categories. Ms. McKibben said there is another section in this draft that talks about damage. However this section talks about

buildings that are vacant and deteriorating because of neglect, she said. The language here says you can redo the building; it is not about damage.

Mr. Voelckers said he thinks the situation should be treated the same as other types.

Accidental Damage or Destruction (Line 231)

Ms. McKibben said the language here is similar but there questions to be answered. She said she heard Mr. Voelckers liking the timeline of one year to rebuild. Mr. Miller said that if he gets a building permit but doesn't act on it, it expires in 18 months unless he renews it. Maybe there should be language here about in order to keep the status the owner has to have an active permit? Mr. Hickok asked doesn't the owner have to get an inspection within certain time? You can't renew a permit without getting an inspection, said Mr. Hickok. Mr. Voelckers said the 365 day marker was about the cessation of activity, but he agrees that if a process is underway and legitimate there could be some other timeline. But if nothing is happening, then the owner loses the nonconforming status. Ms. McKibben said we would have to create two different categories of passive and active regarding density. Portland has 5 years as the magic number. Mr. Hickok asked if the apartment building on Gastineau Avenue is an example of this. Why is it not being rebuilt? Ms. McKibben said it encroaches on a right-of-way; the issues for this building have to do with setbacks and parking, not density.

(Line 237 - If the structure is not rebuilt)

Ms. McKibben explained that this sentence is about if a structure is not rebuilt the density reverts to whatever zoning exists today. She said she likes having the two separate sentences. It is up to the commission to set the policy, the amount of time after which it reverts and if there is an opportunity for an extension. She thinks that 5 years is generous. If at 4.5 years the owner just poured a foundation, the status won't be taken away if work has begun. But if nothing has happened in 5 years, it will. Mr. Voelckers clarified that this is the first pass on language in this document, and the committee will finalize the draft later. Mr. Hickok said he thinks 5 years is generous. Mr. Greene said if within that time something has begun to be rebuilt, then the window should be extended. Mr. Miller said he wants to think about it a while. He said he likes the idea that every 18 months someone checks in about what is going on. What if an owner is elderly and doesn't have the energy to rebuild and leaves it to the grandkids, he postulated? There is value to having a triplex said Mr. Miller. Who will tell the owner they have to fill out the paperwork every 18 months? How do we make sure the person knows of the situation, he asked? Mr. Greene said that in this case it is damaged property. Ms. Boyce said 3 years could be reasonable for replacing housing units but if in 5 years the city doesn't get housing back this is a concern. Mr. Voelckers said he likes having 3 years to get something going, to initiate the rebuild. Mr. Miller asked again how a person will know they have to do this and that they will lose the value of the dwelling if they don't act. Mr. Steedle asked if thought the department should notify owners. Ms. McKibben recalled a burn on Basin Road and the house coming down immediately afterwards. Property owners have some responsibility, she said.

Ms. Boyce said she has trouble with the definition of abandoned buildings. If a person owns multiple homes around the country, for example, and spends only a little time in each, is the home considered vacant? Mr. Hickok said he wouldn't call it vacant if the house is maintained. Ms. McKibben said the concern is backwards, nonconforming status remains if a building is unoccupied. Mr. Steedle talked about squatters. There was a situation in Juneau where squatters were maintaining a building with water and electric being paid, but they were not the owners nor did they have permission to be there.

(Line 239 – If the repair cost is more than . . .)

Ms. McKibben said that this section takes us back to repair costs and the 75% figure, but the committee does not have to talk about that at this meeting. Mr. Voelckers said it seems we are saying the same thing a couple times. Why not state it once and then reference the statement for each of the nonconforming instances, he

wondered? Ms. McKibben said this is Law's job and the language should be consistent. There are pros and cons either way about restating it depending on use.

One Dwelling Unit (Line 242)

The language here is from Portland, said Ms. McKibben. Does this apply to us, asked Mr. Voelckers? Ms. McKibben said yes, in our industrial zoning with only caretaker units allowed as residences. There are some parcels where there is no industry but there is a caretaker unit. It may not apply to Juneau but we need to talk about it. How do we think about caretaker units in these zones, asked Ms. McKibben? Mr. Voelckers asked what we are thinking about here. Ms. McKibben explained that in industrial (I) and waterfront industrial (WI) zones, residences are not permitted but a caretaker unit as an accessory to industrial use is permissible. However Juneau has some residential use in these zones on lots with no active industrial use taking place on the parcel. She said there are lots of policies in the Comprehensive Plan that talk about the need for industrial areas in the borough and talk about not allowing residential uses in these zones. Ms. Boyce said that recently a Conditional Use Permit for a marijuana facility was protested due to residential use in the industrial zone where the facility was proposed to operate.

Mr. Voelckers suggested the committee should give this concept the benefit of half-engaged thought. He said it seems this raises a philosophical question about what might be considered a "bad actor", a house in a WI or I zone that is damaged, do we want to give the owner the ability to rebuild or have it go away because it doesn't belong? Yes, that is the question, said Ms. McKibben. Mr. Miller said he thinks this fits for industrial land that is very active and has a caretaker unit on it, storage for boat condos or a plumbing contractor or tour company as examples. But what about a caretaker unit on an industrial parcel owned by a contractor who just parks dump trucks and wants someone to keep eye on things? Ms. McKibben said a caretaker unit is still conforming for a parking yard; this is ok. But, she said, we also have situations where an industrial use took place and a caretaker unit was built in conformance but then that industrial building was made into condominiums and the caretaker unit was no longer associated with the industrial use. Anyone could buy the former caretaker unit but not do any care taking of the industrial use, said Ms. McKibben. This has happened. Mr. Voelckers asked if there are cases where people are just gaming the system. There are a few from a while back, said Ms. McKibben. Mr. Steedle pointed out Sherwood Lane and Crazy Horse Drive during a discussion about installing an asphalt plant. There were residences in this industrial zone, and people were against the asphalt. We can run some data on this, said Ms. Boyce.

Mr. Voelckers said this seems like a fringe situation. He would err on the side of if someone is gaming the system, then we should not have to accommodate. Mr. Hickok said what about the Fairweather barn, is that in an industrial zone? If the zone is commercial, you can have more residential use, said Ms. Boyce. Mr. Voelckers suggested maybe staff look at whether this situation is worth giving language in the document when it is not likely to have much use in our community. Ms. McKibben brought up the point of a parcel where the zoning changed after the house was built, or a duplex built before zoning changed to industrial, then should the owner be able to keep that use. Mr. Voelckers said these situations are already covered elsewhere.

(Line 260 – Nonconforming densities may not be enlarged . . .)

Mr. Voelckers pointed out that this is literally the same statement as on Line 226.

Intentional Damage, Destruction or Demolition (Line 262)

We don't want to encourage people to set fire to their homes, said Ms. McKibben. The fire department will determine if something has been intentionally set and this should not be rewarded.

Nonconforming Parking (Line 266)

The concept here is already in current code, said Ms. McKibben. She brought the committee's attention to the words "may be replaced or reconstructed". The new requirement is less, she said, now just 1 parking space is required, and she thinks this works. Mr. Voelckers asked if this is specific. Only to nonconforming situations, said Ms. McKibben.

Nonconforming Signs (Line 268)

This topic is addressed in the code that deals with signs (49.45.400).

Nonconforming Situation Review (Line 269)

Ms. McKibben said this is a new concept, and she has been thinking about what the process might look like. What does this mean, asked Mr. Steedle? Ms. McKibben said to change the use or to get density approved owners would need to go through a review regarding nonconformance. Are we talking about an administrative review and the Board of Adjustment, asked Mr. Steedle? There would need to be some sort of process for establishing this status, said Ms. McKibben. The language here asks that the owner provide evidence of a nonconforming status. Mr. Hickok asked if someone purchases a property that is in some way nonconforming, will they have to go through this review. Ms. McKibben said that right now people call the department and staff does the research, but she thinks this needs some thought. The department would have records on a property and share them with an appraiser if this review had already been done. But if not done, we haven't thought about how to handle that.

Mr. Voelckers said the process of determining a property to be nonconforming might want to be at the front end of the document because it leads to a series of active requirements.

(Line 271 - Approval criteria.)

Ms. McKibben reviewed the list of proposed criteria. She suggested thinking about Rainbow Foods, which is a nonconforming use grocery in a residential area. "With mitigation measures, there will be no net increase in overall detrimental impacts . . ." This list is borrowed language, she said. We would want to also look at on-site parking requirements for the parcel; what else for this list? Mr. Voelckers suggested public safety; he said he was thinking about AmeriGas in the Valley. Does the committee want to think about language regarding neighborhood harmony asked Ms. McKibben? Mr. Voelckers said he would, for example what about a strip club? He would like to include the opportunity to raise the question. Mr. Greene said he likes this phrase as a catch-all to for something that doesn't fit in a neighborhood.

The line about outdoor displays, etc. (Line 280) pertains to residential uses, said Ms. McKibben. This language refers to maintaining neighborhood character. To be contrary, said Mr. Voelckers, why are not all items on Lines 276-280 also relevant elsewhere? Mr. Steedle suggested that the sentence beginning on Line 282 could say "in addition". Ms. McKibben said that this section is an additional layer of review for a residential district and might not be applicable elsewhere. She suggested leaving the language for Mr. Palmer to work on, as there is structure for writing an ordinance that would make it clearer.

Definitions (Line 291)

Ms. McKibben pointed out that the draft includes a boatload of definitions. In particular, a definition for nonconforming density is important because this is a new concept. Does it seem clear to others, she asked? Mr. Voelckers asked if these were pulled from the Portland model. Some are already in our existing code, replied Ms. McKibben, some come from other communities and from the dictionary of planning concepts.

Mr. Voelckers pointed out the phrase on Line 309 about intent and said that this is hard to establish. He felt this might need some thought, and he suggested making the language more about action than intent which is hard to suss out. I don't know if there is a better way to do it, said Ms. McKibben. Mr. Voelckers asked how can one prove intent or lack thereof. Ms. McKibben said that when something is not defined, we go with a common definition.

(Line 315 -Discontinued)

Ms. McKibben said that the 365 consecutive days is used in our code. The committee liked that number.

Ms. McKibben said she is not sure if all these definitions are needed in this document. Are these definitions broader than just this piece of Title 49, asked Mr. Voelckers? Yes, nodded Mr. Steedle and Ms. Boyce.

Mr. Voelckers asked about the expectations of time on this document. Will it come back from law with baby wheels on it? Ms. McKibben said she wants to go through it and make notes on what needs more input. Ms. Boyce asked if staff should bring back the draft ordinance before it moves on to the next step. Mr. Voelckers said he would like to see it again. Once it is all written down, he would like staff and committee members to think about their own experiences and see how this would apply. Ms. McKibben said she is not sure of Mr. Palmer's schedule and when he can get together with CDD staff to discuss updating this draft.

IV) Next Meeting

Wednesday, November 15, 3:15 pm.

VI) Adjournment

The meeting adjourned at 4:25 pm.



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June 21, 2017

From: Beth McKibben, AICP, Planning Manager

To: Planning Commission

Subject: Review of Title 49's Nonconforming Development Policies

The Planning Commission has expressed interest in examining CBJ's Nonconforming Development code. The impetus for this review is that recent changes in practice by the mortgage industry have made it difficult for some buyers to get mortgages for properties with nonconforming situations. Staff has previously identified this section of code as needing revisions to provide clarity.

CBJ's Nonconforming Development code, found at Title 49 Chapter 30, codifies policies that are very typical of other municipal land use codes. It addresses three types of nonconformity: use, lot dimensions, and structures. It appears buyers are encountering most financing challenges when the current zoning does not support the existing density.

Community Development staff has begun reviewing the policies expressed in the Nonconforming Development code and will present an analysis and recommendations to the Title 49 Committee later this summer. Attached to this memo is a succinct summary of nonconformities with recommendations from the American Planning Association. Also attached is Chapter 49.30 of Title 49.

QUICKNOTES

Managing Zoning Nonconformities

In zoning, a nonconformity is an existing lot, structure, or use that fails to comply with existing standards. Legal nonconformities are lots, structures, or uses that either predate zoning or were in conformity with the zoning standards in effect at the time of their establishment, while illegal nonconformities were noncompliant when established.

Most discussions of zoning nonconformities focus exclusively on legally nonconforming lots, structures, or uses. This is because legal nonconformities may remain a part of the community fabric indefinitely, but illegal nonconformities have no protection from code enforcement actions to bring them into compliance. Consequently, in the sections below the term nonconformity refers only to a legal nonconformity.

Zoning changes often result in a net increase in nonconformities. Some common nonconformities in older communities include building setbacks or lots that are too small and corner stores in areas zoned for exclusive residential use. While it makes sense to assume that all nonconformities are undesirable and should be brought into compliance, in reality community members often don't mind if some nonconformities continue or even expand.

Background

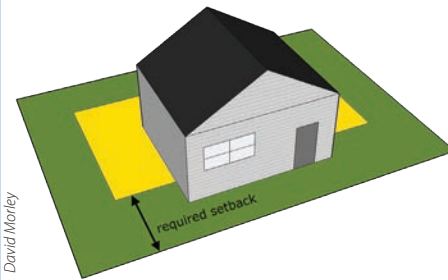
Communities have typically applied zoning standards prospectively. In other words, new standards only apply to new development. Existing nonconforming lots, structures, and uses are grandfathered under new zoning standards. The early framers of zoning law did this on purpose to take the sting out of new regulation. In fact, it's unlikely that zoning would have caught on if all property owners were required to immediately extinguish nonconformities. However, this grandfathered status comes with limitations.

These limitations are most relevant in situations where owners want to modify or expand a structure or use or rebuild after a fire, flood, or storm. Generally, property changes that cross a certain threshold, whether physical or monetary, trigger a requirement that an owner must bring the property into compliance with the current zoning standards. The purpose of these triggers is to encourage redevelopment that is in line with the community's vision for the zoning district. But, as a side effect, these building and use limitations can actually slow the pace of change. Owners may be reluctant to make costly conforming improvements, and banks are typically hesitant to make loans on nonconforming properties. Because nonconforming status creates a barrier to reinvestment, it is important for communities to carefully consider how new zoning standards will affect the types and location of nonconformities.

Not all nonconformities have negative effects on adjacent properties or the larger community. In fact, in some instances, continuance or expansion of a nonconformity does not threaten public health or safety and may even be preferable to the alternative of disinvestment. For this reason, it makes sense for communities to treat nonconformities that are relatively benign differently than those likely to have significant detrimental effects. The following sections contain three broad recommendations for managing nonconformities through zoning.

Recommendation 1: Rezone to Minimize Nonconformities

When communities map new zoning districts, multiple contiguous blocks or even entire neighborhoods may be rendered nonconforming. If the intended goal is to facilitate dramatic redevelopment of these areas, this may make sense. But, if the structures and uses in these neighborhoods are generally viewed as desirable, widespread nonconformities may be a sign that the new districts are a poor fit for older areas of the community.



David Morley

The home in this illustration would be a nonconforming structure, since it does not comply with the minimum front setback.



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In these instances it makes sense to change the zoning to minimize nonconformities. This can be accomplished by remapping mature neighborhoods to a more appropriate zoning district, adjusting the use permissions or dimensional standards of the current district to better match existing conditions, or creating a new zoning district that fits the character of these areas. All of these approaches have the net effect of reducing inadvertent nonconformities and decreasing the likelihood of hardships for property owners.

Recommendation 2: Sanction Benign Nonconformities

For nonconformities that are not geographically concentrated, it often makes sense to distinguish between those that pose a significant potential threat to public health or safety and those that are largely benign. Examples of benign nonconformities may include small deviations from required setbacks or lot area requirements, unlisted uses that are similar to explicitly permitted uses, and minor shortfalls in off-street parking spaces.

While each community will need to establish its own criteria for what constitutes a benign nonconformity, the most effective way to sanction the continuance or expansion of these lots, structures, or uses is to state this tolerance clearly in the zoning ordinance. This may be as simple as adding a provision to a new set of zoning standards that authorizes the expansion or rebuilding of any existing development, subject to the standards in effect when the lot, structure, or use was established. Or communities may want to create a special permit process that allows local officials to grant conforming status on a case-by-case basis. Both of these approaches remove the stigma associated with nonconformance, which is especially important to lenders.

Recommendation 3: Phase Out Detrimental Nonconformities

In contrast to a benign nonconformity, a detrimental nonconformity has a high probability of eventually harming public health or safety. Consequently, zoning should encourage the elimination of detrimental nonconformities. Examples of detrimental nonconformities may include a bar or restaurant with late-night hours in a quiet residential district or a heavy industrial use in a floodplain.

As communities try to phase out potentially harmful nonconformities, they usually focus on limiting expansion and preventing rebuilding or reoccupancy. Typically, this means prohibiting any building expansions or site modifications that do not reduce or eliminate the nonconformity, changing one nonconforming use for another, reestablishing a nonconforming use or structure after a period of vacancy, or reconstructing a severely damaged or demolished nonconforming structure.

In instances where continuance of a nonconformity poses an especially acute risk to public health and safety, communities may take more drastic measures. These measures include nuisance abatement actions, amortization schemes that require conformance after a specified period of time, or public buy-outs for willing sellers. Because these options carry significant legal risks for local governments, local officials should always engage competent legal counsel before taking action.

Summary

Nonconforming lots, structures, and uses are a natural byproduct of new zoning standards. While most zoning ordinances encourage phasing out nonconformities, not all nonconformities pose risks to public health and safety. Instead of treating all nonconformities the same, it makes more sense to distinguish between benign and detrimental nonconformities. Communities can transform benign nonconformities into conforming lots, structures, or uses through rezoning, explicit exemptions from new standards, or special permit processes. And they can expedite the elimination of detrimental nonconformities through strict limits on expansion, rebuilding, or reoccupancy.

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RECOMMENDED READING

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Easley, V. Gail. 2009. "Distinguishing Between Detrimental and Benign Nonconformities." *Zoning Practice*, November. Available at www.planning.org/zoningpractice.

Rosenthal, Deborah. 2010. "Nonconforming Uses: Part 1." *The Commissioner*, Fall. Available at www.planning.org/thecommissioner.

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Markham, Lynn and Diane Milligan. 2005. *Zoning Nonconformities: Application of New Rules to Existing Development*. Stevens Point, Wis.: Center for Land Use Education. Available at www.uwsp.edu/cnr-ap/clue/Documents/Zoning/Zoning_Nonconformities.pdf.

Chapter 49.30 - NONCONFORMING DEVELOPMENT

49.30.010 - Purpose.

It is the intent of this section to provide standards for the continued use of property made nonconforming by adoption of this title.

(Serial No. 87-49, § 2, 1987)

49.30.100 - Continuation of nonconforming situations.

Unless otherwise specifically provided in this chapter and subject to the restrictions and qualifications set forth in sections 49.30.200—49.30.700, nonconforming situations that were otherwise lawful on the effective date of the ordinance codified in this chapter may be continued.

(Serial No. 87-49, § 2, 1987)

49.30.200 - Residences in industrial and waterfront commercial industrial zones.

The restrictions of this chapter shall not apply to existing dwellings in the industrial and waterfront commercial industrial zones.

(Serial No. 87-49, § 2, 1987)

49.30.300 - Nonconforming lots.

- (a) A lot rendered substandard in size by the adoption of this title may nonetheless be used in conformity with applicable use regulations, provided that no use, including duplexes and multifamily dwellings, requiring a lot size greater than the minimum for that zone shall be permitted except as provided in subsections 49.25.510(h) and (i)
- (b) This section applies only to nonconforming lots undeveloped at the time of the adoption of this Code. A change in use of a developed nonconforming lot shall be accomplished in accordance with section 49.30.600.
- (c) If, on the date the ordinance from which this section derives becomes effective, an undeveloped nonconforming lot adjoins and has continuous frontage with one or more other undeveloped lots under the same ownership, each lot may be developed with single-family dwellings if community or approved individual waste systems are provided.

(Serial No. 87-49, § 2, 1987; Serial No. 91-01, § 4, 1991)

49.30.400 - Aggravation of nonconforming situations.

- (a) Except as provided in this section, section 49.25.430, section 49.25.440, and section 49.25.510, nonconforming situations may not be aggravated. As used herein, "aggravate" includes the physical alteration of structures or the placement of new structures on open land if such results in:
 - (1) An increase in the total amount of space devoted to a nonconforming use; or
 - (2) A greater invasion in any dimension of setback requirements or height limitations, a further violation of density requirements or further deficiencies in parking or other requirements.

- (b) A use made nonconforming by the adoption of the ordinance codified in this title may be extended throughout any portion of a completed building manifestly designed or arranged to accommodate such use, but may not, except as provided in section 49.30.800, be extended to other buildings or to land outside the original building.

(Serial No. 87-49, § 2, 1987; Serial No. 91-03, § 4, 1991; Serial No. 91-50, § 3, 1991)

49.30.500 - Reconstruction.

- (a) Except as provided in subsections (b) and (c) of this section, if a building is damaged by any change so that the cost of renewal of the damaged parts exceeds 75 percent of the cost of the replacement of the entire building, exclusive of foundations, using new materials, then such building shall not be rebuilt, unless the building and its intended use comply with this title. The determination of whether a building is destroyed to the extent described shall be made by the building official.
- (b) If a single-family dwelling, duplex, or multifamily dwelling in a residential district is damaged by any involuntary change, including fire, flood, landslide, avalanche, or earthquake, so that the cost of renewal of the damaged parts exceeds 75 percent of the cost of the replacement of the entire building, exclusive of foundations, using new materials, then such building may be replaced or reconstructed to the same footprint on the original location with the exception of encroachments into public rights-of-way or adjacent property; provided, the intended use of the building is the same as, or less intensive than, the prior use and is a permissible use in the district. The determination of whether a building is destroyed to the extent described shall be made by the building official. If the building official determines that the foundation of the building is not reusable due to damage or substantial noncompliance with Title 19, the building regulations code, then the building may be replaced or reconstructed to the same footprint and the footprint shall be relocated on the lot so as to reduce, to the extent reasonably feasible, the occurrence or severity of any nonconforming setbacks, taking into consideration topography, shape, and size of the lot, and all other relevant factors. However, if such relocation is not reasonably feasible, the building may be replaced or reconstructed to the same footprint on the original location. Projections beyond the footprint including architectural features, roof eaves, foundation footings, porches, decks, terraces, patios, unenclosed stairways, and fire escapes, and attached structures, may also be replaced or reconstructed as they existed on the original building, with the exception of encroachments into public rights-of-way or adjacent property. An as-built survey or other proof of the footprint and location of the original building and projections beyond the footprint is to be provided to the City and Borough at the time the building is to be replaced or reconstructed. A building may be replaced or reconstructed under this subsection with the same number of off-street parking spaces as were provided for the original building. Nothing in this subsection constitutes an approval or waiver of an encroachment of the building or its footprint or projections beyond the footprint into a public right-of-way or adjacent property, nor does it authorize the building or projections beyond the footprint of the building to be replaced or reconstructed so as to encroach into a public right-of-way or adjacent property. Nothing in this subsection waives any other applicable laws or regulations including Title 19, the building regulations code, and this title.
- (c) The commission, through the conditional use permit process, may allow the replacement or reconstruction of a multifamily dwelling in any multifamily residential, general commercial, light commercial, mixed use, or waterfront commercial district when the dwelling is damaged by any involuntary change, including fire, flood, landslide, avalanche, or earthquake, and the cost of renewal of the damaged parts exceeds 75 percent of the cost of the replacement of the entire building, exclusive of foundations, using new materials, provided the intended use of the building is the same as, or less intensive than, the prior use. The determination of whether a building is destroyed to the extent described shall be made by the building official. A building may be replaced or reconstructed under this subsection with the same number of off-street parking spaces as were provided for the original building unless additional spaces are required under the Federal Americans with Disabilities Act. Nothing in this subsection constitutes an approval or waiver of an encroachment of the building or its footprint or projections beyond the footprint into a required yard, nor does it authorize the

building or projections beyond the footprint of the building to be replaced or reconstructed so as to encroach into a required yard, except as provided in subsection 49.25.430(5). Nothing in this subsection waives any other applicable laws or regulations, including title 19, the building regulations code; and title 49, the land use code.

- (d) The director may allow a building in the MU zoning district which has been converted from residential to nonresidential use to revert to residential use at the original density and parking requirement, if the reversion results in no additional floor space.

(Serial No. 87-49, § 2, 1987; Serial No. 89-05, § 3, 1989; Serial No. 89-33, §§ 3, 4, 1989; Serial No. 91-46, § 2, 1991; Serial No. 2001-02, § 2, 4-2-2001; Serial No. 2006-15, § 7, 6-5-2006; [Serial No. 2012-36, § 4, 9-17-2012](#).)

Cross reference— Right-of-way encroachment permits, CBJ Code ch. 62.55.

49.30.600 - Change in use of property.

- (a) A substantial change in the use of property containing a situation made nonconforming by the adoption of the ordinance codified in this title may be made only after review and approval according to the procedures applicable to an initial use.
- (b) Property changed in use pursuant to subsection (a) of this section may not thereafter revert to its nonconforming status. As used in this subsection the term "substantial change" means a change sufficient to require a new development permit.

(Serial No. 87-49, § 2, 1987)

49.30.700 - Abandonment and discontinuance of nonconforming situations.

- (a) If a nonconforming use is discontinued for 365 consecutive days, or discontinued for any period of time without a present intention to reinstate the nonconforming use, the property involved may thereafter be used only for conforming purposes.
- (b) For purposes of determining whether a right to continue a nonconforming situation is lost pursuant to this section, all of the buildings, activities and operations maintained on a lot shall be considered as a whole. Discontinuance of part of a use or the use of part of the property shall not necessarily terminate rights to the nonconformity, but if a nonconforming use is maintained in conjunction with a conforming use, discontinuance of the nonconforming use for the required period shall terminate the right to maintain it thereafter.
- (c) When a structure or operation made nonconforming by this chapter is vacant or discontinued at the effective date of the ordinance codified in this chapter, the 365-day period for purposes of this section begins to run on the effective date of the ordinance codified in this chapter.

(Serial No. 87-49, § 2, 1987)

49.30.800 - Completion of nonconforming developments.

- (a) *Completion of structures.* Any structure for which a building permit has been issued prior to the effective date of the ordinance codified in this chapter may be completed in accordance with such permit.
- (b) *Completion of developments other than structures.*

- (1) Any development for which a variance, planned unit development certificate, conditional use permit, or temporary permit has been issued prior to the effective date of the ordinance codified in this chapter may be completed in accordance with a building permit issued prior to the expiration of and in accordance with such variance, planned unit development certificate, conditional use permit or temporary permit. Such expiration shall occur as specified prior to the adoption of the ordinance codified in this title or six months after the effective date of the ordinance codified in this title, whichever is later.
 - (2) A preliminary plat approval issued prior to the effective date of the ordinance codified in this chapter shall expire 18 months after issuance, or six months after the effective date of the ordinance codified in this title, whichever is later, unless the development for which it was issued is first awarded a public transmission facilities permit.
 - (3) A final plat approval issued prior to the effective date of the ordinance codified in this chapter shall expire two years after such effective date, unless the plat is recorded.
- (c) *Allowance for completion.* When it appears from the developer's plans or otherwise that a project was intended to be or reasonably could be completed in phases, stages, segments or other discrete units, the developer shall be allowed to complete nonconforming units only if they were the subject of a building permit issued prior to the effective date of the ordinance codified in this chapter and if they were included in the initial phase.

(Serial No. 87-49, § 2, 1987)



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Abandonment, Discontinuance and Amortization of Nonconforming Uses: Lessons for Drafters of Zoning Regulations

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Zoning and Land Use Planning

*Patricia E. Salkin**

Abandonment, Discontinuance and Amortization of Nonconforming Uses: Lessons for Drafters of Zoning Regulations

I. Introduction

Observing that a disproportionate number of reported cases highlighted on the Law of the Land blog (www.lawoftheland.wordpress.com) are opinions addressing the subject of nonconforming uses, this column attempts to unravel some of the legal issues that stem from poor drafting of these provisions in zoning regulations, and demonstrates options for practitioners and drafters to better regulate for the eventual disappearance of nonconformities.

Early drafters of zoning legislation believed that some uses of land were incompatible with others and that more efficient employment of land resources would be achieved if such incompatible uses were cleanly separated. The drafters respected the “natural” patterns of development evidenced by existing uses, and use districts established by law unavoidably included land devoted to uses proscribed by the new zoning regulations.¹ However, for legal and political reasons, the drafters avoided direct attacks on these incompatible or nonconforming uses and instead permitted existing uses to continue, albeit taking steps to gradually eliminate them over time.² The early drafters took steps to reduce the life expectancy of these nonconforming uses by limiting their right to change, expand, alter, repair, restore, or recommence after the use stopped for a specified period of time.³ With such restrictions, the theory was that market forces would eventually force operators and owners to eliminate these nonconforming uses.⁴ This expectation, however,

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has not been realized, and today the problems associated with the regulation and desire to eliminate nonconforming uses make up a significant portion of land use related litigation. The American Planning Association's Legislative Guidebook on Smart Growth explains that in deciding how to treat nonconforming uses, local governments must address two competing principles: achieving ultimate conformity balanced with fairness in requiring termination of a use or demolition of a structure that was constructed or commenced in compliance with the law when the owner, relying on the legality of the land use or structure at the time, incurred time and money in maintaining the structure or continuing the use.⁵ More recently, attention has been focused on the legal nonconformities of development standards.⁶

The authority of a municipality to deal with nonconforming uses may be broadened or narrowed by the enabling acts which are the source of its zoning power.⁷ However, most states do not address the subject of nonconforming uses in these statutes.⁸ Therefore, the regulation of nonconforming uses is left largely to municipalities and the unique approaches and language they may individually choose to employ with respect to these uses. While there are many aspects of a full discussion of the regulation of nonconforming uses, this column is focused on the narrow issue of how local governments seek to use their authority to eventually eliminate nonconforming uses through regulatory determinations of passive abandonment and/or discontinuance of the use, and well as through the more active method of amortization.

II. Abandonment or Discontinuance

Municipal legislatures have included in their zoning ordinances specific provisions for the termination of nonconforming uses based on the theory of discontinuance of use or abandonment. Some ordinances terminate nonconforming uses after a specified period of "abandonment" while other regulations are drafted in terms of "discontinuance" of use, or allowing a nonconforming structure to remain vacant.⁹ The periods of vacancy, discontinuance, or abandonment that may trigger a permanent cessation of use can range from 30 days to two years.¹⁰

Many jurisdictions have established a two-pronged subjective test to determine if a property owner has abandoned a nonconforming use.¹¹ This test typically requires "(1) an intention to abandon, and (2) some overt act or failure to act

which carries a sufficient implication that the owner neither claims nor retains any interest in the subject matter of the abandonment.”¹² The owner has the burden of proof by a preponderance of evidence to show “the use is a continuing and definite intention.”¹³ Other municipalities instead choose to remove the element of intent. In these situations, discontinuance provisions specifically state that they operate to prevent and prohibit resumption of a nonconforming use after a specified period of time has lapsed, regardless of intent.¹⁴ This type of provision has been construed as establishing a rule of evidence and operates even where there is no intent to abandon or even where there was an intent *not* to abandon.¹⁵ While the courts have agreed that municipalities have power to impose such a restriction, they are not in agreement as to whether it is alone sufficient to prevent resuming the nonconforming use.¹⁶ A number of courts still construe discontinuance as abandonment and require proof of discontinuance for the specified period of time to be supplemented by some proof of an overt act, or failure to act, which would justify a finding that there had been an intent to abandon the rights inherent in the nonconforming use.¹⁷

III. Drafting and Interpreting Ordinance Language for Abandonment and Discontinuance

Absent statutory guidance, exactly what constitutes abandonment or discontinuance of a nonconforming use is up to the municipality in the first instance. Much of the litigation can be avoided if municipal drafters were more careful in wording. What follows are examples of the common approaches to drafting that demonstrate the variety of choices municipalities must make. It is critically important for municipal attorneys to review the applicable zoning ordinance/law when it comes to the subject of nonconforming uses to guide the municipality in a discussion for purposes of ensuring that the ordinance, as written, will accomplish the desired outcome. Furthermore, a preemptive examination of the nonconforming use section of the zoning regulation can help municipal attorneys and planners to identify vague provisions and standards that can be clarified prior to applicants, property owners and neighbors invoking a poorly drafted regulation that is then left to the courts to interpret.

For example, consider the following issues:

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1. What is the desired length of time for a nonconforming use to have ceased for the municipality to consider it abandoned and no longer legally recognized?

There is no “right” length of time for a municipality to allow a nonconforming property owner to cease or suspend operation of the use before future use must conform to the zoning regulation. This is a decision that each municipality must make for itself. The common drafting problem is the ordinances can be poorly written with vague and ambiguous terms. Below are examples of both clear and unclear ordinance provisions, as well as provisions that show a range of time from 30 days to two years before abandoned or discontinued nonconforming uses lose their preferred status as such. These illustrative examples are then followed by examples of recent litigation where the issue before the court centered on the language of the zoning ordinance with respect to time.

Examples from zoning ordinances:

- a. **“If such nonconforming use of land ceases for any reason for a period of more than 30 days**, any subsequent use of such land shall conform to the regulations specified by this chapter for the district in which such land is located.” City of Grand Ledge, MI, Charter, Part II, General Legislation, Chapter 220 Zoning, Article XX: Nonconforming Lots, Structures and Uses, § 220-93 Nonconforming uses of land (C).
- b. **“If any such nonconforming use of land ceases for any reason for a period of more than 30 days**, any subsequent use of such land shall conform to the regulations specified by this chapter for the district in which such land is located.” City of El Reno, OK, Charter, The Code, Part II, General Legislation, Chapter 361 Zoning, Article V: Nonconformities, § 361-30 Nonconforming Uses of Land (C).
- c. “Except as herein provided, no nonconforming use may be reestablished after it has been ***discontinued or vacated for a period of 180 days or more.***” City of Albany, NY, Chapter 375 Zoning, Article XIII, Sec. 375-90(A).
- d. “When a nonconforming use of land, structure and premises in combination **is discontinued or abandoned for six consecutive months or for 18 months during any three-year period (except when government action impedes access to the**

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premises) the land, structure or structure and premises in combination shall not thereafter be used except in conformity with the regulations of the district in which it is located.” Borough of Gibbsboro, NJ, Part II, General Legislation, Chapter, 400 Zoning, Article X: Nonconforming Uses, § 400-77 Abandonment. [Amended 2-15-1983 by Ord. No. 83-1].

- e. **“If any nonconforming use of land ceases for any reason for a period of one hundred eighty consecutive days or more**, any subsequent use of said land shall conform to the regulations for the zoning district in which the land is located.” Code of the City of Evanston, WY, Chapter 24 Zoning, Article X Nonconforming Uses, Structures And Lots, § 24-98 Nonconforming use of land (C).
- f. “If a nonconforming use of a building, structure or lot is ***abandoned for a continuous period of one year***, subsequent use of such building, structure or lot shall conform with provisions of this chapter. For purposes of this chapter, abandonment shall commence when the nonconforming use ceases.” Township of Doylestown, PA, Article XXI Zoning, sec. 175-112 (D).
- g. “Shall not be reestablished if such use has for any reason been discontinued for ***a period of over one year*** . . .” Village of Bronxville, NY, Chapter 310 Zoning, Article V, sec. 310-25(A)(3).
- h. **“Whenever a nonconforming use has been discontinued or in a non-operative status for a period of one year or more**, such use shall not thereafter be reestablished, regardless of change of ownership, and any future use shall be in conformity with the provisions of this Code. The casual, intermittent temporary or illegal use of land or buildings shall not be sufficient to establish the existence of a nonconforming use, and the existence of a nonconforming use on a part of a lot or tract shall not be construed to establish a nonconforming use on the entire lot or tract. Town of Bethany Beach, DE, Chapter 245: ZONING, ARTICLE V Nonconforming Uses and Structures, § 245-32. Abandonment. [Amended 12-16-1983 by Ord. No. 123].
- i. **“When a nonconforming use of land ceases for any reason for a period of more than one year, its legal, nonconforming status is terminated.”** Town of Bridgeville, DE, Charter, The Code, Part II: General Legislation, Chapter 234: Land Use and

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Development, Article V: Nonconforming Situations, § 234-28: Nonconforming Uses (C) Termination of nonconforming status.

- j. “Without just cause, no building or portion thereof used in whole or in part for a nonconforming use in a Residential or Commercial District **which remains idle or unused for a continuous period of 12 months, whether or not the equipment or fixtures are removed**, shall again be used except in conformity with the regulations of the district in which such building or land is located.” Town of Fenwick Island, DE, Charter, Part II, General Legislation; Chapter 160 Zoning, § 160-6: General regulations; exceptions. (D) Nonconforming uses. (2) Discontinuance of nonconforming uses.
- k. “**If any nonconforming use of land or of a structure housing a nonconforming use ceases or is discontinued for any reason for a period of 12 or more consecutive months**, any subsequent use of such land or structure shall conform to the requirements of this chapter in all respects.” Town of Bar Harbor, ME, Charter, The Code, Chapter 125 Land Use, Article IV Nonconformity, § 125-54 Nonconforming uses of land or structures. (E) [Amended 11-4-2003].
- l. “(A) **If a nonconforming use of a building or land is discontinued, razed, removed or abandoned for 365 consecutive days**, subsequent use of such building or land shall conform with the regulations of the district in which it is located. (B) **Abandonment shall commence on the date when customary efforts to continue the use cease.**” Code of the Borough of Quakertown, PA (Bucks County), Chapter 27 Zoning, Part 4 General Regulations, § 406. Nonconformities. (Ord. 983, 3/4/1992; § 4.6; as amended by Ord. 1053, 9/1/1999, § II) 5. Abandonment.
- m. “Abandonment: If any nonconforming use of land or a building is ***discontinued for a period of two years or more*** such land or building shall thereafter be used or developed only in accordance with the terms of the Abington Zoning Bylaw for the zoning district(s) in which such property is located.” Abington, MA—Art. XI Nonconforming Uses, Structures and Lots, sec. 175-70 (A).
- n. “If a nonconforming use is ***discontinued for a period***

of 24 consecutive months, further use of the property *shall conform to this chapter or be subject to review by the Zoning Board of Appeals.*" Town of Lake George, NY, Chapter 175 Zoning, Article VII, sec. 175-65.

2. Does it make a difference whether the property owner intended to abandon the use?

Typically zoning ordinances remove the element of intent from an abandonment analysis, making it easier to prove that the use had ceased for the applicable period of time. Where intent is an element to be considered, evidentiary issues can become problematic. What follows are examples of provisions for zoning ordinances that illustrate various approaches to addressing the issue of intent, and then some recent cases where intent was an issue.

Examples from zoning ordinances:

- a. "A nonconforming use, if is discontinued for a continuous period of six months, shall be deemed terminated *unless the property owner can demonstrate to the reasonable satisfaction of the Planning and Zoning Commission his or her intent to maintain and continue such use.*" Bethel, CT (Fairfield County), sec. 118-40(D).
- b. "Abandonment of a nonconforming use shall consist of some act, or failure to act, which *evidences the owner's lack of intent to continue* the nonconforming use *and is not refuted by any demonstration on the part of the owner of an intent not to abandon the use*; provided however, that any involuntary interruption caused by catastrophe, if any nonconforming use ceases for a period of one year, the owner will be presumed to have abandoned the nonconforming use unless such *presumption is rebutted by substantial evidence of intent not to abandon* the use. Town of Westerly, RI, Chapter 260 Zoning, Article VII, sec. 260-32(B)(3).
- c. "*Intent to resume a nonconforming use shall not confer the right to do so.*" Village of Bronxville, NY, Chapter 310 Zoning, Article V, sec. 310-25(A)(3).
- d. "**If such nonconforming use of land ceases for any reason** for a period of more than 30 days, any subsequent use of such land shall conform to the regulations specified by this chapter for the district in which such land is located." City of Grand Ledge, MI, Charter, Part

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- II, General Legislation, Chapter 220 Zoning, Article XX: Nonconforming Lots, Structures and Uses, § 220-93 Nonconforming uses of land (C).
- e. **“If a nonconforming use of a building or land is voluntarily abandoned and ceases for a continuous period of one year or more,** subsequent use of such building or land shall be in conformity with the provisions of this chapter.” Borough of Shippensburg, PA, Part II General Legislation, Chapter 150 Zoning, Article X Supplementary Regulations, § 150-48 Nonconforming structures and uses, (E) Abandonment.
 - f. **“(C) Continuity of nonconforming uses. No nonconforming use may be reestablished after it has been discontinued for 12 consecutive months. The vacating of premises or structures or the non-operative status of such premises or structures shall be conclusive evidence of discontinued use . . .”** Township of Brecknock, PA, Part II: General Legislation Chapter 110 Zoning, Article III Nonconforming Lots, Uses and Structures, § 110-10 Nonconforming uses and structures.
 - g. **“(D) A nonconforming building or a building in which a nonconforming use is conducted that is damaged or destroyed by any casualty to any extent may be restored within two years after such destruction or damage** but shall not be enlarged except as provided in § 170-73 above. (E) **If any nonconforming use ceases for any reason for a continuous period of two years or more, other than for reasons beyond the control of the owner of the property,** except as provided in Subsection D above, or is changed to or replaced by a conforming use, the land and building thereupon shall be subject to all the regulations as to the use for the zoning district in which such land and building are located as if such nonconforming use had never existed.” Rappahannock County, VA, Part II, General Legislation Chapter 170 Zoning, Article VIII Nonconforming Uses § 170-74 General Regulations.

Recent Litigation:

In two recent cases involving the nonconforming use of a single family home as a rental property, the courts in New Jersey and Utah came to different determinations on whether abandonment had occurred based on two very similar fact patterns.¹⁸

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Some courts have not looked past the presumption of abandonment created by a nonconforming use's statutorily proscribed time period of inactivity. In those courts a showing of intent to abandon a nonconforming use is not required when the statutory time period of abandonment is reasonable and specifically stated in the ordinance.¹⁹ Other courts have ruled that intent is only important where some force outside the control of the property owner prevents the continuous use of the land in a particular manner. When there is nothing involuntary about the cessation of the nonconforming use, the showing of a landowner's intent to abandon is not required.²⁰

Courts which follow this two-pronged approach requiring a showing of intent and an overt act or failure to act, have ruled that mere non-use is not sufficient to establish the fact of abandonment absent other evidence tending to prove the intent to abandon.²¹ According to such reasoning, although the passage of time can create an inference of abandonment there must be the additional showing of an intent to abandon the nonconforming use before the nonconforming use is deemed abandoned.²² The longer the time of cessation the greater the weight is attributable to that factor, but it can be overcome with evidence of the owner's intent to resume operation and factors which have prevented him/her from continuing operation.²³

A zoning ordinance requiring a proof that a nonconforming use was "voluntarily discontinued" for abandonment to occur required proof of a manifest intention to abandon the use coupled with acts or omissions implementing that intent.²⁴ Proof of a previous landowner's decision to dissolve a corporation considered a pre-existing nonconforming use and his choice to cease doing business sufficiently met this burden, and when coupled with nonuse for a statutorily sufficient time period equated to abandonment of the nonconforming use.²⁵ Attempts to sell a property for uses other than nonconforming uses, statements of the owner not to return to the site in question, and removal of equipment integral to the nonconforming use are all acts that have been found equating to the abandonment of a nonconforming use.²⁶

Some courts have ruled that the actions and intent of the current or prior landowner are crucial in determining abandonment of a nonconforming use, while the actions and intent of a lessee or future owner are irrelevant.²⁷

3. Can the Period of Abandonment/Discontinuance be Extended?

Remembering that the goal of zoning is to ultimately bring

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all parcels into compliance with the allowable uses in the zoning district, it might seem peculiar to discuss whether a municipality can extend the time of abandonment or discontinuance of a nonconforming use beyond the time initially set in the local regulation. However, some municipalities, perhaps as a result of negotiation and compromise in the drafting of new zoning regulations, do allow for this possibility. These ordinance provisions should set forth the specific circumstances that must exist for this to occur, as well as describe the process that must be followed for the requesting and granting of this extension. What follows are examples.

Example from a zoning ordinance:

- a. ***“The Zoning Board of Adjustment may, for good cause shown, extend the period of permitted discontinuance up to three additional years,*** provided that application in writing is made to the Board at least 60 days before the commencement date of such three-year additional period.” City of Nashua, NH, Chapter 190, Article XII, sec. 190-122.

Recent Litigation:

Where the zoning ordinance is very strict regarding the extension of the abandonment period, large scale operations will be affected much more than small ones. Where an injunction prevented the operation of a nonconforming use landfill, after the injunction was lifted the landfill was not able to become operational quickly enough not to be deemed abandoned under the applicable ordinance. The controlling statute contained no exception for a complex business such as a landfill, which required considerable startup and development time for it to be functioning after the injunction was lifted.²⁸

4. Can an abandoned nonconforming use be re-established?

Although municipalities are typically strict in their quest to eliminate nonconforming uses, some jurisdictions provide a mechanism for the re-establishment of the nonconforming uses. The first example below seems to indicate that the nonconforming uses shall be allowed to continue by special permit. Where there are no conditions on the length of time a special use permit is granted, and since such permit runs with the land, this may in essence convert the nonconforming use closer to a more permanent use. Further, should municipalities desire to allow the nonconformity to continue,

it might be better to either consider granting a use variance if the subject property can meet the statutory test for such, or consider rezoning to allow the use if it is no longer considered offensive.

Examples from zoning ordinances:

- a. "Any nonconforming structure use which has been abandoned or not sued for a period of two years, or more shall not be re-established, ***except by the granting of a special permit from the Zoning Board of Appeals*** in accordance with provisions of this ordinance." Town of Pittsfield, MA, Town Code Article 23-8 Non-conformities, Sec. 8.4 Abandonment and Non-Use.
- b. "**In the event that a nonconforming use of any building or place is discontinued for a period of six months**, the use of the same shall thereafter conform to the use permitted in the district in which it is located; **provided, however, that the Board of Commissioners may permit a continuation of such nonconforming building or premises.**" Town of Redington Shores, FL, Charter, Part II, General Legislation Chapter 90 Land Development Regulations Part 5 Zoning, Article XXV District Use Regulations, § 90-114 Nonconforming Uses. (C) Discontinuance of a nonconforming use.

Recent Litigation:

Where a zoning ordinance stated that once a nonconforming use is abandoned, it cannot be reestablished, the operation of a nonconforming use on property pursuant to a special exception was deemed by a court to be abandonment of the nonconforming use.²⁹ Once the special use permit is granted, it becomes the operative document regarding the permitted uses of the property, and the use of the property is no longer considered a nonconforming use or the time period required for abandonment begins.³⁰ However, the intent to discontinue a nonconforming use cannot be proven where a municipality forces a property owner to apply for a special use permit for an activity substantially similar to the nonconforming use and where the property owner has no intent to end the nonconforming use.³¹

5. Does use of the entire building need to be abandoned to eliminate the nonconformity?

Another area that has been the subject of litigation surrounds the question of exactly what constitutes a discontinuance of use. For example, is it use of the building/structure

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for any reason in whole, or just in part? Sometimes municipalities choose to use the phrase “substantial discontinuance” or discontinuance of “substantially all” of the use. The immediate problem is that the ordinances fail to define the term “substantial,” providing a field day for negotiation between landowners and the municipality, and ultimately often requiring court intervention due to poor drafting.

Examples:

- a. “Any nonconforming use ***or portion thereof*** which becomes unoccupied, unused or discontinued and remains unoccupied, unused or discontinued during any continuous period of twelve (12) months shall be deemed an abandonment of the nonconforming use . . .” City of Harrisburg, PA, Zoning Code 7-302.2 Reversion of Nonconforming Structures, Buildings and Uses.
- b. “The ***substantial discontinuance*** of any nonconforming use for a period of one year or more terminates such nonconforming use of a structure or premises, and thereafter said structure shall not be used, except in conformity with provisions of this ordinance.” Town of Islip, NY, Chapter 68 Zoning, Article III, sec. 68-15(B).

Recent litigation:

In interpreting the Zoning Resolution of the City of New York to determine the appropriate legal standard to determine whether a nonconforming use has been discontinued, the New York Court of Appeals overturned both the trial court and Appellate Division, concluding that substantial—rather than complete—discontinuation of the active, nonconforming activity forfeits the nonconforming use, and that the good faith of the owner is irrelevant to that determination.³² Here, Section 52-61 of the Zoning Resolution prohibited continuation of a nonconforming use if, during a two-year period, “***the active operation of substantially all*** the nonconforming uses * * * is discontinued” (emphasis added). The Board of Standards and Appeals found minimal warehouse activity following the complete stoppage of operations for 20 months, and held that this cessation failed to preserve the nonconforming use status. As a result, the Board revoked the building permit that had allowed the petitioner to maintain a nonconforming use on the premises. The Court upheld the Board’s determination finding that it was supported by substantial evidence.

6. Are there exceptions to the period of abandonment?

Most zoning ordinance provisions desire to eliminate

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nonconformities, and therefore leave no opportunity for discontinuance after the use is abandoned, unintentionally or even involuntarily (e.g., due to an act of god). Occasionally, however, a municipality chooses to overlook, or not count, the period of time that a use was discontinued as a result of certain intervening actions that are not within the control of the property owner.

Example from a zoning ordinance:

- a. ***"If any portion of the twelve month period of discontinuance is due solely to fire, other casualty, act of God, or action by a governmental jurisdiction, including, inter alia, a proposal submitted to City officials for consideration of either a reuse of or a continuation of the same use of the structure, then such portion of time shall not be counted in the afore-said twelve month period following which nonconforming use shall be deemed abandoned."*** City of Harrisburg, PA, Planning and Zoning Code, 7-703.2(c)(2).

Recent litigation:

Where a zoning ordinance contained a provision allowing a nonconforming use fraternity to continue so long as the fraternity's privileges were not revoked by the university for more than a year, the revocation of privileges for more than a year immediately expired the nonconforming use. The subsequent lease of the property for use by another fraternity within one year did not function to preserve the nonconforming use.³³

7. What constitutes evidence of abandonment?

Some zoning regulations provide examples of what evidence will be considered to assess whether the use has been abandoned.

Examples from zoning ordinances:

- a. "A nonconforming use shall be presumed abandoned and its right as a nonconforming use extinguished when any of the following has occurred:
"(A) If a nonconforming use of a building or land is discontinued, razed, removed or abandoned for 365 consecutive days, subsequent use of such building or land shall conform with the regulations of the district in which it is located. (B) Abandonment shall commence on the date when customary efforts to continue the use cease." Code of the Borough of Quakertown, PA (Bucks County), Chapter 27 Zoning,

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Part 4 General Regulations, § 406. Nonconformities. (Ord. 983, 3/4/1992; § 4.6; as amended by Ord. 1053, 9/1/1999, § II) 5. Abandonment.

- b. “(C) Continuity of nonconforming uses. No nonconforming use may be reestablished after it has been discontinued for 12 consecutive months. **The vacating of premises or structures or the non-operative status of such premises or structures shall be conclusive evidence of discontinued use.**(F) Restoration and repair. (1) Restoration (c) **The reconstruction shall start within one year from the time of damage to the structure.**” Township of Brecknock, PA, Part II: General Legislation Chapter 110 Zoning, Article III Nonconforming Lots, Uses and Structures, § 110-10 Nonconforming uses and structures.

Recent Litigation:

As abandonment of a nonconforming use is often a question of fact, many cases involve landowners arguing the zoning board had incorrectly ruled that their nonconforming use was abandoned. Landowners have been able to rebut the presumption of the abandonment of a nonconforming use through the use of affidavits and by casting doubt on contrary evidence.³⁴ Half-hearted efforts of complying with chronological requirements have not been sufficient to rebut the presumption of abandonment.³⁵

In *Zall v. Zoning Board of Appeals of Salisbury*,³⁶ the owner of property adjacent to a nonconforming use brought an action seeking to annul a special permit granted to the nonconforming use property owner (defendant) by the zoning board (co-defendant). The special permit authorized the defendant to change a prior nonconforming use of its beachfront property from a nightclub to a restaurant. The trial court vacated the board’s decision to grant the special permit concluding the defendant had abandoned the nonconforming use. The defendant appealed. The applicable zoning ordinance stated that nonconforming uses cease to exist after two years of non-use. Aware that the two-year period set forth in the by-law was about to expire, the defendant made what the judge viewed as a weak effort to open for business in August, 2001. The defendant obtained a temporary ten-day permit to serve “prepackaged food with milk.” However, he did not purchase new goods for sale, and the only food available was several years old. The defendant was on the premises several hours each day during the ten-day period, with the lights on and the door unlocked, but did not make

any sales. The defendant did not advertise the business or do anything that would put the public on notice that a food establishment had opened. A month later, the defendant threw the items out. The Court did not find the defendant's actions to be a sufficient showing of operation of his business to reverse the trial court's determination that the nonconforming use was abandoned. As a result, the lower court's decision to vacate the zoning board's decision to grant a special permit to NEBC was affirmed.³⁷

8. Can an abandoned use be converted to a less intensive nonconforming use?

Typically zoning ordinances provide that abandoned uses may resume or be converted to a less intensive nonconforming use. Courts prohibit the conversion back to the more intensive use.³⁸ Likewise, courts have not allowed the reversion to a previously abandoned more expansive nonconforming use once it has been abandoned.³⁹ Where the owner of a prior nonconforming use billboard improperly added lights to the sign, he did not abandon the original nonconforming use. The court ruled that an improper expansion of a nonconforming use does not equate to an overt act of abandonment as the original use was not abandoned.⁴⁰ On the other hand, where a nonconforming use deli was converted into a take-out Chinese restaurant which operated beyond the authorization the zoning board granted to the deli, the original nonconforming use was deemed abandoned.⁴¹ The subsequent reversion of the property to a deli use was not possible as the court ruled the nonconforming use was abandoned by the prolonged improper use as a Chinese restaurant.⁴² The sale of alcohol by a restaurant has been considered an accessory use and not an expansion nor a separate and distinct use to a nonconforming restaurant.⁴³ As such the decision of a previous owner of a nonconforming use to stop serving alcohol for several years did not affect the restaurant's ability to serve alcohol in a restaurant setting.⁴⁴

IV. Amortization

A more active or aggressive method of eliminating nonconforming uses is amortization. This concept has its roots in the early 1915 case of *Hadacheck v Sebastian*, 239 U.S. 395 where the Court confirmed that the City could eliminate the brickyard use on the property in question without such action necessitating compensation. Amortization has always been a controversial tool, gaining most notoriety perhaps in

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the 1960s and 1970s as advocates attempted to use this method to force the removal of billboards along highways. By 1978, governments were prohibited from using amortization to remove these signs on federally funded highways absent compensation. While few states have specific statutory guidance on amortization, the general rule from common law is that the property owner/user must be given enough time to realize a reasonable return on their investment. Although courts approach amortization issues on a case-by-case basis, a balancing test is typically employed to weigh the value to the public in eliminating the use and the harm or private loss suffered as a result of the amortization.

What follows are examples from local zoning laws and ordinances demonstrating various approaches to implementing amortization efforts. Readers must keep in mind, however, the need for appropriate balancing.

1. Time for the Nonconforming Use to Conform

- a. "Any adult arcade, adult bookstore, adult cabaret, adult entertainment establishment, adult motel, or adult motion picture theater, as defined in this Ordinance, in existence at the time of adoption of this Ordinance which violates or does not conform to the provisions hereof (hereafter, a "pre-existing, non-conforming business") **shall conform to the provisions of this Ordinance within a period of three (3) years from said adoption of this Ordinance.**" City of Jackson, MS, Article XIII, § 1303.03-A. Amortization of Non-conforming Use.
- b. "Any nonconforming open use of land or any nonconforming billboard or advertising structure not attached to a building, but which lawfully existed at the time that this Ordinance became effective, **shall be discontinued within five (5) years from the date of its passage.**" Howard County, IN, Ch. 6, § 6.1. Amortization of Nonconforming Uses or Buildings.
- c. "The lawful use of buildings or land existing at the effective date of this Ordinance which does not conform to the provisions of this Ordinance shall be discontinued within a reasonable period of amortization of the building; uses of buildings and land which become nonconforming by reasons of a change in this Ordinance shall also be discontinued within a reasonable period of amortization of the building. A reasonable period of amortization shall be construed to being **after the date of adoption of this Ordinance and shall be consid-**

ered to be thirty (30) years for buildings of ordinary wood construction, forty (40) years for buildings of wood and masonry construction, and fifty (50) years for buildings of fireproof construction."

County of Redwood, MN, § 21(1). Non-conforming Uses.

- d. "The Board, under authorization of State statute, may provide for the timely modification or removal of a nonconforming structure or use of land. **A maximum of a five (5) year period may be granted in which the nonconforming use shall be modified or removed** in order to comply with the General Plan and Zoning Ordinance. The Board may provide for a shorter time period by providing a formula establishing a reasonable time period during which the owner can recover or amortize the amount of any investment in the nonconforming use or structure, if any." Layton City, UT, Ch. 19.15.080. Amortization of nonconforming uses.
- e. "If, after holding public hearings, the Planning Commission determines that the continuance of a nonconforming use is detrimental to the health, safety or welfare of a neighborhood, the nonconforming use shall be completely removed or converted to a conforming use within an amortization period prescribed by the City Council. The Planning Commission shall establish conditions for the operation of the nonconforming use during the amortization period **(not less than 5 years nor more than 40 years, depending upon the impact the nonconforming use has on the surrounding neighborhood).**" City of Florence, OR, Title 10, § 10-8-8. Removal of Nonconforming Uses.
- f. "The board may require the removal or discontinuance of a nonconforming use in any residential district which does not meet the allowable use standards for the zone in which it is contained. The removal of nonconforming uses may be accomplished only in the following 2 ways:
 - A. Nonconforming signs, temporary structures, open air storage facilities, or parking facilities shall be required to be removed **5 years from the date of this ordinance**, when, after a hearing as provided in section 150.023, the commission finds the uses to be inconsistent or incompatible with surrounding land uses.
 - B. Nonconforming use in a permanent structure, except as described in section 150.144(D), may only be required to be removed when, after a hearing as provided in section 150.023, the commission finds that the nonconforming use is inconsistent or incompatible with

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surrounding land uses, and the nonconforming use is not necessary to the surrounding residential areas in that location. If the commission recommends the use be discontinued, the board is required to give the owner notice and serve notice to subsequent owners that the use of the land or structure is to be amortized. The amortization period shall relate to the market value of the property. **Any structure having a market value less than \$5,000.00 shall be given an amortization period of 2 to 5 years. Any structure with a market value over \$5,000.00 shall be given an amortization period of not less than 5 years or more than 25 years from the date of the hearing. If the nonconforming structure or use is not removed or discontinued within 6 months of the end of the amortization period, the owner shall be subject to a fine of not more than \$500.00 per day or other court action which the village deems necessary.**⁴⁵

2. Extension of the Nonconforming Use to Conform

- a. **"The City Planning Board may grant an extension of time for continued operation after the conclusion of this grace period if the owner of the pre-existing, non-conforming business proves that he is unable to recoup his investment in such enterprise by that date. In order to secure an extension of time, the owner must submit to the City Planning Board a written request for such extension at least sixty (60) days prior to the expiration of the three (3) year grace period. No application for extension received by the City Planning Board after such time shall be considered. This information shall be supported by relevant documentary evidence such as financial statements and tax records. Copies of such documentary evidence must be attached to the request for extension, and refusal or failure to provide this information as required shall constitute a waiver of the right to seek an extension of time in which to operate. Such written request shall set forth the following information:**

- a. The amount of the owner's investment in the pre-existing, non-conforming business through the effective date of this Ordinance;

- b. The amount of such investment that has been or will have been realized at the conclusion of the three-year grace period;

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- c. The life expectancy of the existing enterprise;
- d. The existence or nonexistence of lease obligations, as well as any contingency clauses therein permitting termination of such lease.

The City Planning Board shall notify an applicant for an extension of time of the time and place of a hearing to be held on such request before the City Planning Board. After such hearing, the City Planning Board shall issue a written order on the request for extension. If the owner desires to appeal the City Planning Board's order, said appeal may be taken by following the procedures for appeal to the City Council pursuant to the provisions of the Zoning Ordinance of Jackson, Mississippi, as amended. Extensions that are granted shall specify a date certain for closure, and shall not be valid for operation at any other location." City of Jackson, MS, Article XIII, § 1303.03-A. Amortization of Nonconforming Use.

- b. **"The owner or operator of a nonconforming use may apply to the City Council for an extension of time within which to terminate the nonconforming use. An extension shall be for a reasonable period of time commensurate with the investment involved and shall be approved if the City Council makes all of the following findings or such other findings as are required by law:**

(1) The applicant has made a substantial investment (including but not limited to lease obligations) in the property or structure on or in which the nonconforming use is conducted; such property or structure cannot be readily converted to another use; and such investment was made prior to September 27, 2005.

(2) The applicant will be unable to recoup said investment as of November 24, 2006.

(3) The applicant has made good faith efforts to recoup the investment and to relocate the use to a location to meet the requirements of this Chapter." Santa Monica, CA, Ch. 9.44.040. Amortization of nonconforming uses.

- c. **"A nonconforming use due to be terminated pursuant to this section may be extended upon application for a special approval for such extension from the Board of Appeals.** Such approval shall not be granted unless the applicant establishes and the Board of Appeals finds that, notwithstanding the fifteen year period for amortizing a nonconforming use created by the 1991 amendment referred to above, termination

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of the nonconforming use would cause serious financial harm to the property owner not balanced or justified by the advantage to the public in terms of more complete and effective zoning accruing from the cessation of such use. In making this determination the Board shall consider, among other factors (including the factors set forth elsewhere in this chapter relating to the issuance of special permits or approvals), i) the nature of the nonconforming use; ii) the cost of converting to a conforming use; iii) the amount of investment that existed in the property on March 1, 1991, or if the zoning change creating the nonconformity was adopted after March 1, 1991, the amount of such investment on the date of such later zoning change; iv) the detriment caused by the nonconforming use; v) the character of the neighborhood; vi) the ability of the landowner to have amortized the cost of the landowner's investment over the period between March 1, 1991 (or such later zoning change date) and the required termination of such use; and vii) whether an additional reasonable amount of time is needed by the owner to amortize the owner's investment. In making its determination the Board shall disregard, as irrelevant, any costs for purchase of a nonconforming building or property or costs to repair, maintain, improve or enlarge a nonconforming property, incurred after March 1, 1991, or, if the nonconformity was created by a subsequent zoning change, any such costs incurred after such change. If the extension is granted, the Board of Appeals shall set a fixed additional period for the extension of time before the nonconforming use must be terminated." Town of Ithaca, NY, § 270-214. Amortization of certain nonconforming uses related to pre-1991 residential occupancies.

3. Rebuilding of Damaged Nonconforming Use

- a. "No structure damaged by fire or other causes to the extent of more than triple its assessed value shall be repaired or rebuilt except in conformity with the provisions of this Ordinance, provided, however, that this requirement shall not apply with respect to any structure used exclusively for residential purposes." Howard County, IN, Ch. 6, § 6.1. Amortization of Nonconforming Uses or Buildings.
- b. "No buildings damaged by fire or other causes excluding residences and farm buildings, to the extent that their restoration will cost more than sixty (60) percent of

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their fair cash value shall be repaired or rebuilt except to conform to the provisions of this ordinance.” Logan County, IL, § 9.4. Amortization of Nonconforming Uses or Buildings.

- c. “Structures incurring damage of less than 50 percent (50%) of fair market value above the foundation may be restored, reconstructed and used as before, provided that such restoration is commenced within six (6) calendar months from the date damages were incurred. If reconstruction is not commenced within six (6) months, the use of said land or structure shall thereafter conform with the provisions of this Ordinance. Fair market value shall be determined by reference to current statutory provisions pertaining to real estate assessment and the records of the county assessor.” City of Snellville, GA, Article V, § 5.7. Amortization and Discontinuance.

V. Conclusion

A substantial portion of the litigation surrounding nonconforming uses could be avoided with better drafting of zoning ordinance provisions. Areas that have attracted a significant amount of nonconforming use litigation involve abandonment or discontinuance of use and amortization. Property owners are typically not anxious to give up the property interest that accrues from nonconforming use status. Sometimes property owners are not aware of the specific regulations governing their nonconforming use, other times, the use may have inadvertently ceased for the requisite period of time. Still, often disagreements result from ambiguities in the regulations themselves. Attorneys who find themselves in a position to assist municipalities with the drafting of nonconforming use provisions should be mindful of the pitfalls in failing to specify exact desires of the municipal client in dealing with such uses. Practitioners whose clients desire to challenge vague and ambiguously worded provisions may be pleasantly surprised at the body of caselaw that has developed that may support these positions, as well as the wealth of examples available from other jurisdictions that could be used to demonstrate more specific and clearer language for addressing municipal desires.

NOTES:

¹Patricia E. Salkin, *American Law of Zoning*, vol. 2, sec. 12-7

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(Thomson Reuters/West 5th ed. 2009).

²Patricia E. Salkin, *American Law of Zoning*, vol. 2, sec. 12-7 (Thomson Reuters/West 5th ed. 2009).

³Patricia E. Salkin, *American Law of Zoning*, vol. 2, sec. 12-7 (Thomson Reuters/West 5th ed. 2009).

⁴Patricia E. Salkin, *American Law of Zoning*, vol. 2, sec. 12-7 (Thomson Reuters/West 5th ed. 2009).

⁵Stuart Meck, *Growing Smart Legislative Guidebook* vol. 2, sec. 8-111 (American Planning Association 2002 ed. Jan. 2002).

⁶See, V. Gail Easley and David A. Theriaque, “Distinguishing Between Detrimental and Benign Nonconformities,” *Zoning Practice* (American Planning Association, November 2009).

⁷Patricia E. Salkin, *American Law of Zoning*, vol. 2, sec. 12-10 (Thomson Reuters/West 5th ed. 2009).

⁸Patricia E. Salkin, *American Law of Zoning*, vol. 2, sec. 12-10 (Thomson Reuters/West 5th ed. 2009).

⁹Patricia E. Salkin, *American Law of Zoning*, vol. 2, 12-233 to 12-235 (Thomson Reuters/West 5th ed. 2009).

¹⁰Patricia E. Salkin, *American Law of Zoning*, vol. 2, 12-233 to 12-235 (Thomson Reuters/West 5th ed. 2009).

¹¹*Karas v. Foss*, 2008 WL 859504 (N.J. Super. A.D., 2008) (citing *S & S Auto Sales, Inc. v. Zoning Bd. of Adjustment for Borough of Stratford*, 373 *N.J. Super.* 603, 613 (App. Div. 2004)) citing *Borough of Saddle River v. Bobinski*, 108 *N.J. Super.* 6, 16–17 (Ch. Div. 1969).

¹²*Karas v. Foss*, 2008 WL 859504 (N.J. Super. A.D., 2008) (citing *S & S Auto Sales, Inc. v. Zoning Bd. of Adjustment for Borough of Stratford*, 373 *N.J. Super.* 603, 613 (App. Div. 2004) citing *Borough of Saddle River v. Bobinski*, 108 *N.J. Super.* 6, 16–17 (Ch. Div. 1969).

¹³*Karas v. Foss*, 2008 WL 859504 (N.J. Super. A.D., 2008) (citing *S & S Auto Sales, Inc. v. Zoning Bd. of Adjustment for Borough of Stratford*, 373 *N.J. Super.* 603, 613 (App. Div. 2004) (citing *Villari v. Zoning Bd. of Adj. of Deptford*, 277 *N.J. Super.* 130, 137 (App. Div. 1994)).

¹⁴Edward H. Ziegler, Jr., *Rathkopf's The Law of Zoning and Planning*, 4 *RLZPN* § 74:3 (2009).

¹⁵Edward H. Ziegler, Jr., *Rathkopf's The Law of Zoning and Planning*, 4 *RLZPN* § 74:3 (2009).

¹⁶Edward H. Ziegler, Jr., *Rathkopf's The Law of Zoning and Planning*, 4 *RLZPN* § 74:3 (2009).

¹⁷Edward H. Ziegler, Jr., *Rathkopf's The Law of Zoning and Planning*, 4 *RLZPN* § 74:3 (2009).

¹⁸*Euneva v. Keansburg Planning Board of Adjustment*, (PDF COPY of opinion), Superior Court of New Jersey, Monmouth County, (Decided: November 5, 2008 & Approved for Publication: May 26, 2009), and *Vial v. Provo City*, 2009 UT App 122 (Utah Ct. App. 2009).

¹⁹*McKenzie v. Town of Eaton Zoning Board of Adjustment*, 154 N.H. 773 (N.H. 2007), and *Village of Waterford v. Amna Enterprises, Inc.*, 27 A.D. 3d 1044 (N.Y. App. Div. 2006), and *Sun Oil Co. of PA v. Board of*

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²⁰City of Red Bank v. Phillips, 2007 WL 4460223 (Tenn. Ct. App. 2007).

²¹Ghindia v. Buckeye Land Development, LLC., 2007 Ohio App. LEXIS 694, **12 (Ohio Ct. App., 2007).

²²Karas v. Foss, 2008 WL 859504 (N.J. Super. A.D., April 2, 2008).

²³S&S Auto Sales, Inc. v. Zoning Board of Adjustment for the Borough of Stratford, 373 N.J. Super. 603, 624. (N.J. Super. Ct. App. Div. 2004).

²⁴Ghindia v. Buckeye Land Development, LLC., 2007 Ohio App. LEXIS 694, **12 (Ohio Ct. App., 2007).

²⁵Ghindia v. Buckeye Land Development, LLC., 2007 Ohio App. LEXIS 694, **12 (Ohio Ct. App., 2007).

²⁶Pezzullo v. Ure, 2008 R.I. Super. LEXIS 167, *18 (R.I. 2008).

²⁷Face Value, LLC v. Zoning Board of Appeals of Town of East Hartford, 2008 Conn. Super. LEXIS 2931 (Conn. Super. Ct. 2008), Karas v. Foss, 2008 WL 859504 (N.J. Super. A.D., April 2, 2008), Gem City Metal Spinning Co. v. City of Dayton Board of Zoning Appeals, 2008 WL 185535 (Ohio Ct. App. 2008), Palmieri Cove Associates v. City of New Haven Board of Zoning Appeals, 2006 Conn. Super. LEXIS 848 (Conn. Super. Ct. 2006).

²⁸Custom Land Development, Inc. v. Coopertown Board of Zoning Appeals, 168 S.W.3d 764, 775 (Tenn. Ct. App. 2004).

²⁹Purich v. Draper Properties, Inc., 395 Md. 694 (2006).

³⁰Smith Bros. Woodland Management, LLC v. Zoning Board of Appeal of Town of Brookfield, 108 Conn. App. 621 (Conn. App. Ct. 2008), Purich v. Draper Properties, Inc., 395 Md. 694 (2006).

³¹Greer v. Washougal Motorcross, LLC., 2007 Wash. App. LEXIS 497, *11 (Wash. Ct. App. 2007).

³²Toys R Us v. Silva, 89 N.Y.2d 411, 676 N.E.2d 862, 654 N.Y.S.2d 100 (1996).

³³Schweizer v. Board of Adjustment of City of Newark, 2009 WL 597630 (Del. 2009).

³⁴Bialik v. Stambaugh Township, 2008 WL 1885772 (Mich. Ct. App. 2008), and Finn v. Zoning Hearing Board of Beaver Borough, 869 A.2d 1124 (Pa. Commw. Ct. 2005).

³⁵Zall v. Zoning Board of Appeals of Salisbury, 73 Mass. App. Ct. 1103 (Mass. App. Ct. 2008).

³⁶Zall v. Zoning Board of Appeals of Salisbury, 73 Mass. App. Ct. 1103 (Mass. App. Ct. 2008).

³⁷Zall v. Zoning Board of Appeals of Salisbury, 73 Mass. App. Ct. 1103 (Mass. App. Ct. 2008).

³⁸Taylor v. Zoning Board of Appeals of City of Evanston, 375 Ill. App. 3d 585 (Ill. App. Ct. 2007).

³⁹Town of Orange v. Shay, 68 Mass. App. Ct. 358 (Mass. App. Ct. 2007).

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⁴⁰Pallco Enterprises, Inc. v. Denton Beam, 132 Cal. App. 4th 1482, 1498 (Cal. App. Dep't Super. Ct. 2005).

⁴¹Gorgone v. District of Columbia Board of Zoning Adjustment, 2009 D.C. App. Lexis 179 (2009).

⁴²Gorgone v. District of Columbia Board of Zoning Adjustment, 2009 D.C. App. Lexis 179 (2009).

⁴³City of Okoboji v. Okoboji Barz, Inc., 746 N.W.2d 56 (Iowa 2008).

⁴⁴City of Okoboji v. Okoboji Barz, Inc., 746 N.W.2d 56 (Iowa 2008).

⁴⁵Mt. Zion Code sec. 150.146 (1999).

Agenda
Planning Commission
Committee of the Whole
 CITY AND BOROUGH OF JUNEAU
Ben Haight, Chairman
 December 11, 2018

I. ROLL CALL

Ben Haight, Chairman, called the Committee of the Whole Meeting of the City and Borough of Juneau (CBJ) Planning Commission (PC), held in the Assembly Chambers of the Municipal Building, to order at 5:45 p.m.

Commissioners present: Ben Haight, Chairman; Dan Miller, Dan Hickok, Andrew Campbell, Nathaniel Dye, Carl Greene

Commissioners absent: Percy Frisby, Paul Voelckers, Michael LeVine

Staff present: Jill Maclean, CDD Director; Beth McKibben, Senior Planner; Laura Boyce, Senior Planner

Assembly members: Wade Bryson

II. REGULAR AGENDA

AME2018 0009: Proposed amendments to 49.30 – Nonconforming Development

Ms. McKibben told the Commission that the primary concept of this proposed amendment to 49.30 is to be less stringent on benign nonconforming situations and more stringent on those that would have a more detrimental effect on public health and safety. The best way to address conformity is to make sure that zoning works, she said. The ADOD (Alternative Development Overlay District) is a good example of this. The other concept is to sanction benign developments. Every community decides what is benign for them, she said. In some residential uses, allowed density may not be conforming to the current code, she said.

The community is experiencing challenges as the finance community is reticent to finance nonconforming properties, said Ms. McKibben.

The other goal is to phase out detrimental nonconforming uses, said Ms. McKibben. There are not too many of these within the community, she noted. Some of these properties truly do not

belong in their existing neighborhood, she said. The goal is that over time these properties will be moved to an area in which they fit, she said.

A change which had recently been made to the draft ordinance is the nonconforming use. The language states that a nonconforming use may be expanded as long it still comports with the neighborhood, she said, with no negative impact.

Other changes were made based upon the discussion at the last meeting regarding nonconforming structures, said Ms. McKibben. A nonconforming structure may be reconstructed in compliance with regulations when they are accidentally damaged or destroyed. If it is intentionally destroyed, it can only be reconstructed in accordance with the current code, said Ms. McKibben. Previously the language stated that a nonconforming structure could be reconstructed whether its damage was by accident or intentional, said Ms. McKibben.

Additional new language was added concerning overcoming a presumption of abandonment, said Ms. McKibben. This provides a method for a property owner to overcome a determination that a nonconforming situation has been abandoned. This would be approved by the Director and could be protested to the Board of Adjustment at a Nonconforming Situation Review. This draft has language which specifically defines what abandonment is, said Ms. McKibben.

Proof of Nonconforming Situation was changed by the staff to Proof of Nonconforming Status, said Ms. McKibben. It is now clearer to have a group defined as nonconforming status such as if someone wanted to sell their four plex which was legally nonconforming. They would have proof of nonconforming status, said Ms. McKibben. The process has not really changed even though the name changed, she noted.

The Nonconforming Situation Review language has also changed since last viewed by the Commission, said Ms. McKibben. This process allows the Board of Adjustment to review, limit, or deny:

- ✓ The change of use to a different use which is prohibited by the base zone
- ✓ Expansion of nonconforming use
- ✓ Change from a nonconforming, nonresidential use to an allowed residential use that exceeds the allowed density in RR, D1, D3, D5, D10SF, D10, D15 and D18 zones
- ✓ Reconstruction of a nonconforming dwelling unit on sites that exceed the maximum residential density standards when an applicant does not provide standard evidence for a Proof of Nonconforming Situation when the Director does not find the evidence to be satisfactory

Commission Comments and Questions

Mr. Miller asked for clarification of a legal nonconforming status. He asked if this would fit

within the Nonconforming Situation Review and if there was an avenue other than the Planning Commission which could review the status.

Ms. McKibben said the proof of nonconforming status which is a staff review. As part of this work CDD needs to reach out to the business and finance communities, the appraisers and the title companies. They could then notify their client that they need to obtain a legal nonconforming status, she said. Often people don't know that their property is nonconforming until it comes to sale, said Ms. McKibben. That would enable the sale to proceed much more smoothly, she said. If they want to appeal the staff decision on the nonconforming status, then the next step would be the Nonconforming Situation Review, she said.

The adoption of ordinance 15-03 provides the opportunity for the Planning Commission to approve right-of-way acquisitions that create nonconforming situations if each lot has at least one building that can be reasonably developed, explained Ms. McKibben. The nonconforming situations created by these acquisitions will be considered legally nonconforming and should be documented as such. This draft nonconforming code works with that process.

In general, a legally nonconforming use that is operated and maintained, has the right to continue operating. Some nonconforming codes provide for amortization of nonconforming uses, meaning the nonconforming use is given a period of time, such as five years, to become conforming, or else move. This is not a process that Juneau has used and is not proposed with this language. If a nonconforming use is not being maintained or well operated, there are other processes outside of Title 49 that can be used to address the problem.

At the last meeting it was discussed what transpires when a nonconforming status is lost, said Ms. McKibben. Language currently in the code states that it is lost if the repair cost of the structure is more than 75 percent of the cost of the replacement of the entire building, exclusive of foundation, with new material. The extent of building damage shall be determined by the building official.

The current proposal is as follows:

- ✓ Nonconforming use - if intentionally destroyed, nonconforming rights are lost, and the redevelopment must comply with current regulations. If accidentally destroyed to the 75 percent threshold, then the nonconforming use cannot be reconstructed or developed.
- ✓ Nonconforming density for more than one dwelling unit - if intentionally destroyed, nonconforming density rights are lost. If accidentally destroyed, there is no replacement cost threshold, and nonconforming density may be reconstructed.
- ✓ Nonconforming density to one dwelling unit - if intentionally destroyed, nonconforming density rights are lost. If accidentally destroyed to the 75 percent cost threshold, the nonconforming density cannot be reconstructed.

- ✓ Nonconforming structure - if intentionally destroyed, nonconforming rights are lost and the construction must comply with current regulations. If accidentally destroyed to the 75 percent threshold, the reconstruction must comply with the current dimensional standards.

Mr. Miller inquired about the case of a nonconforming density.

Ms. McKibben referred the Commission to the table presented earlier which allows for the reconstruction of the dwelling which has a nonconforming density.

Mr. Miller said he has never liked the 75 percent rule. Mr. Miller said he believed that a lot of the legally nonconforming situations in Juneau are in the downtown area. Most of these lots are benign, said Mr. Miller. Referring to more recently constructed and deemed nonconforming buildings along Glacier Highway, Mr. Miller said if they were to be destroyed for over 75 percent of the value, they would not be able to reconstruct their buildings at the same location. They would have to conform to the newer code.

Mr. Dye said he agreed with much of what Mr. Miller said. The purpose of zoning is to spur development in a certain direction, said Mr. Dye. He said he does have some concern about it being too easy to rebuild to a non-conforming standard. He said he does not want nonconforming construction so easy to obtain that zoning regulations become meaningless.

A nonconforming density with a nonconforming structure on a nonconforming lot are exempt from the 75 percent rule, said Mr. Miller. He said he feels this is a good rule. He said he did not think it was fair that some structures were exempt from this 75 percent rule while the others are not. He said they should both be able to rebuild on the same footprint without having to meet the existing setback requirements.

Mr. Dye said he did agree that single-family nonconforming residential units are more benign than other multi-residential nonconforming structures. He said it did seem to be a little unfair that the 75 percent rule still exists for single-family units. Mr. Dye asked the staff if they could set a date which would encompass 100 percent rebuild.

Ms. Maclean said for the most part it is the two town areas which have the most nonconforming single-family residences and structures. The ADOD's are in place to protect those residences, she said.

Ms. McKibben said perhaps once they accomplished the downtown zoning, that they look again at the nonconforming structures in that area. She said they have a number of exceptions for an instance with a nonconforming lot to be granted reduced setbacks. The evaluation for the downtown zoning should result in very few nonconforming structures, she said. It may be a better time to discuss this particular issue when they have a better idea of what the new

downtown zoning will be like, she added.

Mr. Dye said they are trying to protect single-family residences as well as multi-family residences until the zoning is fixed.

In answer to a question posed by Mr. Dye, Ms. McKibben said there are currently no sidebars placed upon what the nonconforming density could be increased to. Referring to line 261 of the draft ordinance, Ms. McKibben read that in all residential zones, (RR – D18) a change from a nonconforming nonresidential use to an allowed residential use that exceeds the allowed density would be the expansion of a nonconforming use. On line 301 of the draft ordinance, Ms. McKibben read that nonconforming residential density will have no net increase in overall detrimental impact on the surrounding area taking into consideration factors such as vehicle trips, impact on surrounding street parking and on lot coverage, vegetative cover, and conformity with the Land Use Plan.

Mr. Dye said he was thinking of a chart similar for the one developed for the Alternative Residential Subdivision (ARS). For D5 zoning for example, maximum development would fall just a little under the zoning for D10, he explained.

Ms. McKibben said she understood they are talking about making a nonconforming use to be changed to a nonconforming density. If this was in a D1 zone there would be the highest density possible.

Mr. Dye said he did have a concern that the ordinance would limit rezone work. He said perhaps it opened up a bigger area than may be optimal.

Mr. Miller posited that if the propane business on Mendenhall Boulevard decided to purchase an industrial lot for their business and change their nonconforming uses to a nonconforming density, their lot could be a D10 zone when everyone around them was zoned D5.

This is an incentive to get rid of nonconforming uses, said Ms. McKibben. This is a concept that has existed in the language, but they had not discussed it very much, she said. The idea is that residential uses are probably more compatible with the neighborhood, she said. They could be more specific about criteria evaluated in the Nonconforming Situation Review that would make the Commission more comfortable, she said. They could put in language as suggested by Mr. Dye, she added. They could combine the two approaches, she said.

Ms. Maclean said she liked the limits suggested by Mr. Dye. She added they do already have bonuses in Title 49 such as the apartments on Riverside Drive which received extra units. There are alternative ways to gain units or density, she said.

The Board of Adjustment through the Nonconforming Situation Review could deny a request, said Ms. McKibben, or it could apply conditions. If there is a density of D15 proposed in a D5 zoning district, and the Commission found that the traffic was incompatible with the area or the site could not be adequately buffered from the adjacent D5 zoning, the Commission could apply conditions, she said.

Mr. Dye clarified that to apply for a change in density the applicant would already have to be in a legally nonconforming situation.

Ms. McKibben clarified for Mr. Dye that things that are not legal need to go away, or become legal.

To clarify what is “intentional” Ms. McKibben said if an individual burns their own house down, that is intentional. If someone else burns that house down, that is not intentional, she said, unless there is evidence that the owner paid someone else to burn their house down, she said.

Changes within the Current Draft Ordinance

On line 44, under nonconforming uses for continued operation, the continued operation has changed to reflect the conversation from the last meeting, said Ms. McKibben. She said based upon the conversation at the last Planning Commission meeting, the Commission seemed to be fine with expansion of the use inside of the building as long as there were not external negative impacts that affected the neighborhood.

“Overcoming presumption of abandonment” on line 208 of the draft ordinance, said Ms. McKibben, has been adjusted. It defines abandonment, and this is decided by the Director. If the applicant is not satisfied with the Director’s decision, that decision can be protested through a Nonconforming Situation Review by the Board of Adjustment. All of the Director’s decisions within this ordinance can be protested through the Board of Adjustment through the Nonconforming Situation Review, said Ms. McKibben.

Mr. Miller asked if there are time frames associated with abandonment.

Abandonment would be a little bit different depending upon the nonconforming situation, said Ms. McKibben. A nonconforming residential density, for example, can be reconstructed no matter how long it has been vacant or abandoned, she said. Once the reconstruction process has begun, it must be completed within three years, she explained. There is a timeline for a nonconforming use, she said. “Once abandoned, the prior legal nonconforming status of the use shall be lost and any use of the property should comply with all applicable provisions of this title, unless the nonconforming use is established to the Nonconforming Situation Review.”

If the propane store changes to a duplex, the previous use of the propane store cannot be regained, said Ms. McKibben. A property would be considered abandoned if no action had been

taken on the property within a year unless the owner can demonstrate that they had to make substantial efforts to continue the use. That is consistent with the current code, said Ms. McKibben.

One dwelling unit that is nonconforming can be reconstructed within three years, said Ms. McKibben.

Mr. Dye asked why there is no time limit for residential density on residential abandonment.

This concept had been discussed at the Title 49 meeting in the support of residential uses and densities, said Ms. McKibben. Ms. McKibben said one example she could think of that was discussed at the Title 49 meeting, was a residence which had been abandoned for several years because it was stalled in the probate process.

Mr. Miller said perhaps it could be placed under the Director's determination of abandonment that proof of a necessary absence such as to take care of a relative could be used as a reason for abandonment not to be declared.

Mr. Hickok asked if a nonconforming use continued to pay property tax if it still would have to be considered abandoned.

If a business stops operating for a period of time, and taxes are still paid on it, the use itself is abandoned, said Ms. McKibben.

Mr. Hickok asked if there is a notification process for abandoned uses.

Educating the community about this new code will be the challenge, said Ms. McKibben.

In answer to a question posed by Mr. Greene, Ms. McKibben said that a nonconforming use can be transferred with ownership. If the new owners wanted to use the property for a different use then they would have to comply with the current code, she explained. There is a process within this ordinance for an owner to go from one nonconforming use to a different nonconforming use, she added.

Ms. McKibben added that she believes there has yet to be added to this draft ordinance a time limit for the nonconforming structure reconstruction.

Mr. Miller said if there is a structure of nonconforming density there is no time limit.

Ms. McKibben said currently nonconforming structures have a one-year time limit. She asked Mr. Miller if he wanted the nonconforming structure for nonresidential uses to have a one-year time limit to reconstruct.

Mr. Dye said it may be very difficult for businesses to come back within a year if they may have to confront insurance and legal issues.

Mr. Dye said he would be more comfortable with a three-year time span.

Mr. Miller concurred with Mr. Dye.

Mr. Dye said perhaps they could file a letter of intent to be constructed within a year and then have several years for completion.

Ms. McKibben said she would work on some language to reflect these ideas.

The law department will be notified of the revisions suggested this evening, said Ms. Maclean.

Chairman Haight said he would like to see this draft ordinance come once again before the Committee of the Whole so that new Commission members can be brought up to speed.

A presentation will be made to the real estate and finance community about this draft ordinance so that it can provide its input at the public hearing of this ordinance, said Ms. McKibben.

III. **OTHER BUSINESS** - None

IV. **ADJOURNMENT**

The meeting was adjourned at 6:50 p.m.



Planning Commission

(907) 586-0715
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155 S. Seward Street • Juneau, AK 99801

PLANNING COMMISSION NOTICE OF RECOMMENDATION

Date: October 16, 2019
Case No.: AME2018 0009

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

Proposal: Planning Commission Recommendation to the City and Borough Assembly regarding a text amendment to repeal and replace 49.30 – Nonconforming Development

Legal Description: Borough-wide

Hearing Date: August 27, 2019, September 17, 2019, and October 15, 2019

The Planning Commission, a special public meeting, adopted the analysis and findings listed in the attached memorandums dated September 12, 2019 and October 8, 2019, and recommended that the City and Borough Assembly adopt staff's recommendation for a text amendment to repeal and replace CBJ 49.30 – Nonconforming Development, consistent with the amendments made at the October 15, 2019 meeting.

Attachments: September 12, 2019 & October 8, 2019 memorandums from Beth McKibben, AICP, Senior Planner, Community Development, to the CBJ Planning Commission regarding AME2018 0009.

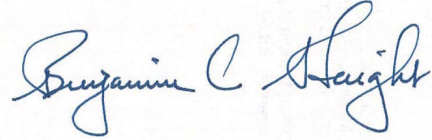
This Notice of Recommendation constitutes a recommendation of the CBJ Planning Commission to the City and Borough Assembly. Decisions to recommend an action are not appealable, even if the recommendation is procedurally required as a prerequisite to some other decision, according to the provisions of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

City and Borough Assembly
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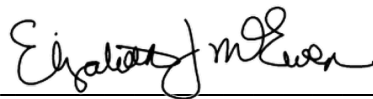
Project Planner:



Beth McKibben, AICP, Senior Planner
Community Development Department



Ben Haight, Chair
Planning Commission



Filed With Municipal Clerk

10/30/2019

Date

cc: Plan Review

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