CITY AND BOROUGH OF JUNEAU
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COMMUNITY DEVELOPMENT

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May 27, 2020

MEMORANDUM

From: **Irene Gallion, Senior Planner**

To: **Planning Commission**

Case Number: **AME2018 0004**

RE: Proposed Revisions to the Downtown Juneau Alternative Development Overlay District (ADOD)

REQUESTED ACTION:

This memo summarizes the history and proposed standards of an updated Downtown Juneau ADOD for review by the Planning Commission Committee of the Whole on June 9, 2020. During this meeting, for each modified standard, staff will review:

- How the standards were developed
- Implementation for the modified standard
- Public comments
- Facilitated discussion

This memo summarizes the Purpose and Need for the ordinance and summarizes proposed standards. **Staff requests that the Planning Commissioners review this memo in preparation for the Committee of the Whole work session. Please review (ATTACHMENTS):**

- ATTACHMENT A: City and Borough of Juneau v. Thibodeau, Supreme Court Opinion, May 11, 1979
- ATTACHMENT B: Olmo, LLC v. CBJ Board of Adjustment, Decision on Appeal, February 14,2017
- ATTACHMENT C: Existing ADOD boundaries
- ATTACHMENT D: Proposed ADOD boundaries
- ATTACHMENT E: Public comments on dimensional standards
- ATTACHMENT F: Title 49 Committee minutes
- ATTACHMENT G: Draft Ordinance
- ATTACHMENT H: Public comments on elements of the ordinance other than dimensions
- ATTACHMENT I: Variances to Land Use and Platting Regulations, Lee Sharp, 1997

PURPOSE AND NEED

The need for the Downtown Juneau ADOD reflects:

- CBJ v Thibodeau (1979), establishing that variances must be related to features of the land (ATTACHMENT A).
- The "Olmo appeal" (2018), establishing hardship as a "threshold issue" for variances (ATTACHMENT B).

Pre-code downtown neighborhoods are unable to meet variance requirements due to the high thresholds of "hardship." The need for code to regulate reasonable development advanced the Alternative Development Overlay District (ADOD). The initial ordinance (2017) was developed in haste, has burdensome costs for developers, and outlines methodologies that give well-intentioned interpreters different answers.

Proposed standards and this ordinance will:

- Reduce costs to the homeowner
- Facilitate consistent interpretations of dimensional standards
- Reduce complexity of using the ADOD

To clarify:

- Recently-approved non-conforming code allows residents to rebuild their existing non-conforming structure after destruction within the building's pre-existing footprint. (Building code elements would have to be modernized.)
- Proposed ADOD facilitates improvements beyond the original structure for residences and commercial buildings within the boundary.

<u>Background</u>

The existing Downtown Juneau ADOD (2017):

- Acknowledged that existing zoning downtown does not match the built environment.
- Established a process for reducing dimensional standards to allow for the construction, reconstruction, expansion, or rehabilitation of residential buildings. This code:
    - Addresses lot coverage, vegetative cover, and setback requirements.
    - Applies to residential buildings.
- Established Planning Commission review for all ADOD permits.

The existing ADOD has a sunset date of August 2020. The existing ADOD was intended to be temporary, allowing time to establish new zoning regulations for downtown areas.

The existing ADOD code has exhibited some short-comings:

- **Complexity and consistency:** The procedure involves averaging setbacks of properties within a 150-foot radius. What percentage of the property that must be in that radius to be included is unclear. Some properties require use of GIS imagery to establish setbacks, while some properties have much more accurate as-built surveys. Well-intentioned interpreters can come up with different answers to the same question.

- **Expense:** The base price for an ADOD evaluation is $400 per lot line.
- **Time:** The current ADOD requires a Planning Commission hearing, which compels a staff report and public noticing.

The proposed ADOD:

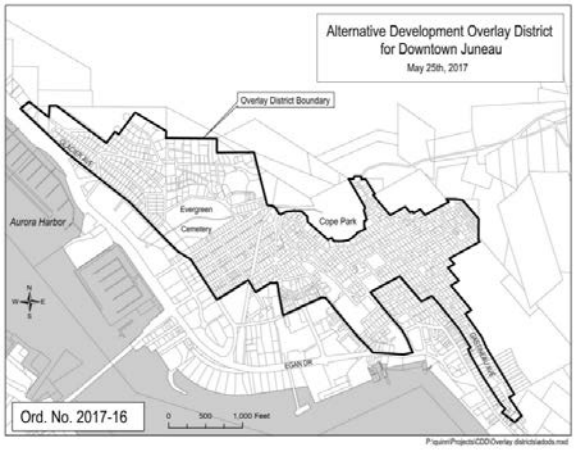
- Establishes dimensional standards, limiting interpretation required.
- Would execute through the Building Permit process, reducing workload for staff and the Planning Commission, and reducing cost and time for the developer.
- Costs of the proposed ADOD have not been established, and will likely be consistent with other permit fees.

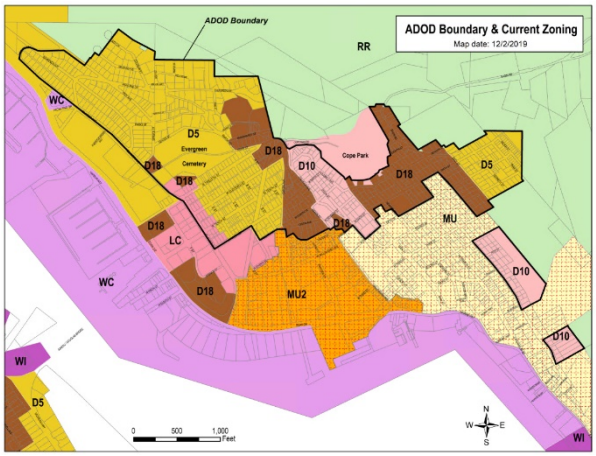
PROPOSED STANDARDS

The proposed standards below are "opt in" modifications to underlying zoning in an overlay boundary. The tables below summarize existing standards and the proposed Downtown Juneau ADOD dimensional standards.

Note that density and use restrictions prevail under proposed ADOD standards – changes are limited to dimensional standards.

Staff and the Title 49 Committee have recommended changes to the proposed boundary of the Downtown Juneau ADOD (see also ATTACHMENTS C and D):





The largest change is the exclusion of the Mixed Use (MU) zoned area in the boundary. MU has more liberal dimensional standards than the Downtown Juneau ADOD is proposing.

Public comments on proposed dimensional standards are included in ATTACHMENT H.

<u>Minimum Lot Area</u>

The table below compares proposed Downtown Juneau ADOD minimum lot size to existing minimum lot size in the various zoning districts. Lot sizes are shown in square feet.

Note that under current regulation CDD would allow development of an undersized lot that met setback requirements. New standards would be used to:

- Evaluate proposals for subdivision of a lot in the ADOD boundary.
- Approve an accessory apartment without Planning Commission approval, if other parking and dimensional requirements could be met.

	Proposed	Current			
Structure	**ADOD**	**D5**	**D10**	**D18**	**LC**
Single Family Home	3,000	7,000	6,000	5,000	2,000*
Common Wall Dwelling	3,000	7,000	5,000	2,500	
Duplex	4,500	10,500	8,712	4,840	

* Light Commercial has a minimum lot size of 2,000 square feet for permissible uses, which includes residential and commercial development.

Lot Width, Depth and Coverage

	Proposed	Current			
FEATURE	**ADOD**	**D5**	**D10**	**D18**	**LC**
Lot width	25'	70'	50'	50'	20'
Bungalow	25'	35'	25'	25'	
Common wall dwelling	25'	60'	40'	20'	
Lot depth	25'	85'	85'	80'	80'
Vegetative cover	15%	20%	30%	30%	15%
Lot coverage	50%	50%	50%	50%	No Max

Lot coverage is 60% under the existing ADOD. The reduced coverage balances less-restrictive setbacks.

Structure Height

	Proposed	Current	
Height	**ADOD**	**D5, 10, 18**	**LC**
Permissible uses	35'	35'	45'
Accessory uses	25'	25'	35'
Bungalow		25'	

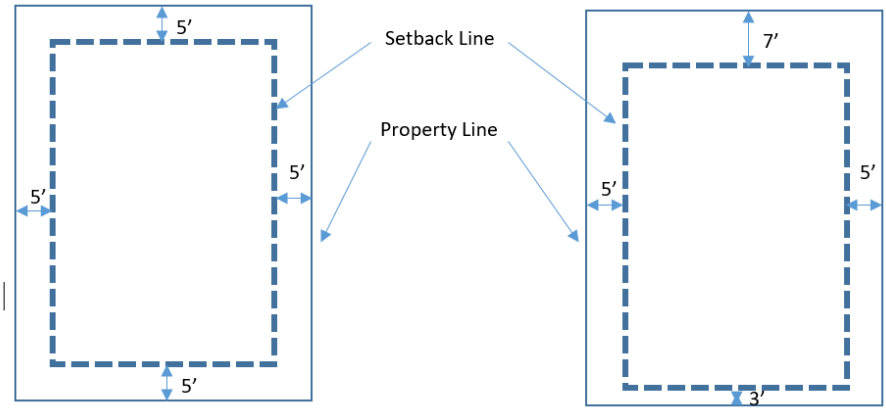
Structure Setbacks

Current setbacks:

YARD	**D5**	**D10**	**D18**	**LC***
Front	20'	20'	20'	25'
Street Side	13'	13'	13'	17'
Side	5'	5'	5'	10'
Common Wall Dwelling Side	10'	3'	5'	
Rear	20'	20'	10'	10'

Proposed setbacks for all properties in the ADOD:

Staff proposes a 20-foot setback sum with a 3-foot minimum per side. This means that the setbacks of all sides of a lot must equal 20 feet, but no side may be less than 3 feet. This essentially creates a "setback box" that can be moved around the lot to accommodate existing structures. Examples:



Proposed setbacks for lots less than minimum lot area:

For lots less than the minimum lot area, the required setback sum can be reduced proportionally, but in no case can the setback sum be less than 12 feet and no side can be less than 3 feet.

<u>Proposed Exemptions to Setbacks:</u>

CBJ 49.25.430 establishes exemptions and reductions to required yard setbacks borough-wide. If the exemption listed in 49.25.430 is less restrictive than the proposed ADOD setbacks, it is shown in the proposed ordinance for clarity. If the exemption is more restrictive than the proposed ADOD setbacks, the ADOD setbacks apply.

Architectural features and roof eaves may project into a required yard setback but no closer than two feet from the side and rear lot lines.

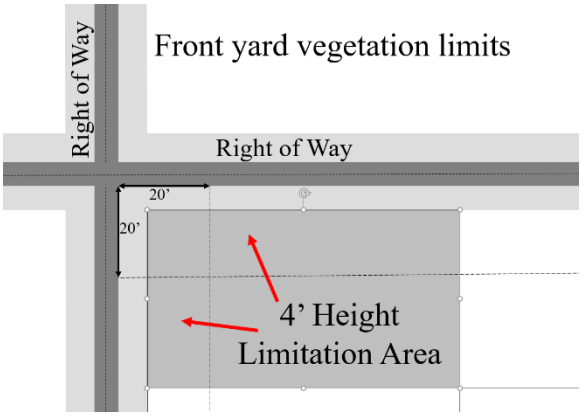
Unenclosed balconies, connecting deck stairways, walkways, ramps and landings with or without roofs may extend to the front lot line or street side lot lines. Structure may not exceed five feet internal width, not counting support structure.

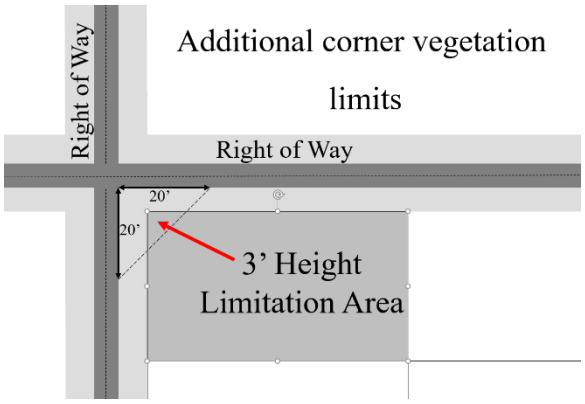
A parking deck (which cannot be more than one foot above the level of the adjoining roadway, and can only be used for parking) is exempt from setback requirements. A non-sight-obscuring safety rail up to 42 inches is allowed.

Fences and vegetation. For this section, a "travelled way" is defined as the edge of the roadway shoulder or curb closest to the property.

(A) Maximum height of a sight-obscuring fence or vegetation is four feet, within 20 feet of the edge of the traveled way. Trees are allowed if they do not obscure view from four feet to eight feet above ground.

(B) On corner lots, the maximum height of a sight-obscuring fence or vegetation is three feet, within 20 feet of a street intersection. The area in which sight-obscuring fences and vegetation is restricted shall be determined by extending the edge of the traveled ways to a point of intersection, then measuring back 20 feet, and then connecting the three points. Trees are allowed if they do not obscure view from three to eight feet above the ground.





ADDITIONAL SUPPORT MATERIALS

- Title 49 Committee meeting minutes (ATTACHMENT F)
- DRAFT proposed ordinance (ATTACHMENT G)
- Public comments on elements of the ordinance other than dimensional standards (ATTACHMENT H)

ADDITIONAL BACKGROUND

"Variances to Land Use and Platting Regulations," by Lee Sharp (1997, ATTACHMENT I) is attached to provide context on variance case law.

In 2015 Olmo, LLC appealed a Planning Commission decision to deny a variance to the Assembly. The Assembly's decision to uphold the variance hinged on the Appellant's ability to demonstrate hardship. While the variance code had multiple criteria for considering a variance, those criteria could not be considered before hardship was established. Hardship was a "threshold issue."

Under old code, "hardship" was a difficult standard to meet. In new code (established in 2018), the Planning Commission eased the standard from "extraordinary situation or unique physical feature" to "unusual or special" features of the property.

Nonetheless, pre-code downtown neighborhoods in Juneau and Douglas struggle to meet variance criteria. According to case law:

Hardship:

- **Denies reasonable use of the property.** Downtown home owners in established homes use the property reasonably.

- **Can only be related to costs in the most extreme conditions.** A homeowner needing to pay more for an improvement is not, in itself, a hardship.
- **Cannot be self-imposed.** A structure is considered "self-imposed" regardless of who built it and when. Nine-hundred-sixteen downtown structures have residences constructed before regulation was established (1956).

Peculiarities of the land:

- **Arise when the physical conditions of the land distinguish it from other land in the area.** A distinguishing condition might be a steep slope or meandering waterway that did not impact neighbors. Downtown neighborhoods have similar physical conditions, distinguishing few lots.

Under old variance code, 50% of variances were to setbacks community-wide. When you consider the variances in just Downtown Juneau that percentage rises to 80%.

CITY & BOR. OF JUNEAU v. Thibodeau

Annotate this Case

595 P.2d 626 (1979)

CITY AND BOROUGH OF JUNEAU, Appellant, v. Robert THIBODEAU, d/b/a Shoprite Market, Appellee.

No. 3636.

Supreme Court of Alaska.

May 11, 1979.

*627 Gerald L. Sharp, City and Borough Atty., Juneau, for appellant.

James F. Petersen, Juneau, for appellee.

Before BOOCHEVER, C.J., RABINOWITZ, CONNOR and BURKE, JJ., and SCHULZ, Superior Court Judge.

OPINION

RABINOWITZ, Justice.

This appeal arises from a Memorandum of Decision and Order of the superior court reversing the decision of the Assembly of the City and Borough of Juneau denying Thibodeau a variance to the local zoning ordinance requirement for off-street parking spaces. The variance previously had been granted by the municipality's planning commission sitting as a board of adjustment[1] and had been appealed to the assembly by objecting neighboring landowners. The superior court remanded the case to the board of adjustment with instructions for the board to make express findings of fact based on a hearing record showing evidence in support of its findings.

Robert Thibodeau is the original owner of the Shoprite Market, a general store located within the Douglas community in the City and Borough of Juneau, Alaska. The store was built by Thibodeau in 1962 and it and the adjoining parking lot occupy approximately one-half city block in area. Prior to 1975, the zoning of the property was split, the store proper being located in the C2 *628 (commercial) Douglas district while the adjacent parking lot was located in the RML (multiple family) zoned area. Pursuant to Thibodeau's plans for expansion of the market, he applied to the city and borough planning commission in the spring of 1975 for rezoning of the parking lot for commercial uses. The rezoning was accomplished in May and June of 1975, and Thibodeau subsequently applied to the planning commission, sitting as a board of adjustment, for a variance reducing the required number of off-street parking spaces so that he could carry out his plans to enlarge the store building into the parking area. The variance was granted by the

board and the number of off-street parking spaces required was reduced from thirty to sixteen. Adjacent property owners appealed the grant of the variance to the city and borough assembly. After a hearing before the members of the assembly, the assembly reversed the decision of the board of adjustment which had granted the variance. Thibodeau then appealed to the superior court.

Initially, we note that Thibodeau has challenged this court's jurisdiction to decide the appeal. Thibodeau urges that the judgment of the superior court was not a "final judgment" within the meaning of Alaska Appellate Rule 5[2] from which an appeal may be taken because the superior court's remand was based on the inadequacy of the hearing record and findings of the board of adjustment and because "Mr. Thibodeau was neither granted nor denied his variance."

The question of the finality of a judgment for purposes of conferring appellate jurisdiction on this court has been addressed previously on numerous occasions.[3] The test which was adopted in Greater Anchorage Area Borough v. City of Anchorage, 504 P.2d 1027 (Alaska 1972), for determining finality is essentially a practical one. In GAAB we stated:

The basic thrust of the finality requirement is that the judgment must be one which disposes of the entire case, `... one which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.'[4]

We further held that "the reviewing court should look to the substance and effect, rather than form, of the rendering court's judgment, and focus primarily on the operational or `decretal' language therein."[5]

In ordinary civil litigation, this practical definition of finality adequately distinguishes the cases which should be heard on appeal to this court from those cases which should not be considered because they have not been disposed of completely on the merits in the superior court. However, in specifically reviewing cases involving both civil and criminal matters in which the superior court's disposition of the issues before it was undertaken as an intermediate appellate court sitting in review of either the judgment of a district court or the decision of an administrative agency, we are cognizant that application of the GAAB test for finality has generated uneven results in our prior opinions. Our experience with cases involving decisions of the superior court *629 sitting as an appellate court in a variety of factual circumstances has convinced us of the need to clarify further the rules of appellate review with respect to these kinds of cases. Since the present case presents exactly the sort of finality question which has caused difficulties in the past, we have undertaken here to explain finality as it applies to review of intermediate appellate decisions of the superior court.

We think the better rule is that a decision of a superior court, acting as an intermediate appellate court, which reverses the judgment of the court below or the decision of an administrative agency and remands for further proceedings, is a non-final order of the superior court. Our decision on this point requires us to overrule portions of our opinion in Greater Anchorage Area Borough v. City of Anchorage, 504 P.2d 1027 (Alaska 1972);[6] nevertheless, we believe this step to be necessary in this case.

GAAB involved a controversy between the City of Anchorage and the Greater Anchorage Area Borough regarding the denial of a permit from the Alaska Public Utilities Commission to install certain utility poles and powerlines. The city had appealed to the superior court from the decision of the Public Utilities Commission. Part of the original conflict was resolved by stipulation of the parties, and the superior court referred the remaining matter before it to the Public Utilities Commission for resolution. The borough then appealed to this court. After stating the practical test for finality of judgments which is quoted immediately above, we held that appellate jurisdiction existed in this court to review the decision of the superior court. We based this holding on our conclusion "that the superior court meant to completely dispose of the sole remaining issue pending before it, and that it did not intend to retain jurisdiction."[7]

We are now of the view that an order of the superior court issued in its appellate capacity which remands for further proceedings is not a final judgment for purposes of Alaska Appellate Rule 5. However, a party to such a remand may properly invoke our discretionary review jurisdiction where the requirements of Appellate Rules 23 and 24(a) are met.[8] We think this *630 approach is more consistent with the stand we have taken regarding the question of finality in criminal cases and that it represents the soundest approach to the exercise of final appellate jurisdiction by this court.[9]

State v. Browder, 486 P.2d 925 (Alaska 1971), thoroughly considered the reasons for discretionary review by this court of decisions by the superior court which are not otherwise appealable under Appellate Rule 5. In Browder, this court entertained a petition for review brought by the state from a judgment of the superior court reversing a criminal contempt conviction by the district court and remanding the matter for trial by jury in the district court. We held that even though appeal as a matter of right pursuant to Appellate Rule 5 was foreclosed because AS 22.05.010[10] and Rule 5 prohibited the state from appealing a criminal case except "to test the sufficiency of the indictment or on the ground that the sentence is too lenient,"[11] this court could consider the superior court's decision on petition for review by the state. In Browder we stated that:

We think it significant that the legislature in prescribing this court's jurisdiction specifically provided that `The supreme court may issue injunctions, writs of review, mandamus, certiorari, prohibition, habeas corpus, and all other writs necessary or proper to the complete exercise of its jurisdiction.' In our view this provision is a clear manifestation of the legislature's intent that the supreme court would be able to exercise its final *631 appellate jurisdiction other than by appeal.[12]

The exercise of discretionary review in Browder satisfied the constitutional requirement that final appellate jurisdiction be vested in the supreme court under article IV, section 2 of the Alaska Constitution.[13] As we discussed in Browder:

Unless the supreme court can fully implement its final appellate jurisdiction through use of its review jurisdiction, it will be extremely difficult, if not impossible, for this court to exercise proper control over the administration of criminal justice, and the development of rules of law in criminal trials. One can envision that erroneous rulings involving important questions of constitutional law will be made during a trial, or at the superior court appellate level, in favor of

the accused. How are such mistakes to be corrected? Neither AS 22.05.010 nor Alaska's constitutional prohibition against double jeopardy requires that an erroneous non-final order or decision, favorable to the accused, must stand uncorrected.[14]

In a similar manner, the exercise of discretionary review in civil cases such as the one presently before us will insure that this court has the opportunity to exercise final review of questions decided by the superior court in remanding a case whenever it is necessary to provide immediate guidance on a particular matter. To preserve this constitutionally imposed review function, a party need not have a further absolute right to review prior to final disposition of the litigation after remand by the superior court. Following final judgment in the trial courts, a party always may appeal to the supreme court as a matter of right.[15]

Our decision that the superior court order before us in this case is not a final judgment for purposes of appeal pursuant to Appellate Rule 5 does not preclude review of the merits of the city and borough's contentions in any event. This court has not hesitated to treat an appeal improperly brought from a non-final judgment as a petition for review in order to prevent hardship and injustice.[16] In the present case, we find that such hardship exists not only because the City and Borough of Juneau has raised a "substantial right" in regard to an order of the superior court which in effect "grants a new trial"[17] before the board of adjustment on the merits of the variance, but because the city and borough may have relied on our decision in Greater Anchorage Area Borough v. City of Anchorage, 504 P.2d 1027 (Alaska 1972), in bringing an appeal instead of a petition for review to this court.[18]

Turning to the merits of the appeal, we are called upon to review the standards for *632 granting a variance which the superior court instructed the board of adjustment to apply. Since we are convinced that the superior court adopted an incorrect test for the granting of variances under the applicable zoning ordinance of the City and Borough of Juneau and that the city and borough assembly in fact applied the proper standards, we reverse the superior court's order and reinstate the decision of the assembly which reversed the board of adjustment's original decision granting the variance.[19]

It is established in zoning law that general zoning ordinances, while designed to encourage the best overall use of land in a city or borough,[20] may not be well adapted to deal with unusual individualized situations which sometimes occur and result in more stringent burdens being placed on some parcels of land than on others. Variance provisions thus fulfill a sort of "escape hatch"[21] or "safety valve"[22] function for the individual landholder who would suffer special hardships from the literal application of the terms of a particular zoning ordinance.[23]

Section 49.25.802(c) of the zoning code for the City and Borough of Juneau, which governs the grant of the variance in the present case, states in full:

(C) Variances. Where hardships and practical difficulties resulting from peculiarities of a specific property render it difficult to carry out the provisions of this chapter, the board may grant a variance in harmony with the general purpose and intent of this chapter. Such variances may vary any standard requirement or regulation of this chapter after the prescribed hearing and after it is shown that all of the foregoing conditions exist: (1) Compliance with the strict letter of

the restrictions would unreasonably prevent the owner from using the property for a permitted purpose or would render a conformity with such restrictions unnecessarily burdensome; (2) That a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district; *633 (3) Whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners; (4) That relief can be granted in such a fashion that the spirit of the ordinance will be observed and public safety and welfare secured; (5) That the authorization of such variance will not be materially detrimental to the public welfare or injurious to nearby property; (6) The variance does not allow the property to be used for uses not otherwise allowed in the district involved. In authorizing a variance, the board may attach thereto conditions regarding the location, character, and other features of the proposed structures or uses as it finds necessary to carry out the spirit and purposes of this ordinance and in the public interest. A variance so authorized shall become void after the expiration of one year if no building permit has been issued in accordance with the plans for which such variance was authorized, except that the board may extend the period of variance authorization without public hearing upon a finding that there has been no basic change in pertinent conditions surrounding the property at the time of the original approval.

In supplying content to these standards, the superior court focused on the words "practical difficulty" in the ordinance and essentially adopted the criteria for granting area variances articulated by the courts of New York and Rhode Island in interpreting their own variance provisions.[24]

The superior court's adoption of this "practical difficulty" test for the grant of a variance in the circumstances of the present case involved an implicit rejection of the "hardship" language in the Juneau ordinance, including the requirement that "peculiarities of the specific property" be implicated in complying with the ordinance. Other jurisdictions have judicially established a distinction among the standards applied to different types of variances reserving the "practical difficulty" test for non-use type variances such as the one involved in the present case.[25] However, in *634 all the cases which have adopted the "practical difficulty" test, the ordinances involved have differed significantly from the Juneau zoning ordinance at issue here.

Importantly, the cases in which separate standards have been applied to use and area variances have all involved ordinances which were phrased in the disjunctive form (i.e., hardships or practical difficulties) rather than in the conjunctive form (i.e., hardships and practical difficulties).[26] Courts which have interpreted ordinances phrased in the conjunctive form have consistently required the applicant for a variance to satisfy both the practical difficulty and the hardship elements of the variance test.[27] The express language of CBJ 49.25.802(c) fits into the latter category of ordinances, requiring that in order for the Juneau board of adjustment to grant a variance both "hardships and practical difficulties" must exist. (emphasis added)

Even more significant, the Juneau zoning ordinance expressly prohibits variances for uses not otherwise authorized in the zoning district.[28] Thus, unlike the jurisdictions which permit both use and area variances, if the "hardship" standard of the Juneau code does not apply to area variances, it has no application at all. This court should not presume that a legislative body has used superfluous words.[29] Thus, the hardship test must apply to the only type of variance

which is permitted by the zoning ordinance the area variance and the superior court erred in following cases from other jurisdictions which were interpreting substantially different legislation.[30]

*635 In our view, the express, unambiguous standards for granting variances in the Juneau ordinance decide the instant litigation.[31] The Juneau ordinance requires that "the peculiarities of the specific property render it difficult to carry out the provisions of this chapter."[32] At the hearing on the variance before the borough assembly, one of the assembly members asked the following question of Thibodeau:

Speaking of this same letter of July 31 from the Zoning Administration, one of the things that bothers me is that it says that the Board reached no formal conclusion or finding of fact in support of its action. I have gone through the Zoning or the Planning Commission's minutes and so forth and I don't find that particular justification for a variance. It's a special treatment. I don't find where there's anything on the lot that's ... any peculiarity of the lot that makes it different from any place else. Perhaps I missed something.[33]

Thibodeau replied, "The variance is on the number of parking stalls, it has nothing to do with the peculiarity of the lot...." Thibodeau further testified before the assembly that if the variance was granted, "I do expect to get a larger share of the grocery dollar of the people who are living in the Douglas community."

In our view, this testimony of the applicant Thibodeau provides conclusive support for the assembly's decision that the variance request did not fulfill the requirements of the ordinance and that, therefore, it should not have been granted by the board of adjustment.[34] Peculiarities of the specific property sufficient to warrant a grant of a variance must arise from the physical conditions of the land itself which distinguish it from other land in the general area.[35] The assertion that the ordinance merely deprives the landowner of a more profitable operation where the premises have substantially the same value for permitted uses as other property within the zoning classification argues, in effect, for the grant of a special privilege to the selected landowner.[36] We do not believe that the variance provision in the instant ordinance is intended to achieve such an inequitable *636 result.[37] Rather, where the ordinance equally affects all property in the same zoning classification, relief from the general conditions of the governing law properly must come from the assembly through an amendment to the zoning code.[38]

The judgment of the superior court is Reversed, and the decision of the city and borough assembly on the variance is Reinstated.[39]

BOOCHEVER, C.J., with whom CONNOR, J., joined, dissented.

MATTHEWS, J., not participating.

BOOCHEVER, Chief Justice, with whom CONNOR, Justice, joins, dissenting.

I dissent. While the area/use variance and disjunctive/conjunctive ordinance analyses developed by other jurisdictions and utilized by the majority are instructive, the Juneau ordinance in

question presents us with a unique situation, and we must interpret it according to its own terms. It would be helpful to a careful analysis to set forth the relevant ordinance again. Section 49.25.802 of the Ordinances of the City & Borough of Juneau states in pertinent part:

(c) Variances. Where hardships and practical difficulties resulting from peculiarities of a specific property render it difficult to carry out the provisions of this chapter, the board may grant a variance in harmony with the general purpose and intent of this chapter. Such variance may vary any standard requirement or regulation of this chapter after the prescribed hearing and after it is shown that all of the foregoing conditions exist: (1) Compliance with the strict letter of the restrictions would unreasonably prevent the owner from using the property for a permitted purpose or would render a conformity with such restrictions unnecessarily burdensome; (2) That a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district; (3) Whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners; (4) That relief can be granted in such a fashion that the spirit of the ordinance will be observed and public safety and welfare secured; *637 (5) That the authorization of such variance will not be materially detrimental to the public welfare or injurious to nearby property; (6) The variance does not allow the property to be used for uses not otherwise allowed in the district involved.

This ordinance differs from those governing the decisions of other states in two key respects. First, although it is couched in the conjunctive "hardships and practical difficulties" language, the Juneau ordinance does not modify the word "hardships" with any of the usual adjectives, such as "undue" or "extreme." Thus, it is more amenable to a single-test construction.[1] The application of a unitary standard is supported by A. Rathkopf, who, in his treatise, The Law of Zoning and Planning, observes:

The overlapping of the concepts of practical difficulty and undue hardship in so many factual situations and the lack of real reason for treating the two situations differently, has caused the courts to treat the two terms as if they were synonymous and, in many instances, the enabling acts or ordinances so treat them.

2 Rathkopf, The Law of Zoning and Planning, 45-20 (2d ed. 1972). That the Juneau ordinance is such an ordinance is illustrated by its second major distinguishing characteristic. Unlike the ordinances governing the cited decisions from other jurisdictions, the ordinance before us codifies six criteria under which area variance applications must be judged, all of which must be present before the variance can be granted.

Section 49.25.802(c) of the ordinance is capable of two constructions. Either the first sentence represents a threshold test for an application which must be met before the six criteria may be applied, or the six criteria define "hardships and practical difficulties resulting from peculiarities of a specific property... ." Because there is no language in the ordinance hostile to the latter construction, there are several compelling reasons for adopting it.[2] There is no ready definition which can be culled from the cases for the term "hardships and practical difficulties." The subparts of section 49.25.802(c) provide a relatively simple, straightforward definition, which is already in the hands of those responsible for the execution of the ordinance. If the conditions set

forth in subsections (1) and (2) are present, I fail to see how "hardships and practical difficulties" could be absent. Finally, the language of subsections (1)-(4) is almost identical to what Rathkopf has advanced as the proper test in area variance cases.[3]

*638 Such a result, in my opinion, is more likely to conform to the intent of the Assembly in drafting the ordinance. The Juneau ordinance provides no mechanism for varying the "use" requirements. It is, of course, much more important that a neighborhood not be adversely affected by inappropriate use of property, than that area requirements for a permitted use be varied. I see no reason to engraft the "extreme" or "unusual" hardships requirements that have historically been required for use variances on the Juneau area variance requirements. The construction of the ordinance here suggested adequately protects the public interest, yet is not so rigid as to make it practically impossible to grant an area variance. There are countless cases involving the need for waivers, such as when a property owner wishes to build a garage and may have to go one foot over the sideline requirement under circumstances which do not adversely affect the public interest at all. Area variances of that type would be effectively prohibited under the majority's strict reading of the variance provision.

I think that Thibodeau presented a threshold case of hardship and practical difficulties. Because the order entered by the superior court directed the Planning Commission to make specific findings regarding the factors set forth in section 49.25.802(c), I would affirm.

NOTES

[1] CBJ 49.25.800, a provision of the zoning regulations of the City and Borough of Juneau, provides that the Planning Commission of Juneau is to sit as a board of adjustment to hear appeals from decisions of administrative officials and to grant exceptions to and issue variances from the literal provisions of the zoning code. See CBJ 49.25.802.

[2] Alaska R.App.P. 5 provides:

Judgments From Which Appeal May Be Taken.

An appeal may be taken to this court from a final judgment entered by the superior court or a judge thereof in any action or proceeding, civil or criminal, except that the state shall have a right to appeal in criminal cases only to test the sufficiency of the indictment or on the ground that the sentence is too lenient.

[3] Recent cases which have interpreted the finality requirement include Johnson v. State, 577 P.2d 706, 709 (Alaska 1978); Adams v. Ross, 551 P.2d 948, 950 (Alaska 1976); Breese v. Smith, 501 P.2d 159 (Alaska 1972).

[4] Greater Anchorage Area Borough v. City of Anchorage, 504 P.2d 1027, 1030 (Alaska 1972) (footnote omitted), quoting Catlin v. United States, 324 U.S. 229, 233, 65 S. Ct. 631, 633, 89 L. Ed. 911, 916 (1944).

[5] 504 P.2d at 1030-31 (footnotes omitted). See McGhee v. Leitner, 41 F. Supp. 674 (W.D.Wis. 1941); Patrick v. Sedwick, 387 P.2d 294 (Alaska 1963); In re Mountain View Util. Dist. No. 1, 359 P.2d 951 (Alaska 1961); Levine v. Empire Savings and Loan Ass'n, 557 P.2d 386 (Colo. 1976).

[6] To the extent that Alaska Pubic Util. Comm'n v. Chugach Elec. Ass'n, 580 P.2d 687 (Alaska 1978), and Fischback & Moore of Alaska, Inc. v. Lynn, 407 P.2d 174 (Alaska 1965), rely on the same rationale as Greater Anchorage Area Borough v. City of Anchorage, 504 P.2d 1027 (Alaska 1972), in finding finality in the judgments of the superior court remanding the cases to the Public Utilities Commission and the Workmen's Compensation Board respectively, they are also disapproved.

[7] Greater Anchorage Area Borough v. City of Anchorage, 504 P.2d 1027, 1032 (Alaska 1972). Portions of our opinion in GAAB read:

We conclude that the substantial effect of the operational portion of the superior court's referral order was to completely dispose of the case pending before it.

Moreover, the superior court did not expressly retain jurisdiction in the case at bar... . The superior court spoke in terms of `appeal' from the PUC's decision rather than `retained jurisdiction.' Appealing to a court for the purpose of obtaining review of an inferior tribunal's order and returning to a court with retained jurisdiction for the purpose of continuing litigation are separate and distinct legal processes. In this case, the lower court was merely apprising the parties of their rights to seek judicial review of an administrative adjudication under the Alaska Administrative Procedure Act. We conclude that the lower court did not mean to retain jurisdiction.

Id. (footnote omitted).

[8] Alaska R.App.P. 23 provides for review of non-appealable orders or decisions as follows:

An aggrieved party, including the State of Alaska, may petition this court as set forth in Rule 24 to be permitted to review any order or decision of the superior court, not otherwise appealable under Rule 5, in any action or proceeding, civil or criminal, as follows:

(a) From interlocutory orders granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions.

(b) From interlocutory orders appointing receivers or refusing orders to terminate receiverships or to take steps to accomplish the purposes thereof, such as directing sales or other disposals of property.

(c) From any order affecting a substantial right in an action or proceeding which either (1) in effect terminates the proceeding or action and prevents a final judgment therein; or (2) discontinues the action; or (3) grants a new trial.

(d) Where such an order or decision involves a controlling question of law as to which there is substantial ground for difference of opinion, and where an immediate and present review of such order or decision may materially advance the ultimate termination of the litigation.

(e) Where postponement of review until normal appeal may be taken from a final judgment will result in injustice because of impairment of a legal right, or because of unnecessary delay, expense, hardship or other related factors.

Appellate Rule 24(a) limits the granting of petitions for review, in the discretion of the court:

When Granted. A review is not a matter of right, but will be granted only: (1) where the order or decision sought to be reviewed is of such substance and importance as to justify deviation from the normal appellate procedure by way of appeal and to require the immediate attention of this court; or (2) where the sound policy behind the general rule of requiring appeals to be taken only from final judgments is outweighed by the claim of the individual case that justice demands a present and immediate review of a particular nonappealable order or decision; or (3) where the superior court has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by an inferior court or administrative tribunal, as to call for this court's power of supervision and review.

[9] We see no reason that criminal and civil cases should be treated differently on this precise point, nor do the Alaska Appellate Rules draw any distinction regarding finality of judgments. Alaska R.App.P. 5 provides:

An appeal may be taken to this court from a final judgment entered by the superior court or a judge thereof in any action or proceeding, civil or criminal... . [emphasis added]

Alaska R.App.P. 23 provides further that:

An aggrieved party, including the State of Alaska, may petition this court ... to be permitted to review any order or decision of the superior court, not otherwise appealable under Rule 5, in any action or proceeding, civil or criminal... . [emphasis added]

It should be noted, though, that in criminal cases a reversal of a conviction by the superior court is treated differently than a remand. See note 14 infra.

[10] AS 22.05.010(a) provides:

The supreme court has final appellate jurisdiction in all actions and proceedings. The supreme court may issue injunctions, writs of review, mandamus, certiorari, prohibition, habeas corpus, and all other writs necessary or proper to the complete exercise of its jurisdiction. Each justice may issue a writ of habeas corpus, upon petition by or on behalf of any person held in actual custody and may make the writ returnable before the justice himself or before the supreme court, or before any judge of the superior court of the state. An appeal to the supreme court is a matter of right, except that the state shall have no right of appeal in criminal cases, except to test the sufficiency of the indictment or information and under (b) of this section.

[11] Alaska R.App.P. 5.

[12] State v. Browder, 486 P.2d 925, 930 (Alaska 1972).

[13] Alaska Const. art. IV, § 2(a) provides, in part: "The supreme court shall be the highest court of the State, with final appellate jurisdiction." This section of the constitution is implemented by the legislature in AS 22.05.010(a), which is reproduced in note 10 supra.

[14] State v. Browder, 486 P.2d 925, 931 (Alaska 1972) (footnote omitted). We note here that our decision to treat the superior court order remanding a criminal proceeding to the district court as a non-final decision under Alaska Appellate Rule 5 does not affect our treatment of other criminal cases where the superior court enters a judgment of acquittal upon appeal of a criminal conviction from district court. In the latter type of cases, the entry of acquittal is clearly a final judgment for purposes of appellate review jurisdiction. See State v. Gibson, 543 P.2d 406, 409 n. 6 (Alaska 1975); State v. Marathon Oil Co., 528 P.2d 293 (Alaska 1974).

[15] See, e.g., State v. DeVoe, 560 P.2d 12 (Alaska 1977).

[16] See Hanby v. State, 479 P.2d 486 (Alaska 1970); Leege v. Strand, 384 P.2d 665 (Alaska 1963); In re Mountain View Util. Dist. No. 1, 359 P.2d 951 (Alaska 1961); Stokes v. Van Seventer, 355 P.2d 594 (Alaska 1960).

[17] Alaska R.App.P. 23(d).

[18] See Alaska R.App.P. 24(a)(2) which provides that a petition for review will be granted:

Where the sound policy behind the general rule of requiring appeals to be taken only from final judgments is outweighed by the claim of the individual case that justice demands a present and immediate review of a particular non-appealable order or decision.

[19] Although the record does not reflect that, before hearing the appeal, the assembly notified all parties that the hearing was to be a de novo determination of the variance request, pursuant to the requirements of CBJ 49.25.806 and CBJ 01.50.030(e), the public was invited to participate in the hearing on the appeal, and the assembly did hear testimony from the applicant, Robert Thibodeau, and from Mr. and Mrs. F.D. Merritt who had brought the appeal. Further, the assembly had before it the pertinent documents and record of the proceedings before the board of adjustment including a transcript of the minutes of the hearing on the variance before the board. Thus, as discussed subsequently in this opinion, the assembly had before it an adequate record on which to base its specific findings and there is no need to remand this case to the board of adjustment for an additional hearing and further findings as ordered by the superior court.

[20] The purposes and intent of the zoning ordinance of the City and Borough of Juneau are set out in CBJ 49.25.101:

To implement the comprehensive development plan for the city and borough; to encourage the most appropriate use of land; to conserve and stabilize the value of property; to aid in the

rendering of fire and police protection; to provide adequate open space for light and air; to lessen the congestion on streets; to give an orderly growth to the city and borough; to prevent undue concentrations of population; to improve the city and borough's appearance; to facilitate adequate provisions for community utilities and facilities such as water, sewerage, and electrical distribution systems, transportation, schools, parks, and other public requirements, and in general to promote public health, safety, and general welfare.

[21] Lincourt v. Zoning Bd. of Review, 98 R.I. 305, 201 A.2d 482, 485 (1964).

[22] Coronet Homes, Inc. v. McKenzie, 84 Nev. 250, 439 P.2d 219, 224 (1968); Peirce v. Zoning Bd. of Adjustment, 410 Pa. 262, 189 A.2d 138 (Pa. 1963).

[23] Rubin v. Board of Directors, 16 Cal. 2d 119, 104 P.2d 1041 (1940); Marker v. City of Colorado Springs, 138 Colo. 485, 336 P.2d 305 (1959); Nucholls v. Board of Adjustment, 560 P.2d 556 (Okl. 1976); Bienz v. City of Dayton, 29 Or. App. 761, 566 P.2d 904, 920 n. 7 (1977). See D. Hagman, Urban Planning and Land Development Control Law § 106, at 196 (1971); 5 N. Williams, American Land Planning Law § 129.01, at 11 (1975 and Supp. 1977).

[24] In Westminister Corp. v. Zoning Bd. of Review, 103 R.I. 381, 238 A.2d 353, 357 (1968), the Supreme Court of Rhode Island established that the test for an area variance "is whether a literal enforcement [of the zoning ordinance] would have an effect so adverse as to preclude the full enjoyment of the permitted use." The Rhode Island court further stated:

Entitlement to relief in these cases depends upon a showing that the adverse effect of a literal enforcement of the ordinance precluding full enjoyment of the permitted use amounts to more than mere inconvenience.

Id.

In New York, the test for an area variance requires that:

[W]here the property owner will suffer significant economic injury by the application of an area standard ordinance, that standard can be justified only by a showing that the public health, safety and welfare will be served by upholding the application of the standard and denying the variance.

Fulling v. Palumbo, 21 N.Y.2d 30, 286 N.Y.S.2d 249, 253, 233 N.E.2d 272, 274 (1967). Once the municipality which seeks to deny the variance demonstrates that "some legitimate public interest will be served by the restriction," the property owner in New York must show that the ordinance as applied would deprive him of "any use of the property to which it is reasonably adapted, and that, as a result, the ordinance amounts to a taking of his property." Id. 286 N.Y.S.2d at 253, 233 N.E.2d at 274-75.

[25] Customarily, the cases have concerned themselves with two kinds of variances: "use" variances which permit uses other than those prescribed by the zoning ordinance, and "nonuse" or "area" variances which have no relation to a change in use but rather allow construction or alteration of a permitted structure in a manner not normally available under the ordinance. For

example, area, height, density, set-back, and side and rear yard line restrictions are generally modifiable through area variances. 2 C. Rathkopf, The Law of Zoning and Planning § 45.1, at 45-1 (3d ed. 1972).

In New York, a practical distinction is made between use and area variances, and only use variances are subjected to the strict standard of "unnecessary hardship" while area variances may be granted upon proof of practical difficulty only. Village of Bronxville v. Francis, 1 A.D.2d 236, 150 N.Y.S.2d 906 (1956), aff'd, 1 N.Y.2d 839, 153 N.Y.S.2d 220, 135 N.E.2d 724 (1956). See Viti v. Zoning Bd. of Review, 92 R.I. 59, 166 A.2d 211 (1960). See also Ivancovich v. City of Tucson Bd. of Adjustment, 22 Ariz. App. 530, 529 P.2d 242, 248 (1974). The basis for this judicially adopted lesser requirement with respect to area variances is stated to be that in such cases, impact on the neighborhood is less pronounced and there is no change in the character of the area to be balanced against the needs of the particular applicant for a variance. Village of Bronxville v. Francis, 1 A.D.2d 236, 150 N.Y.S.2d at 909 (1956), aff'd, 1 N.Y.2d 839, 153 N.Y.S.2d 220, 135 N.E.2d 724 (1956). See 2 C. Rathkopf, The Law of Zoning and Planning § 45.5, at 45-24 (3d ed. 1972); 5 N. Williams, American Land Planning Law 145.04, at 121 (1975).

Presumably, a variance of off-street parking requirements fits within the non-use category as a variance in the manner in which a permitted use may be made of the land. Overhill Bldg. Co. v. Delaney, 28 N.Y.2d 449, 322 N.Y.S.2d 696, 698, 271 N.E.2d 537, 539 (N.Y. 1971). However, it should be noted that in Off Shore Restaurant Corp. v. Linden, 30 N.Y.2d 160, 331 N.Y.S.2d 397, 404, 282 N.E.2d 299, 304 (1972), the court found that off-street parking requirements involve elements of both use and area variances depending on the reasons for the imposition of the particular restriction. See also Alumni Control Bd. v. City of Lincoln, 179 Neb. 194, 137 N.W.2d 800 (1965). The court in Off Shore Restaurant distinguished Overhill as involving parking restrictions defined in terms of office space available in the subject building, which is appropriately considered as an area variance. However, in Off Shore Restaurant, the parking requirements were related to the particular use being made of the property and a variance under those conditions would be required to meet the separate test for use variances. Since use variances are flatly prohibited by the Juneau zoning ordinance (CBJ 49.25.802(c)), this distinction between the types of variances parking restrictions may qualify for could be interpreted as precluding all off-street parking variances in the City and Borough of Juneau, regardless of the justifications advanced, solely on the ground that they constitute impermissible changes in the use of the property. Since neither party has brought this issue to our attention, however, we find it is unnecessary to decide it in this case in light of our decision that the variance should not have been granted in any event because it did not comply with other requirements of the variance provision of the zoning code.

[26] See McLean v. Solely, 270 Md. 208, 310 A.2d 783 (1973); Loyola Fed. Sav. & Loan Ass'n v. Buschman, 227 Md. 243, 176 A.2d 355 (1961); Heritage Hill Ass'n v. City of Grand Rapids, 48 Mich. App. 765, 211 N.W.2d 77 (1973); Indian Village Manor Co. v. City of Detroit, 5 Mich. App. 679, 147 N.W.2d 731 (1967); Wachsberger v. Michalis, 19 Misc.2d 909, 191 N.Y.S.2d 621 (1959); Village of Bronxville v. Francis, 1 A.D.2d 236, 150 N.Y.S.2d 906 (1956), aff'd, 1 N.Y.2d 839, 153 N.Y.S.2d 220, 135 N.E.2d 724 (1956).

[27] Anderson v. Board of Appeals, 22 Md. App. 28, 322 A.2d 220 (1974). See also Spaulding v. Board of Appeals, 334 Mass. 688, 138 N.E.2d 367 (1956); Blackman v. Board of Zoning Appeals, 334 Mass. 446, 136 N.E.2d 198 (1956); 1A C. Sands, Sutherland Statutory Construction § 21.12 (4th ed. 1972).

[28] CBJ 49.25.802(c).

[29] State v. Lundquist, 60 Wash. 2d 397, 374 P.2d 246 (1962).

[30] See Bienz v. City of Dayton, 29 Or. App. 761, 566 P.2d 904, 919-20 (1977), which rejected a distinction in treatment of use and area variances by the court "[i]n the absence of statutory authorization."

[31] The powers and duties of the board of adjustment are strictly limited to those prescribed by the ordinance governing variances. CBJ 49.25.802. See also Ivancovich v. Tucson Bd. of Adjustment, 22 Ariz. App. 530, 529 P.2d 242 (1974). The majority of jurisdictions hold that in construing zoning ordinances, the same rules of construction are used as when the courts are construing statutes of the legislature. See 1 N. Williams, American Land Planning Law §§ 5.03-5.04, at 105-06 (1974). We see no reason for adopting the minority rule that zoning ordinances are in derogation of the common law and therefore must be construed narrowly in favor of the right of the property owner to unrestricted use of his property. See, e.g., State v. Owens, 114 Ariz. 565, 562 P.2d 738 (App. 1977); Kiefer v. Luhnow, 491 P.2d 100 (Colo. App. 1977); County of Clatsop v. Rock Island Constr., Inc., 5 Or. App. 15, 482 P.2d 541 (1971). As this court has previously stated: "[I]f a statute is unambiguous and expresses the intention of the legislature, it should not be modified or extended by judicial construction." Poulin v. Zartman, 542 P.2d 251, 270 (Alaska 1975). See also Burroughs v. Board of County Comm'rs, 88 N.M. 303, 540 P.2d 233 (1975).

[32] CBJ 49.25.802(c).

[33] The assembly member was referring to the letter from the Zoning Administrator to Thibodeau informing him that the board of adjustment had granted his variance request.

[34] Appellee's brief before this court does not attempt any further explanation of the peculiarities of the property which would make it eligible for a variance. Instead, Thibodeau relies on the superior court's decision that the uniqueness requirement does not apply to area variance cases.

[35] Erickson v. City of Portland, 9 Or. App. 256, 496 P.2d 726 (1972). See also R. Anderson, American Law of Zoning §§ 18.34, 18.58 n. 92 (2d ed. 1977).

[36] Topanga Ass'n for a Scenic Community v. County of Los Angeles, 11 Cal. 3d 506, 113 Cal. Rptr. 836, 846, 522 P.2d 12, 22 (1974). See also Richards v. Turner, 336 A.2d 581 (Del. Super. Ct. 1975); Glasgow v. Beaty, 476 P.2d 75 (Okl. 1970); 2 C. Rathkopf, The Law of Zoning and Planning § 45.3, at 45-8 (3d ed. 1972).

[37] See generally Barbour v. District of Columbia Bd. of Zoning Adjustment, 358 A.2d 326 (D.C.App. 1976); Uptown Improvement Ass'n, Inc. v. Board of Zoning Adjustments, 243 So. 2d 345 (La. App. 1971); Alumni Control Bd. v. City of Lincoln, 179 Neb. 194, 137 N.W.2d 800 (1965); Bailey v. Uhls, 503 P.2d 877 (Okl. 1972).

[38] Taxpayers Ass'n of South East Oceanside v. Board of Zoning Appeals, 301 N.Y. 215, 93 N.E.2d 645, 647 (1950); Appeal of Lindquist, 364 Pa. 561, 73 A.2d 378 (1950). Indeed, the Juneau assembly recognized that a legislative amendment to the zoning code was the appropriate approach to remedying the result reached in the present case. After denying the variance, the assembly passed a motion which directed the planning commission to review all its parking requirements and to look particularly at the possibility of an amendment that would allow a reduced number of parking spaces for stores having a predominantly "walk-in" trade.

We recognize, as does the dissent, that attractive cases may exist where, although the request for a variance is not motivated by any peculiarities of the property in question, the absence of impact on the surrounding neighborhood alone makes the request for a variance reasonable. However, we have reservations as to whether the variance request in the case at bar is of this nature. Further, we are reluctant to create such a novel exception from the zoning ordinance, particularly in the face of the express language of CBJ 49.25.802. If a separate category of variances is warranted, it is for the legislature to so indicate.

[39] Because of our disposition of this case is based on the lack of uniqueness of the property in question, we need not address the broader issue of delineating specific standards for the application of the "hardships and practical difficulties" language in the ordinance. We note, however, that in the particular context of the Juneau ordinance, our decision that the "hardships" portion of the test must be given some content does not bind us, as the dissent suggests, to the strict interpretations accorded that standard in some jurisdictions where the hardship test is modified by adjectives such as "undue" or "extreme." See note 25 supra.

[1] Judge Stewart, in his scholarly opinion, likewise concluded that the terms should be given a single construction.

[2] A similar result was achieved in Beatrice Block Club Association v. Facen, 40 Mich. App. 372, 198 N.W.2d 828 (Mich. App. 1972), where the court applied the Detroit use variance ordinance. That ordinance, organized similarly to the area variance ordinance before us, contained an introductory statement that variances could be granted if there was "practical difficulty or unnecessary hardship," followed by three criteria that had to be met. Id. 198 N.W.2d at 831. The court held, "In order for the variance to have been properly granted, unnecessary hardship must appear in the record demonstrating the existence of the three requirements set forth in the ordinance." Id. at 832.

[3] Rathkopf concludes:

An analysis of the reported cases in which the emphasis was put upon the aspect of "practical difficulty" indicates that ... [t]he questions properly before the board of appeals on an application

for a variance from "area restrictions," as such non-use restrictions have herein been collectively termed, are:

1) Whether compliance with the strict letter of the restrictions governing area, set backs, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.

2) Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.

3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

In considering these basic questions the Board should take into consideration the nature of the zone in which the property lies, the character of the immediate vicinity and the uses contained therein, whether, if the restriction upon the applicant's property were removed, such removal would seriously affect such neighboring property and uses; whether, if the restriction is not removed, the restriction would have a tendency to create hardship (to any extent) to the owner in relation to his efforts to make normal improvements in the character of that use of the property which is a permitted use under the use provisions of the ordinance.

2 Rathkopf, The Law of Zoning and Planning, 45-28 to 29 (2d ed. 1972). It appears likely that the drafters of section 49.25.802(c) read Rathkopf and intended to incorporate his test into the ordinance. The ordinances in the cases cited from other jurisdictions predate even the first edition of Rathkopf's treatise.

BEFORE THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU

OLMO, LLC,

Appellant,

vs.

CBJ BOARD OF ADJUSTMENT,

Appellee.

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

DECISION ON APPEAL

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

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

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

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

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

I. Burden of Proof and Standard of Review.

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

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

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

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

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

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[1] *See*, City *of Kenai v. Friend of Recreation Ctr.*, 129 P.3d 452 (Alaska 2006).
[2] *Lazy Mountain Land Club v. Matanuska-Susitna Borough Bd. of Adjustment & Appeals*, 904 P.2d 373, 386 (Alaska 1995).
[3] *South Anchorage Concerned Citizens, Inc. v. Coffey*, 862 P.2d 168, 173 (Alaska 1993).
[4] *Anderson v. State*, 26 P.3d 1106 (Alaska 2009).

II. Relevant Facts.

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

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

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

CBJ 49.15.424, Access, provides in part:

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

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

(1) Dedication of a new right-of-way with construction of the street to public standards. This street must connect to an existing publicly maintained street;

(2) Use of an existing publicly maintained street;

(3) Upgrading the roadway within an existing right-of-way to public street standards. This existing right-of-way must be connected to another publically maintained street; or

(4) A combination of the above.

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

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

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

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

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

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

> (1) The relaxation applied for or a lesser relaxation specified by the board of adjustment would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners;
>
> (2) Relief can be granted in such a fashion that the intent of this title will be observed and the public safety and welfare preserved;
>
> (3) The authorization of the variance will not injure nearby property;
>
> (4) The variance does not authorize uses not allowed in the district involved;
>
> (5) Compliance with the existing standards would:
>
> (A) Unreasonably prevent the owner from using the property for a permissible principal use;
>
> (B) Unreasonably prevent the owner from using the property in a manner which is consistent as to scale, amenities, appearance or features, with existing development in the neighborhood of the subject property;
>
> (C) Be unnecessarily burdensome because unique physical features of the property render compliance with the standards unreasonably expensive; or
>
> (D) Because of preexisting nonconforming conditions on the subject parcel, the grant of the variance would not result in a net decrease in overall compliance with the land use code, title 49, or the building code, title 19, or both; and
>
> (6) A grant of the variance would result in more benefits than detriments to the neighborhood.
>
> (CBJ 49.20.250(b).)

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

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

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

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

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

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

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

A. CBJ 49.20.250(b)(1).

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

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

B. CBJ 49.20.250(b)(2).

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

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

C. CBJ 49.20.250(b)(5)(A – D)

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

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

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

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

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

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

D. 49.20.250(b)(6).

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

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

VI. Conclusion

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

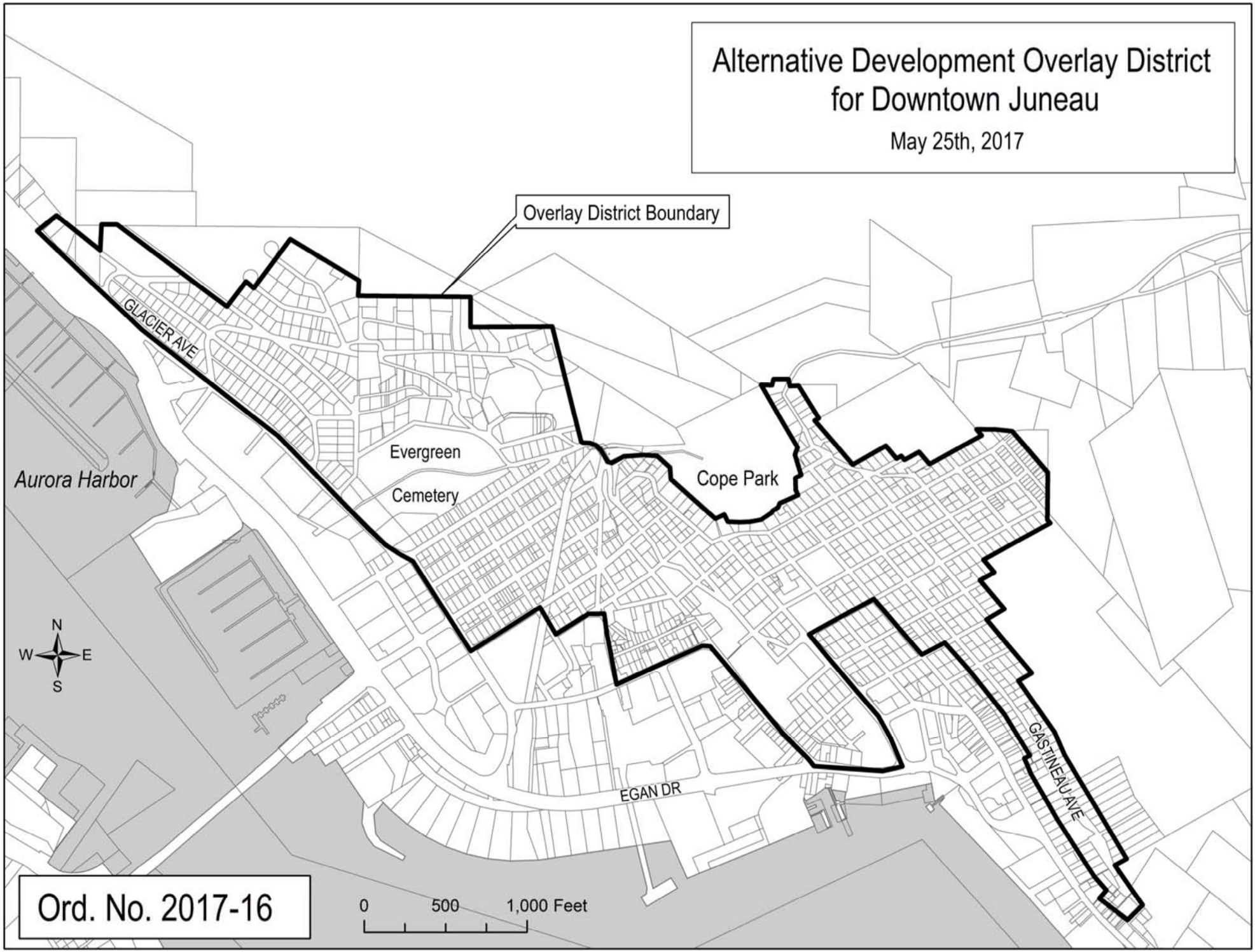
reasons, the Board of Adjustment's decision is affirmed.

DATED 2/14, 2017.

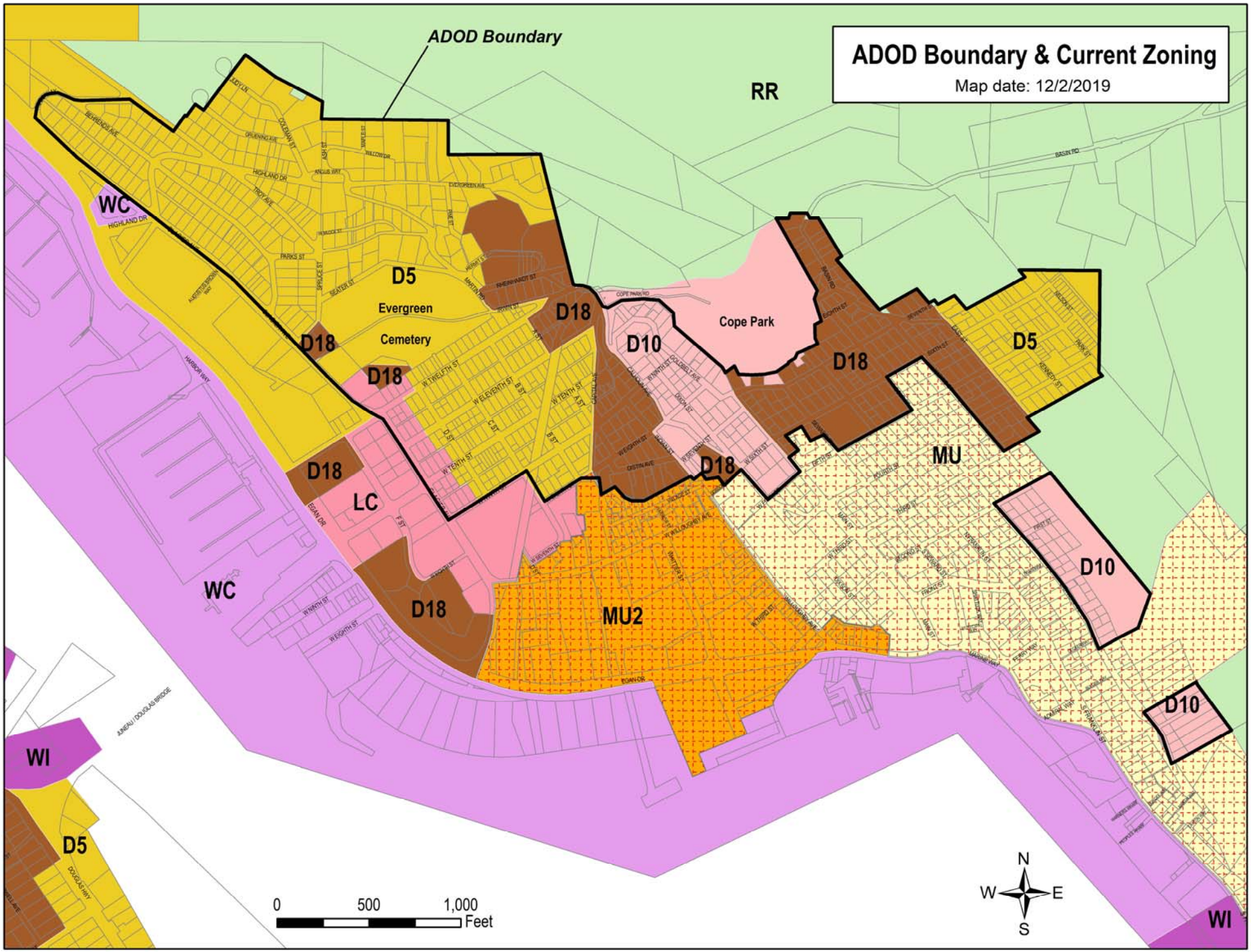
ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

By: Maria Gladziszewski
Presiding Officer on Appeal

Attachment B: Olmo, LLC v. CBJ Board of Adjustment, Decision on Appeal, February 14, 2017



Attachment C: Existing ADOD Boundaries



Attachment D: Proposed ADOD Boundaries

Comments on Dimensions

49.70.1430 Downtown Juneau ADOD Standards

Lot Size
Can some expectations (like lot size) be specific to existing structures? Helping any building conform to minimum lot size is existing very different from allowing lot subdivision.
Bigger structures on smaller lots?
Why is common wall lot size the same as SF?
Square foot of the lot size seems small, a dramatic reduction. Under this regime my neighbors could have 14 units instead of 8 (D18)
What is the number of lots that could be subdivided based on lot size?
Concern: Small developable lots. Don't want infill on tiny lots. (at least 2 people had this concern)
Why do we need minimum lot size?
Single family recommend 5,000, 3000 is too small. Minimum 4000.
Lot size. We agree that 7,000 square feet is too large of a lot size for the Casey-Shattuck neighborhood. Many, if not most, lots in the Casey-Shattuck subdivision are 3,600 square feet and when walking around the neighborhood they are the lots that appear to have adequate room for a house, driveway, garage, patio, outbuilding, garden, etc. without everything being squished together. A look at the Casey-Shattuck subdivision map shows a generally consistent lot size and shape that is 60'x90'. Obviously, several of us already live on much smaller lots (ours is 2,400 square feet) but it is very cramped. In our opinion 3,000 square feet is too small to be a standard lot size in the Casey-Shattuck subdivision. At 3,600 square feet conformance would likely be greater than 70%, which is a small difference to the proposed 3,000 sq. ft. (78%) compared to a significant difference in viability for adequate development. This is a good example for establishing specific standards for each of the various neighborhoods in the ADOD. It also begs the question of trying to make conformance for existing situations just for the sake of conformance. In reviewing the Assessor's database, 3,600 square feet is by far the most common lot size in the Casey- Shattuck neighborhood. We see no logical reason to significantly reduce the minimum lot size to 3,000 square feet, which would capture very little additional conformance while creating more challenges for development.
I strongly oppose the reduction in ADOD lot size to 3000sf. I understand that it brings 78% of residences into compliance, but I don't actually agree that achieving a high rate of compliance is the most important goal in maintaining the nature and habitability of downtown Juneau. I think a 60-70% compliance rate is actually preferable than trying to fit "as many properties as possible" into compliance.
I was left wondering why we don't just make the changes to the set back and undeveloped space calculations, but leave the minimum lots sizes as they are until the comprehensive plan and zoning update are done. Is it because being out of compliance with minimum lot size prohibits any increase in the footprint, regardless of compliance with the set back?
Qualities of the Casey-Shattuck neighborhood that we consider important to maintain during this process are described below: - Proportion of improvements to lot size. There have been a couple of recent developments in the Casey-Shattuck subdivision that appear to have a significantly greater proportion of improvements to lot size than most of the pre-existing Casey-Shattuck subdivision development. They are significantly more imposing than the overall general character of the Casey-Shattuck subdivision. Please refer to our comments on lot sizes, setbacks, etc. below.

Lot Size, continued
I understand why the setback and green space changes could give a property owner more buildable space, but I am still not clear why it matters if the minimum lot size shrinks — unless owners want to tear down existing buildings and subdivide, which you all explained they probably won't because parking requirements will prevent construction of two new buildings (or would the legal principle that at least one house must be allowed prevail despite lack of parking?)
We believe minimum lot size should be 3,600 square feet for the Casey-Shattuck subdivision
I recommend the ADOD lot size requirements remain at 5000sf, but if necessary, reduce with an absolute minimum of 3500-4000sf. That would bring more properties into compliance, but retain more of the current neighborhood character.
Qualities of the Casey-Shattuck neighborhood that we consider important to maintain during this process are described below: - Landscaping. Many, if not most, homeowners in the Casey-Shattuck subdivision take pride in the appearance of their house and landscaping. With the small lots and minimal green space, residents can afford to put a little extra energy in what they do have. Most houses have their green space facing the paved street, which we consider to be the front of the house, regardless of the lot's access point. Street side green spaces add to the overall sense of a long established, well-cared for neighborhood.
I got distracted by being exposed first to the map showing lots that could be subdivided, making me think subdivision opportunity was an important motivation (or risk) of the ADOD change. Other meeting participants thought the lot size change would allow new multi-family or apartment buildings.
Also, perhaps explain why it helps if the ADOD makes more existing/grandfathered construction comply with minimum lot size.
Lot Width
I also recommend lot width and depth not be reduced past 30' except where currently less than that measurement.
Lot width, depth, and vegetative cover *Width and depth. We believe a 25' lot width is far out of character with the Casey-Shattuck neighborhood. There are very few, if any, lots in the Casey-Shattuck subdivision with such a narrow width. Further, with the proposed 3,000 sq. ft. minimum lot size, a 25'wide lot would have to be 120' long and there are few, if any, lots in the Casey-Shattuck subdivision 120' long. A 25' width does not maintain the character of the Casey- Shattuck subdivision and is much too narrow to accommodate compatible development in the neighborhood. With the proposed minimum 3' side yard setbacks, 19' would be the maximum width for a house. Below we advocate minimum 5' side yard setbacks, which would result in a maximum 15' wide structure.*
We believe the minimum lot width should be 35' for the Casey-Shattuck subdivision.
Lot Depth
Recommend 50' not 25'
I also recommend lot width and depth not be reduced past 30' except where currently less than that measurement.

Minimum Vegetative Cover
15% minimum vegetative coverage seems too low - especially after seeing your graphic!
Would like to keep more veg, your change is too much.
Why so low on vegetative cover? Do not see the justification (common concern).
Please make vegetative cover higher.
What is vegetative cover?
Please do not require less than 15% vegetative cover.
In regards to vegetative cover, I recommend retaining at least 20% vegetative cover or more, rather than reducing to 15%. As with lot size, this is related to maintaining the character of downtown properties.
Love to see sight-obscuring regs (vegetation) applied to existing properties.
3' minimum height for vegetation is too high. Some children are less than 3'. If you are in a small car, 3' is still obscuring.
Vegetation is a key esthetic and decreasing requirements would impact sense of green space.
Structure Height
Lot Coverage
Bigger structures on smaller lots?
Will this allow large structures on small lots?
Setbacks
I both dislike and like the proposed setbacks. As stated above, our setbacks concern me. I do like that this will increase the minimum side setback from two feet to three feet.
I like the idea of having a "moveable" setback box for where you can build.
Consider different, smaller set backs against access easement that have become part of property - i.e. paths between buildings owned by 3rd party.
Setbacks should not be impacted by structure size. The coverage on the lot would still seem greater with smaller setbacks.
Discussion of relationship between 3' setback and fire code - person's neighbor has a "no construct" agreement - she thinks 3' to the lot line is too close.
3' separation seems small to some (multiple comments)
Reduced setbacks for non-conforming properties. Round to the nearest foot? Maybe a portion of a foot? (tenth or hundredth?)
Concerns about eaves and agreements between neighboring properties if one neighbor has to use the other neighbor's property for maintenance access.
Why a 5' width on excepted access?
Why is 5' a maximum internal width for excepted access rather than a minimum internal width?
Love to see sight-obscuring regs (vegetation) applied to existing properties.
3' minimum height for vegetation is too high. Some children are less than 3'. If you are in a small car, 3' is still obscuring.
Starr Hill - one foot won't help us.
3' cannot be reduced with the setback sum reduction, correct?
Reduced setbacks will make a tremendous difference for remodels and additions. These are the most common construction projects in the overlay district.
I really like the new standards and thank you for your efforts. However, this effort will not help those of us with encroaching/non-conforming properties on Starr Hill, etc. Thank you.
Minimum 5' per side, 20' total. Otherwise it is a set up for neighbor conflicts for air/light/maintenance

Setbacks, continued

Reducing setbacks on smaller lots concerns me because of the increased fire hazards and noise and light pollution. This will also increase insurance risks when performing routine house maintenance.

Qualities of the Casey-Shattuck neighborhood that we consider important to maintain during this process are described below: - Friendliness. One important characteristic of the Casey-Shattuck neighborhood is its friendliness. People generally walk on the sidewalks (which is another unique characteristic of the Casey-Shattuck subdivision) and often will stop and chat with residents about their landscaping, local news, the weather, or whatever. One reason they stop is that there is generally a vacant comfortable distance from the sidewalk to the resident, which tends to encourage casual conversations. It's also because residents are spending time in their yard. Similar to the concept of personal space when talking with an acquaintance, the personal space in the outdoor neighborhood setting is generally much greater. When a house is three feet from the sidewalk such interactions are less likely to occur. The resident is less likely to spending time in such a small yard and walkers may be self-conscious about looking towards the house. More people would tend to walk in the street to avoid the feeling of invading privacy, increasing pedestrian/driving hazards, making the neighborhood a little less personal.

Structure height, Street-side (front yard) setbacks: While walking around the Casey-Shattuck subdivision with a tape measure we have found that nearly all houses (not including entry ways) are at least seven feet from the inside edge of the sidewalk, which we assume is a reasonable proxy for the property line. This includes at least one side of corner lots. We identified only one house less than seven feet from the sidewalk south of B Street. We did not investigate north of B Street but we believe there would be very few, if any exceptions there, as well. As discussed above, the space between the sidewalk and the houses is a desirable characteristic of the Casey-Shattuck subdivision. That front yard space is integral to the desirability and character of the neighborhood and should not be compromised. Allowances could be made for entry-ways and decks.

<u>We believe developments in the Casey-Shattuck subdivision should have a minimum 7' front yard</u> <u>setback, not including entryways</u>.

Side yard setbacks: We believe that no side yard setback should be less than 5' in any portion of the proposed ADOD zone for two reasons: Safety, and creating potential conflict with neighbors. Anyone who builds their house within three feet of the property line cannot perform the usual and customary maintenance on their house (sanding, painting, staining, cleaning windows, clearing gutters, replacing windows, replacing siding, etc.) on that side without trespassing onto their neighbor's properties. Most of these tasks require a ladder to accomplish the work. OSHA guidelines (attached) specify for safety that the proper angle for setting up a ladder is to figure one-quarter of the working length of the ladder and placing the foot of the ladder that distance away from the wall. A 12 foot ladder (which might be long enough to wash windows but not long enough for any of the other tasks above) would require 3 feet away from the wall. If the structure is a two story building and the ladder is 24 feet it would need 6 feet to be safe which is still an issue with 5' setbacks. Perhaps setback distance should be based on the height of the structure?

<u>We believe that no side yard setback should be less than 5'</u>.

Exceptions to setbacks: Please refer to our comments on side yard setbacks above. Roof eaves two feet from the property line is inadequate for rain gutter access and maintenance without having to encroach on the neighbor's property. <u>We support expanding the proposed setback for eaves to be three feet (3').</u>

How would the ADOD apply when the property has a deficient setback (less than 3 feet) on one side, but "excess" setbacks elsewhere? The documents are clear whether a setback less than 3 feet on one side would preclude application of the ADOD. My home on 521 W 9th has a substandard set back on one side, but "excess setbacks elsewhere of the proposed 20 foot requirement. Would The ADOD allow for an expansion given other requirements are met?

Setbacks, continued
I really like the simplicity of the "formula" of 20' to 12' for total setbacks. However, I do think that the exceptions to setbacks should eliminate references to Front/Side/Rear.
I am strongly against any changes that allow a setback of less than ten feet.
We believe that no side yard setback should be less than 5’ in any portion of the proposed ADOD zone for two reasons: Safety, and creating potential conflict with neighbors. In a perfect world all neighbors would get along and would work cooperatively but we all know that this is often not the case. We’re sure Community Development can attest to that. Ladder placement can be a pretty site-specific requirement for the required task. If a neighbor asks permission to put their ladder on their neighbor’s property and it would land in the middle of the neighbor’s prize vegetable or flower garden they may rightfully choose to say no, which could lead to hard feelings. Or one neighbor may decide to construct a tall privacy fence along the property line and preclude the other neighbor from being able to use a ladder at all. The 3’ setback seems to be setting up potential conflict situations or unsafe situations as people try to do what they need to do within a 3’ setback. We have personal experience with this situation. Our neighbor’s side yard setback is 2’7”. He has to seek our permission any time he wants to do any maintenance and upkeep on the back wall of his house. Ours is a congenial relationship but if it wasn’t and we refused that permission he would be hard-pressed to be able to do anything for maintenance and upkeep there. It seems like the CBJ would be institutionalizing inevitable neighbor conflict with this unrealistic and impractical side yard distance.
49.70.1440 Yard Setback Exceptions
Why is access to the rear lot line not included in the exemption? (there seemed to be multiple individuals interested in this)
Are arctic entries included in the setback exceptions?

Meeting Agenda of the City and Borough of Juneau
Title 49 Committee of the Planning Commission

Thursday, April 11, 2019
Community Development Department
Large Conference Room, 12:00 pm

Members Present:
Nathaniel Dye, Travis Arndt, Andrew Campbell, Ben Haight

Members Absent:
Shannon Crossley, Ken Alper

Staff Present:
Laura Boyce (CDD Planner), Jill Maclean (CDD Director), Alexandra Pierce (CDD Planning Manager), Laurel Bruggeman (CDD Planner), Amy Liu (CDD Planner), Marjorie Hamburger (CDD Admin)

I. Call to Order

The meeting was called to order at 12:16 pm.

II. Approval of Minutes

Minutes from October 15, 2018, November 19, 2018, and December 3, 2018 need review and approval. Copies will be sent to Committee members to review and approve at the next Title 49 Committee meeting.

III. Agenda Topics

A. AME2018 0004: Downtown Zoning

Ms. Boyce shared a PowerPoint regarding the new proposals for residential zone districts in downtown Juneau.

Why are we here?
This slide displayed the Alternative Development Overlay District (ADOD) boundary. Residential districts were labeled; these are the areas proposed for rezoning in order to preserve their existing characteristics. The next slide showed the proposed new zoning and some new zoning categories including RSF1 in the Highlands area, RSF2 for Starr Hill and Casey Shattuck neighborhoods, and RMF 10 and 18 in areas where multi-family residences are located.

Purpose of the ADOD
Ms. Boyce gave some background to the ADOD, which was adopted in 2017 and sunsets this August for downtown Juneau, which gives CBJ a deadline to have the new zoning in place. Ms. Maclean said that the reason why CDD was tasked to do this rezoning was so that property owners will have the ability to reconstruct or build new homes that fit within their neighborhood. A recent trigger for this effort was the application for a variance received and denied for a new home construction at 12th and A Streets in the "Flats" neighborhood. The owners were just trying to build a home similarly situated on the property like neighboring structures.

Important Terms
The first of these slides presented a visualization of terms regarding setbacks and buildable area on a lot as well as a definition of vegetative cover. Changes are being proposed regarding lot size, setbacks, and vegetative cover but no changes are being proposed regarding use.

The second slide gave information about what constitutes a non-conforming property. The 1987 borough-wide rezone effort resulted in most of the downtown properties not conforming to their zoning. Ms. Maclean added that is important to note that these properties are considered legally-nonconforming.

Some History of Downtown Development
The "Year of Built Structures" slide is color coded for building dates of properties and makes clear the age of the older, established downtown.

After the 1987 rezoning resulted in properties becoming non-conforming, owners who wanted to improve their homes might require a variance to make necessary improvements. The green color in this slide showed setback variances that have been granted. Mostly these have happened in downtown Juneau and downtown Douglas. In 1987 the cost of application for a variance permit was $100, today it is $400. This has been a cost and a complication borne by home owners simply because the properties were rezoned in such a way that they no longer "fit".

As a comparison, the slide of the Valley indicated not much need for variances because the D5 zoning fits better in those neighborhoods. The same for is true for the Lemon Creek area. In these areas, variances that are requests are most often regarding parking, height, and streamside setbacks.

Existing Conditions Downtown Juneau: Summary of setback nonconformity
Ms. Liu said that previously there was no information about setback compliance, but she and Ms. Bruggeman have worked with data and imaging to put together this chart, allowing some room for error. These tables summarize the trends. The take away is that a minority of lots meet setback requirements and the front setback is the most demanding to meet under current zoning. Mr. Dye asked if this is the situation borough wide. No, just those areas where the ADOD is currently in place i.e. downtown Juneau and downtown Douglas, said Ms. Liu.

The next slide shows properties indicated in red which do not meet the front yard setback. Ms. Liu reiterated that the scope of this study was limited to residential properties in the Juneau ADOD area.

The slide "Summary of setback nonconformity" shows more detail. For all of the zone districts downtown, there currently is a 20 foot minimum setback requirement. The properties in the darkest color are ones that in actuality are setback 0-4 feet in the front yard. Mr. Dye asked if exceptions are allowed such as for arctic entries. Ms. Liu said that she and Ms. Bruggeman did the best they could looking at aerial imaged but not all was as clear as could be desired.

The rear yard setback slide indicates properties not meeting the 20 foot setback.

For side yard setbacks, blue or yellow colors indicate that only one side setback was met. If green, both sides are nonconforming, said Ms. Liu.

A street side setback is when a property has frontage on 2 rights of way and one side is chosen as the "street side".

Existing Conditions Downtown Juneau - Lot size
Considering all of the D5 zoned properties in the ADOD area, 80% did not meet the minimum lot size standard. If on the map in the slide it has a color, it does not meet minimum lot size. Some lots are less than 2500 sq. ft. The smallest lot on Starr Hill is 903 sq. ft. and in the Flats the smallest is 761 sq. ft.

Non-Conforming Properties
All the properties in yellow are considered non-conforming for minimum lot size.

What is proposed?
The first slide in this section showed the current D-5 zone district standards. These are proposed to be changed for the ADOD area. Ms. Boyce showed a series of slide with the proposed district standards for the different neighborhoods in the ADOD area.

The Highlands – This table showed what is currently in place and what is proposed, based on all the collected data. Ms. Boyce said it is likely there will be a discussion about maximum height, because the suggestion is to lower that number because it is a finding that the existing character of the D5 neighborhoods would not support a 35 ft. building. Mr. Arndt asked if a 15 foot setback forces a property owner to put in a garage because there is not enough room in a driveway. Ms. Maclean said parking can take place in a setback. The larger setbacks seem appropriate for safety reasons along Glacier Highway with the school zone. Mr. Dye asked how many properties are conforming as to parking. Ms. Boyce said this was not looked at, but it would be difficult to determine. Ms. Maclean pointed out that the focus is to get away from the need for variances and, in any case, there now is another way to reduce a parking requirement - the parking waiver, adopted in 2016 or 2017.

The next two slides included visualizations of the proposed changes. The maximum lot coverage would remain at 60%, but there would be more flexibility for where a home could be rebuilt or added on to on the property.

Casey Shattuck & Starr Hill – This table displayed what is proposed for these areas. The Casey-Shattuck proposal is for a 5 foot setback for the front whereas only 3 feet is proposed for Starr Hill. Subsequent slides showed how this might look. At the end there would be more flexibility on the lot for where an owner can build. Mr. Arndt and Mr. Dye wondered not make both neighborhood 3 feet? Also, Mr. Dye asked if the ADOD will disappear once the zoning is done. Ms. Maclean said she thought arctic entries, sheds, and carports might not need an ADOD. There are some little things in the exception language, like “not less than 10 feet” that could be tweaked in order to eliminate the need to retain the ADOD. Mr. Dye asked if the intent is to allow a remodel, a rebuild or a new build or is it just to address non-conforming properties, which is another section of code currently being worked on? Ms. Maclean said that the non-conforming code language will address an owner’s ability to rebuild. Ms. Liu said that the rezoning project has more to do with adding to an existing building or a new build on a property. Ms. Maclean said that in any of the instances encroaching would not be allowed. Mr. Arndt wondered if it would be out of the question to strive for 90% compliance for all of the ADOD area. Ms. Pierce said staff had a lot of discussion about recognizing houses built up to lot line such as on Starr Hill and whether or not to suggest a zone with a 0 foot front setback. Ms. Boyce said it generally is nice to have buffer of some sort along the street. Having a larger buildable area on the lot means an owner can situate a building farther back. Mr. Dye said he had questions about the 60% buildable area and the confusion owners may have about this. Mr. Haight said many properties on Starr Hill are not going to achieve this ratio of existing building to lot size. Mr. Arndt said he would like to see the percentages of properties being talked about.

Mr. Campbell wondered about the thinking in 1987 to rezone downtown in this way; was it intentional to create this mismatch or just ignorance of how it would affect the area? Ms. Maclean said that it was not unusual at that

time to create this type of zoning. The Valley was in the process of being built and much of that area conforms to the zoning that was put in place, so that seemed to be replicated downtown. Perhaps people at that time were not valuing as much the historic value of downtowns - witness the razing of Willoughby Avenue. Mr. Campbell pointed out that now the city has made it possible to construct cottage housing and other smaller, residential buildings. He would not want to perpetuate a mistake in a similar way as in the past and just blanket areas as one zone when it might not be appropriate into the future.

Ms. Maclean said that according to the Housing Action Plan, it is a win to gain additional dwelling units in areas with good public services when there is a larger lot in such an area, but these in-fill efforts often bump into the existing property owners who like their neighborhoods as they are, although they themselves were able to develop as they wanted back in the day. Also, there are other issues regarding subdividing a lot, for example there are hazard areas in the Highlands and Starr Hill. The hazard zone might not allow for a subdivision despite the larger size of the lot. There are two different premises at work - making the existing development conform to its zoning versus adding more infill development. Ms. Maclean said that this rezoning effort is mostly about determining what the character of a neighborhood is and allowing future development to match that character. Mr. Dye wondered if the intent is to alleviate non-conforming situations or to allow for new construction. What lens should commissioners look through as we proceed, he asked? What about replicating these types of areas elsewhere in the borough? Ms. Maclean said that the task at hand is to preserve the character of historic neighborhoods and make most of the properties conforming. Homes that are currently in place need to be able to be reconstructed. Issues with a building that is considered non-conforming come more into play when someone is trying to obtain a mortgage to buy one of these homes and/or reconstruct what they own if it was legal when it was built. Also, as a city we have said that we need more housing, so we want to make it a bit easier to do infill development. Ms. Pierce said that the idea of relying wholesale on legally nonconforming status versus fixing the zoning perpetuates the problem of a flawed process from the 1980's. Legally non-conforming doesn't fix the problem, although it allows for renovations and helps with buying and selling. But this rezoning effort helps with decision making, she said. Mr. Dye said that some of the non-conforming numbers do not decrease very much, and so that doesn't seem that big of a win. Ms. Maclean said that Starr Hill is very wonky with a lot of variety in the properties, unlike Casey Shattuck which is more uniform.

Mr. Dye asked if this rezone will be more effective than the ADOD. Ms. Boyce said that there is another facet to rezoning in regards to an undersized lot that wants to add an accessory apartment. At present, the owner needs to obtain a Conditional Use Permit to do so. Ms. Maclean said another problem with the ADOD is that all decisions need to go before the Planning Commission which can be time consuming for property owners depending on their property. Often there is the need for a lot of time consuming research which means money charged to the owner. She said she thinks if the rezone gets most properties to become conforming, it will be a benefit to the community.

Mr. Arndt asked how many permit problems and rebuilding issues would be solved going forward from a rezone. Would it be better or possible to consider all buildings built pre-1987 conforming and allow them to be rebuilt within their existing footprints? Ms. Maclean said that would be considered "legally non-conforming" but would still not fit the zoning. Mr. Haight said that a house he owned on Starr Hill had the property line going through the house. He said he can see Mr. Arndt's argument if the property lines could be figured out except if a building crosses property lines that can't be done. Ms. Maclean said she would be worried that the whole borough would want properties to be absolved of their current zoning in a similar way if it happened for downtown. Mr. Arndt said he disagreed; other areas were not built in 1900, he said.

Slide showing ADOD boundary
Ms. Boyce said that parcels identified in red are structures related to the proposal to drop the maximum height to 30 feet in the residential neighborhoods as they all are currently more than 30 feet tall. Mr. Dye asked if newer structures would be then considered legally non-conforming. He said that most of the neighborhood concerns about a recent new build of an out-of-character tall residence in the Casey Shattuck neighborhood were about design standards not height. If we are trying to not compound mistakes from the 1980's, shouldn't we fix all non-conforming situations, he asked? Ms. Boyce said that if ADOD is strictly adhered to, then any efforts should be about preserving neighborhood character. Mr. Arndt said this felt like a half-step into design standards once height is added. Mr. Dye said he was leery of the 30 foot limitation. Mr. Arndt said that he hates taking things away from something allowable that was once there. Mr. Dye asked if the planners thought this could be used as a carrot to help the new zoning be adopted. Ms. Boyce said not really.

Mr. Arndt left the meeting at 1:11 pm.

Lot size < 3,000 sq. ft. (2 slides – Starr Hill, Casey Shattuck)
Many of these lots are owned by the same people with houses built across property lines, said Ms. Boyce. Ms. Maclean said it would be helpful if these situations could be shown on the map.

Mr. Dye suggested removing any CBJ-owned land out of the images, such as the tiny lots along Calhoun Avenue.

Lot size < 4,000 sq. ft.
Can you force people to consolidate their lots, asked Mr. Dye? We do not do that here, but other places do, said Ms. Maclean. She said this concept was considered and then deleted by the Title 49 Committee from the non-conforming code. Mr. Dye asked to be reminded why the committee did not want this included as he thought this should be reconsidered. Also, he pointed out, the area represented in this slide included a lot of high hazard properties which cannot be subdivided for that reason.

Multifamily Zone Districts Downtown
Ms. Boyce said that for multifamily the proposal is to just change a few things. The minimum lot size is smaller and setbacks are different from what is currently in place. Density is not proposed to change at all. Mr. Dye asked if on the street side, the triangle map still would need to be done. Yes, this is included to insure safety around corners, said Ms. Boyce. Mr. Dye said he thought this needed to be looked at for corners to see if it will fix problems.

Setback Reductions
This slide showed the code as it currently exists. Language is being proposing to be added to say that in no instance shall a required setback be less than 3 feet (underlined sentence at the end).

Existing Conditions - Downtown Juneau
These slides show changes to zoning over time in the residential areas under discussion. The Casey Shattuck/Federal Flats area has seen many zone changes from pre-1956 until today.

Benefits of Rezoning
This slide highlighted what had been talked about regarding the benefits to the property owners and the community.

Conclusion
Where we going next with this project, asked Mr. Dye? He said he assumed more work needs to be done in Title 49 Committee. Mr. Campbell said he would like to compare the zoning with the hazard maps. Mr. Dye said he wanted to see a visual of the whole area organized in a way that he could wrap his brain around the big picture. Ms. Maclean said a visual like this will also help the Assembly. Mr. Dye also suggested removing those double lots that contain only one structure from the math and if percentages could be added that would be easier to digest. Finally, is indicating the corner math not too much to ask?

IV. Next Meeting

It was proposed to keep the momentum and make best use of Ms. Boyce's time before she leaves the department. Wednesday, April 17, or Thursday, April 18, will be vetted with committee members. Commissioners made requests for some other information they would like to see at the next meeting.

VI. Adjournment

The meeting adjourned at 1:30 pm.

Meeting Agenda of the City and Borough of Juneau
Title 49 Committee of the Planning Commission

Thursday, April 18, 2019
Community Development Department
Large Conference Room, 12:00 pm

Members Present:
Nathaniel Dye, Travis Arndt, Shannon Crossley,

Members Absent:
Andrew Campbell, Ken Alper

Staff Present:
Laura Boyce (CDD Planner), Jill Maclean (CDD Director), Alexandra Pierce (CDD Planning Manager), Laurel Bruggeman (CDD Planner), Marjorie Hamburger (CDD Admin)

I. Call to Order

The meeting was called to order at 12:06 pm.

II. Approval of Agenda

MOTION: by Ms. Crossley to approve the agenda.
The motion passed with no objection.

III. Approval of Minutes

A. October 15, 2018 Draft Minutes

MOTION: *by Ms. Crossley to approve the October 15, 2018, minutes.*
The motion passed with no objection.

B. November 19, 2018 Draft Minutes

MOTION: *by Ms. Crossley to approve the November 19, 2018, minutes.* **The motion passed with no objection.**

C. December 3, 2018 Draft Minutes

MOTION: *by Ms. Crossley to approve the December 3, 2018 minutes.*
The motion passed with no objection.

IV. Agenda Topics

A. AME2018 0004: Downtown Zoning

Ms. Boyce gave a similar presentation as at last week's meeting with some additional slides and information.

To reiterate, she said that zone district are being proposed to better fit what is on the ground downtown. Mr. Dye said that a variance request for setbacks was denied some years ago which led to what is now referred to as the "Olmo decision" regarding zoning that does not fit what already exists on the ground. This case led to the creation of the Alternative Development Overlay Districts (ADOD) to allow for flexibility and time to rezone downtown Juneau and Douglas and reduce the amount of nonconforming properties.

Ms. Boyce said that she has updated some of the maps with legends and pink coloring to indicate hazard areas.

Ms. Boyce said that property owners in the Highlands have concerns about having the same zoning as properties lower down the hillside along Glacier Ave. She has included a new map with blue boundaries showing the larger lots in that neighborhood that could be subdivided and it also shows those lots that are small but owned by the same owner and so could, potentially, be combined into one conforming lot.

Ms. Maclean said that in Juneau if you have abutting properties in common ownership which are nonconforming, there is no requirement to combine these properties in order to conform. There are communities she is familiar with that do mandate this. The Title 49 Committee did discuss in the fall about possibly proposing this mandate but decided it was not the right thing to do. Since the question came up at last week's meeting, maybe the committee would want to reconsider, she said, because seeing it applied makes more sense than when it was discussed hypothetical last fall.

Mr. Arndt clarified that such an action would not change what people have built; it would just change whether or not it conformed to the zoning. In which case, is there any actual benefit to anyone, he asked? Mr. Dye said that if lots were combined and the house which formerly was built across property lines burns, the owners can rebuild on the footprint. There could be some mandating language in the code to the effect that shared ownership properties are required to be consolidated if and when owners want to rebuild. Mr. Arndt said he couldn't think of any other benefit to the owner. Ms. Maclean said another instance might be if an owner wanted to add an addition to a building, causing the structure to cross property lines. It seems it could be useful language only if an owner is proposing some development that crosses property lines. Mr. Dye said it would make sense to him to draft such language as part of the nonconforming code that is being worked on. Mr. Arndt said he agreed. Ms. Boyce pointed out a nuance regarding if there are 2 buildable lots, a tax issue arises because the assessors would be charging for only one. Mr. Dye asked why this is so.

Returning to the map with hazard areas indicated, Mr. Dye pointed out that in order to subdivide these properties, owners need to come before the Planning Commission. While an owner can build in a high hazard area, they can't subdivide the lot.

Ms. Boyce said that those properties in the Highlands that could meet lot width and lot depth would potentially be able to subdivide.

Ms. Boyce said the proposed minimum lot size for the Starr Hill neighborhood is 3,000 sq. ft. On the map, those lots indicated in purple are abutting lots with common ownership. An owner of a lot in a severe avalanche zone has the right to build a single family home; however if a residence is already existing, the owner cannot add bedrooms or increase density at all. Mr. Dye wondered if with the remapping of hazard zones if some parcels will change designation. And, if so, it might not be prudent to rely on current mapping. Ms. Maclean said that in Juneau as long as a parcel is not zoned Industrial, the owner has an automatic right to build a single family home, no matter what. Some people at the neighborhood meetings spoke against having smaller lot sizes because they worry about more homes going in, especially in the Highlands area. One thought to mitigate

increasing the density in that neighborhood is through hazard zones, as many parcels there cannot subdivide anyway.

Ms. Boyce suggested if there is concern, there could be a temporary moratorium on subdivisions until the new hazard maps are adopted. Mr. Arndt said he thought hazard areas should be pulled out of the conversation. Hazard areas should not dictate what we do, he suggested. The reason that new zoning is proposed is because of the goal of maintain the character of the historic neighborhoods. He said he felt less swayed by people's personal objections if the decisions about changes are in keeping with the character of the neighborhood. Ms. Maclean said that now we do not have any idea if hazard zones will change, but she agrees that is should not be used as an excuse not to do something. Mr. Dye said he agreed with keeping it as informational material.

Mr. Dye expressed concern with having too many new zoning districts. What is the goal and will they be used elsewhere in the borough? Also, how would new zoning work with the nonconforming code? He said he is unclear about what lens to look through. Is it best to use form-based zoning? Maybe, he suggested, things need to slide more within a single zone district instead of having multiple zones is a relatively small area. Is there another way to do it, he wondered, and asked for some staff input.

Ms. Boyce asked if a sliding scale would just be for setbacks. Mr. Dye said he wasn't sure; it could be for lots of stuff. Mr. Arndt said he had an historical question. If the problem arose in the 1980's, what pre-dated that? Is it possible to eliminate the changes made in the 1980's and go back to something original? Mr. Dye said there was a time when the Federal Flats were zoned to allow for very tall buildings. This pre-dates the zoning in use today, he said. Ms. Boyce showed the *Year Built of Structures* map. Mr. Arndt said it seems we can't go back to a previous zoning method; however staff has had to do a lot of work to create a band-aid to fix another band-aid.

Ms. Boyce showed the Casey-Shattuck/Flats Area table with the dates of zoning. The D10sf zone classification was created to emulate the Casey Shattuck neighborhood, but it did not work to make many properties fit. Mr. Arndt asked if an R-2 zone makes almost all properties conforming. No, said Ms. Boyce, half would not conform.

Ms. Maclean said that a sliding scale method is sort of form-based whereas Euclidian zoning creates districts by use. Form based zoning is more about form driving the use and is often used in neighborhoods that the community wants to preserve. For example, the form can be such that a big box store couldn't fit, whereas a small pharmacy might. Also, the zoning can go so far as to dictate architectural treatments. A sliding scale might work for setbacks, she said, but lot size might scare people if there were to be no minimum. Mr. Dye wondered if in a zoning district, the sliding scale can apply to a particular lot size based on the date it was originally platted. For example, lots platted in 1960 or earlier do not need to meet a minimum size and those platted after do need to. Ms. Maclean said she was worried that the city does not have records for old properties. Ms. Pierce mentioned a property above Savviko Park that was a jagged tooth size and being troublesome, and the owner only had a photograph of a handshake that determined how the lot came to be platted that way.

Mr. Dye said he would not want to limit the determination to just when a lot was platted; it could be expanded to include proof of ownership, etc. Mr. Arndt said he thought a combination of both ideas could be good and might fit better. He said he likes form based zoning but perhaps something could also apply like Mr. Dye suggested with a sliding scale. His major concern is that what is being proposed still doesn't address all or most of the nonconforming properties. Mr. Dye concurred and said that if the purpose is to alleviate problems going forward and engage with the community so they can preserve what they have, 66% conformance is not worth it. Mr. Arndt said that he wants things to be easier for planners and homeowners. Ms. Boyce said that because all of these lots are nonconforming, when an owner seeks a permit to add on to their building, a lot of time is needed for analysis.

Mr. Dye said that there already are some sliding scale mechanisms in place, so he is trying to move this discussion there. Mr. Arndt asked how much work it would be to look at a form based system. Ms. Maclean said it may take quite a bit of money as staff would have to go out and measure the properties. Mr. Dye asked if it would be realistic to use a hybrid method. Ms. Maclean said she thought it could work for setbacks and vegetative coverage, but she was not sure about lot size. Also, she could anticipate questions about why such a method would not be allowed in other areas of Juneau. Mr. Dye said he thought this could be easily explained because other areas of development in the borough are not so old. Mr. Arndt suggested that the determination of other districts that could use such a method be tied to a percentage of properties in an area that are nonconforming. For example, if more than 50% of properties are nonconforming, then this system could be used. Mr. Dye said that clarifying this at the start can make it understandable to the community. Downtown Juneau and Douglas have very clear problems that are not present elsewhere in the borough. Evidence suggests that they are unique. Mr. Arndt said that he does not want the next group sitting here 30 years from now to have to solve the problem created today or that wasn't fixed in the first place.

Ms. Crossley said she wondered if minimum lot size is the issue. Why does that problem exist? Mr. Dye said that it existed in Euclidian zoning and someone had to pick a number to use. Ms. Crossley wondered if a size of a lot could be established below which an owner cannot build? Ms. Bruggeman said that when someone subdivides a property, they have to show that there is a buildable area. Ms. Boyce said that could encourage a lot of development downtown with the accompanying density issues for water, sewer, etc. Ms. Pierce asked if a house built in 1901 burns, how is the owner allowed to rebuild. Mr. Dye said he thought it should be about the lot, continuing same use in the same footprint, and allowing the owner to maintain what they had. If the owner wanted to replace the single family home with a triplex, that would be different. Mr. Arndt said there would have to have bounds on the sliding scale. A person who buys a lot in the Flats has to know what the rules are so they don't have expectations that they might develop a triplex from the single-family home. Ms. Crossley asked who determines the scale. The Planning Commission and then the Assembly would have to approve.

Mr. Dye asked staff if this was something that could be considered, despite all the work that has already been done. The work done so far has shown that traditional zoning methods don't get as close to 100% conformance as was desired. Also, Mr. Dye asked, would the ADOD still need to exist for those properties that will not conform ever? Ms. Boyce said that the districts in the current proposal allow for 60% lot coverage, which matches the ADOD. Regarding setbacks there is proposed language (no less than 3 feet) and reduced requirements for vegetative coverage. Mr. Arndt wondered if an applicant could be required to obtain more data about their property as part of a permit application. A home owner would need to provide information about how their proposal fits a trend in their neighborhood, and then the city would keep that collected data into the future. Put the onus on the applicant, he suggested.

Ms. Boyce said that the intent with reduced setbacks is to create a building window with greater flexibility to place a structure on a lot. Mr. Dye asked if there is a reliance on lot coverage to restrict buildings, why is there a need for any setbacks? Ms. Boyce suggested that safety, light, and air could be reasons. Mr. Dye wondered if this is an issue now. What is a safe minimum? Mr. Arndt said that as parcels get smaller, and buildings are closer together, firewalls are important.

Ms. Boyce showed committee members a parcel viewer that is under development and clicked on the layer list feature, which allows building footprints to be shown. Density exceeded is one of the layers, however staff is not engaged with determination as part of the rezoning project. The tool allows for users to click on the variance layer to see when and why variances were received. This tool is not published for the public, at present, however.

Ms. Boyce wanted to know if the committee wanted to spend more time with the tables in the presentation. Mr. Dye said while it is interesting data, he did not want to spend more time with them if the lens for looking at the rezoning of downtown was shifting. Mr. Arndt stressed that zoning has to be clear to homeowners and applicable by planners, and he wondered what would work for both of these goals. Ms. Maclean said she has worked with other codes and wondered what might be the outcome if frontage required was looked at instead of lot coverage because there are so many "weird" lots downtown. If there were to be a sliding scale for setbacks, perhaps it could be based on the frontage instead of on lot size. What is the average and the smallest for frontage, asked Mr. Dye. He said he thought that this is the kind of creativity needed for this project. Ms. Pierce asked if new zoning only gets to 95% compliance is that any better than 66%? Mr. Arndt said that if the zoning becomes easy to be applied by CDD that would be very helpful.

Ms. Crossley said she liked the frontage comment a lot. When considering an historic district, it is hard to put it in a modern box.

Mr. Arndt said that the work staff has done has been very useful, but it also shows the need to look at some other solution.

V. Committee Member Comments and Questions

Ms. Maclean asked about good days of the week for a lunchtime meeting. Tuesdays and Wednesdays are good for Ms. Crossley, Mr. Dye, and Mr. Arndt.

Ms. Boyce will email out a link to the parcel viewer she mentioned.

Mr. Dye asked what else is on the committee's plate. Ms. Maclean said she would need to review minutes from previous meetings. Some things she recalled were urban agriculture, which went to the Committee of the Whole but was sent back to Title 49 Committee for some additional work. Other topics to finish include common walls, nonconforming, and streamside setbacks. Ms. Pierce said that planners are in the process of consolidating the amendments they wish to see to fix problems in the code. Mr. Dye said the Title 49 Committee wanted to see small, housekeeping fixes just once, if possible.

VI. Adjournment

The meeting adjourned at 1:05 pm.

Meeting Agenda of the City and Borough of Juneau
Title 49 Committee of the Planning Commission

Wednesday, July 10, 2019
Community Development Department
Large Conference Room, 12:00 pm

Members Present:
Nathaniel Dye, Travis Arndt, Shannon Crossley, Ben Haight

Members Absent:
Ken Alper

Staff Present:
Jill Maclean (CDD Director), Alexandra Pierce (CDD Planning Manager), Laurel Christian (CDD Planner), Amy Liu (CDD Planner), Marjorie Hamburger (CDD Admin)

I. Call to Order

The meeting was called to order at 12:02 pm.

II. Approval of Agenda

MOTION: *by Mr. Haight to approve the agenda.*
The motion passed with no objection.

III. Approval of Minutes

A. April 11, 2019 Draft Minutes

MOTION: *by Mr. Arndt to approve the April 11, 2019 minutes.*
The motion passed with no objection.

B. April 18, 2019 Draft Minutes

MOTION: *by Mr. Arndt to approve the April 18, 2019 minutes.*
The motion passed with no objection.

C. May 30, 2019 Draft Minutes

MOTION: *by Mr. Arndt to approve the May 30, 2019 minutes.*
The motion passed with no objection.

IV. Agenda Topics

A. AME2018 0004: Downtown Zoning

Ms. Liu and Ms. Christian's presentation reviewed existing conditions within the downtown Juneau Alternative Development Overlay District (ADOD), the assumptions underlying the recommended next steps for the Title 49 Committee, and staffs' recommendations including options for employing sliding or Euclidian zoning setbacks.

Ms. Liu said that since most of the lots that are non-conforming are in a D5 zone, staff used that as the basis for examination. Staff's recommendation is to contain zoning revisions within the ADOD boundary so as not to include those D5 properties in other parts of the borough.

Ms. Liu reviewed staff's assumptions that were based on feedback from the Title 49 Committee. Mr. Dye said that the assumption regarding avoiding the creation of new zoning districts was not a correct take-away from the previous conversation. He said his recollection was that the Committee did not want a new zoning district per neighborhood. However, similarly to the work being done by the Auke Bay Implementation Committee, a new zoning district could be warranted, potentially, to achieve the desired results.

Ms. Pierce said that the gist of staff's thinking was to approach the rezoning as an overlay district, not as a new district. Mr. Dye and Mr. Arndt both said they were not comfortable with that. Mr. Arndt said he wanted to combine the changes into one entity, not separate by neighborhoods. Ms. Pierce said that staff wanted to take an overlay district approach as opposed to creating a new zoning district. She said that this would keep things cleaner and with sliding setback proposals, etc. allow for manipulation within the overlay district while keeping zoning districts in place. Ms. Liu said staff was trying to modify dimensional standards for downtown, but new zoning would require a larger overhaul of the code.

Ms. Crossley asked if the new zone would have to be inserted into all tables in the code. Yes, said staff. Ms. Liu pointed out the not everything would change for the D5 zone and therefore would be worth keeping. Mr. Arndt said that the intent is to make the code easy, so he was in agreement with Ms. Liu's statement. Ms. Pierce said that she was not opposed to new zoning but this particular amendment being implemented by an overlay district seemed best. Mr. Dye said he was still not convinced. Auke Bay is messing around with zoning in that area, he said, therefore tables will change regardless.

Ms. Liu said that maintaining neighborhood character is another working assumption. There are amendments to Title 49 regarding non-conforming properties being worked on simultaneous to the downtown rezone effort, which can also help.

Ms. Liu shared staff's recommendations:

1. Modify setback exceptions.

Mr. Arndt said if the required setback were reduced to 3 feet, this would pick up 78% of the properties. Mr. Dye pointed out that if it were not a substandard lot, it would not meet the threshold.

Ms. Liu said there was not a recommendation to change how the setback would be calculated but a suggestion that the setback floor be reduced from 10 feet to 3 feet. Planners find that 10 feet is often not beneficial when reviewing plans in the downtown area. Ms. Liu asked the commissioners to consider if the modification was only appropriate to properties in the ADOD and not all of Juneau.

Mr. Dye asked for an explanation of a "substandard lot" versus an "existing substandard". Ms. Christian said the difference was an owner's lot versus those properties near to the owner's lot. If the required setbacks were reduced to 3 feet borough-wide, the language states "no less than half or 3 feet, whichever is greater".

Therefore, in a standard D5 zone the maximum reduction would be 10 feet for a front or rear. Mr. Dye said that the ADOD is an opt-in program. He asked if this made the assumption that the overlay district would work similar to a rezone. Ms. Maclean said it was important to clarify the purpose of this rezoning effort. Is it more about giving options to downtown property owners by allowing flexibility or preserving the character of neighborhoods? If the priority is the latter, then the overlay would be key to keeping that character.

Mr. Arndt said he agreed, however setbacks are minimums so even if the goal was to maintain neighborhood character, setbacks could be pushed back. He said he did not see the difference. Ms. Maclean said she was thinking in terms of maximum, not minimum setbacks.

Ms. Maclean said that it would be good to ponder the question she posed in order to help staff move forward – flexibility or character preservation. Ms. Pierce said it was her hope to get the project unstuck at this meeting. Meaningful feedback on the approach to setbacks and lot coverage was needed by staff to help them identify the direction in which to move forward.

2. Set boundary for new overlay district.

Ms. Christian said that there were two recommended options regarding the boundary for the overlay district. Dimensional standards would live in the overlay but there would be no change in density or use. Mr. Dye said he had recommended that the Blueprint Downtown Steering Committee think about uses instead of neighborhoods when developing a map of their area of examination, and he realized how strong the connection is in the community with neighborhood names. Ms. Pierce said that one reason why it would be appropriate to do an overlay for the ADOD is to not get bogged down by neighborhood boundaries.

Ms. Christian said that the sheets included in the meeting packet showed minimum lot sizes. She said the minimum lot size could be determined by neighborhood or by the whole ADOD boundary; the committee will need to direct staff on which way to go. She showed options for calculating setbacks. Ms. Maclean suggested taking a walk in the neighborhoods. Some properties have encroachments, she said, for example in the Flats on the alleys there are many houses with garages that butt up against the property line or against the alley.

Mr. Dye said in reviewing the minimum lot size table, he felt that the combined method was appropriate. Ms. Crossley asked if there was a change in the determination of setbacks on a property that was nonconforming on two sides would be possible for a property owner to add on a side of the home where there was plenty of room. Ms. Maclean said that is a reason to prefer sliding setbacks because the owner would have a sum total to work with and would have more flexibility in the situation described. If the decision is to institute sliding setbacks, she said, this comes back to the purpose and intent of the rezoning effort. It will be important to explain why these neighborhoods are unique and why the setback determination applies only here but not borough-wide.

Ms. Liu reminded the committee that for the determination of a sliding setback, the more sides a property has the calculation would change. Not all properties have just four sides. There will need to be a minimum so that at no point can the structure be closer than a minimum. Mr. Dye said he thought it would not be a good argument if a property with more than four sides could build closer to the lot line. Ms. Crossley asked how the calculation changes if there are more than four sides. Ms. Maclean said if the total is 25 feet, simply divide that number by the number of sides. Mr. Arndt said he wondered what the fire marshal had to say regarding minimums. He wondered if this issue would be tracked through the building permit process. Ms. Maclean said that if an applicant wanted to take on the added expense to have a closer setback that would be their choice. Mr. Arndt said he agreed with having a minimum but not with a maximum. Mr. Dye said he was not interested in pursuing maximums. He did not want to have a build-to line.

Ms. Crossley pointed out structures in downtown neighborhoods are very old and may be replaced with new construction. Mr. Dye said that situation was what sparked this rezoning effort. Mr. Arndt said he wanted to talk about the intent. He said his goal was to allow for flexibly and ease of use while preserving the character of neighborhoods.

Ms. Crossley said she was not worried about neighborhood character but was more interested in making a review easy on staff and being adaptable. Mr. Dye said in the situation of the "Cinderella House", the owners needed to demolish the original building and then applied for a variance to build the new home, which was denied. The ADOD was created as a result to make things work better. There was a need for a relief value, he said.

3. Determine minimum lot size.

Ms. Pierce said staff wanted more direction from the committee regarding lot size and setbacks. She asked how member saw this changing or developing along the desired lines. Mr. Dye asked if staff could see it working using the recommended combined areas and playing with permit applications versus how the ADOD is written. Ms. Liu said that cases using the ADOD are brought before the Planning Commission and would require more time for an applicant to have approval, if an average of setbacks were to be used. She said comparing that with lowering the numbers, certain neighborhoods will be helped, but others not so much.

Mr. Arndt asked why the same numbers are not being used. Ms. Liu said the tables were based on Ms. Boyce's suggestions for different neighborhoods. Ms. Crossley asked if there was worry about subdividing large lots. This could be of concern, said staff. Mr. Dye asked if a lot could be subdivided ignoring the zoning district. Ms. Maclean said that if the recommendation were to move forward with a recommendation of a 3,000-foot lot size in the Highlands, there would be a lot of pushback. Mr. Dye said he felt this was doable and could be tied to an event in time. Ms. Maclean said she felt it would be difficult to prove. Mr. Dye asked if the applicant would have to do the work to prove. He felt that some creative language could work.

Ms. Crossley said she was in favor of larger lots being able to subdivide for smaller lots. Ms. Pierce said there is concern about the character of the neighborhood being maintained, such as in the Highlands. Mr. Dye wondered if keeping the Highlands at the forefront of the conversation was of benefit.

Mr. Arndt said regarding the 3,000 figure, only the Highlands neighborhood comes out looking good. Ms. Maclean suggested the committee review the ADOD's purpose at 49.70.1200:

> *The purpose of the alternative development overlay district is to provide adequate minimum standards and procedures for the construction of new residential buildings and the expansion, restoration, or repair of existing residential buildings, while providing time to implement new zoning regulations. This article is intended to provide for the development of housing, preserve the character of neighborhoods, and promote the restoration of blighted buildings.*

Mr. Arndt said there was no fault of the property owners; the zoning was imposed on the existing properties. Ms. Pierce pointed out that in the Highlands there are many small lots in common ownership. Mr. Arndt asked if owners could build across the lot lines. Ms. Maclean said only if they were to consolidate the lots.

Ms. Crossley said she liked the sliding scale and understood why it may be important to keep the neighborhoods separate. Mr. Arndt asked what the biggest hardship for staff when reviewing plans was. Ms. Maclean said usually the setbacks, and also the ADOD is a time-consuming process for staff to do the research. Mr. Arndt

asked if the strategy were to not worry about nonconforming lot size, could that be taken off the list. Ms. Liu said that people need to apply for a Conditional Use Permit for accessory apartments on undersize lots. If the determination of what constitutes an undersized lot were to change, that would reduce staff work load and would not need to come before the Planning Commission. Ms. Maclean said that in the Highlands, financing is not a problem but it is in other areas. Making properties less nonconforming is a relief for owners. Ms. Pierce said there is a need to do something about non-conformity of lot size.

Mr. Dye requested that staff come back to the committee with a recommended strategy to reduce lot size. Mr. Arndt suggested excluding that from the equation. Mr. Dye said he felt that for setbacks, there should be one or two dimensions, and they should not slide. Ms. Maclean said that her preference was that only the front setback have a maximum in order to keep the streetscape in common with the neighborhood.

Mr. Dye said he thought there was a good reason not to build to a zero-side setback. He thought there should be some minimums in order to balance the reality of what is built and what could be built.

4. Determine whether sliding or Euclidean zoning setbacks should be implemented.

Ms. Liu said she detected a leaning towards using a sliding scale but having minimum setbacks for the sides. Mr. Dye suggested splitting the sliding scale. Mr. Arndt suggested a 20-foot count with a minimum of 3 feet on each side. Mr. Dye suggested there could be two sets of values – combined sides and combined front/back. Mr. Arndt said playing devil's advocate there could be a sum total of all the fronts.

Mr. Haight said he liked simplicity and a cumulative amount with a combined setback. He suggested a 2-foot minimum setback. This would allow for drainage and roof eaves. Mr. Dye said he wanted to look at the combined data with the Highlands included and without. Ms. Maclean suggested that before the next meeting staff could look at common ownership of adjoining lots and how many exist with an empty lot that could be built upon. Ms. Liu said that when she calculated the numbers, she did combine shared ownership.

Ms. Crossley asked if a neighborhood meeting had been held to see if the Highlands residents cared. Ms. Maclean said yes. A triplex owner was vocal in support, but most of the opposition came from the Highlands. Ms. Crossley reiterated that she wanted to hear from Highlands' property owners. Mr. Arndt asked how easy it would be to apply the overlay district.

Ms. Pierce discussed the contention at the Blueprint Downtown meeting regarding neighborhood boundaries. She said much time was spent discussing if both sides of Glacier Highway should be included in the Casey Shattuck neighborhood. Determinations such as this can be contentious when money and the ability to develop properties is involved. Mr. Dye talked about people self-identifying with a neighborhood and the variety of neighborhood characters in the downtown area. Ms. Crossley wondered about future generations in a neighborhood – the Highlands of today and the future.

Ms. Pierce reviewed her take-aways from the meeting:

- Look at numbers for sliding setbacks with minimums
    - Sides = combined x feet
    - Front and rear = combined x feet
    - Combined with 2 foot minimums
- Look at common ownership lots in the Highlands
- Come up with a strategy and recommendations regarding lot size
    - What is the strategy for the Highlands

- Recommendation regarding preventing subdivision of lots

Mr. Arndt made a point regarding the suggestion of 2 feet and suggested 2.5 feet instead, because he said 0-5 feet is for a fire setback, so 2.5 is half of that.

Ms. Maclean asked where Gastineau Avenue factored into the neighborhood tables. It was determined that it was not included.

Mr. Arndt asked if there were issues with setback exceptions modifications. Staff said this was an issue borough-wide. Mr. Dye suggested that staff regroup on that question. He asked if it was part of the scope of this ordinance or would be another Title 49 change. He said he thought the topic should be looked at similarly to the non-conforming section.

V. Committee Member Comments and Questions

The next Title 49 meeting will be Wednesday, August 7 at noon. A meeting is also scheduled for Wednesday, August 21 but this may change.

VI. Adjournment

The meeting adjourned at 1:05 pm.

Meeting Agenda of the City and Borough of Juneau
Title 49 Committee of the Planning Commission

Wednesday, August 7, 2019
Community Development Department
Large Conference Room, 12:00 pm

Members Present:
Nathaniel Dye, Travis Arndt, Shannon Crossley, Ben Haight

Members Absent:
Ken Alper

Staff Present:
Jill Maclean (CDD Director), Alexandra Pierce (CDD Planning Manager), Irene Gallion (CDD Senior Planner), Laurel Christian (CDD Planner), Amy Liu (CDD Planner), Chelsea Wallace (CDD Admin)

I. Call to Order

The meeting was called to order at 12:03pm.

II. Approval of Agenda

MOTION: by Ms. Crossley to approve the agenda.
The motion passed with no objection.

III. Approval of Minutes

A. October 15, 2018 Draft Minutes - Common Wall Section

MOTION: *by Ms. Crossley to approve the October 15, 2018 minutes – Common Wall Section.*
The motion passed with no objection.

IV. Agenda Topics

A. Proposed Rezoning of Downtown Juneau Alternative Development Overlay District Area

Before diving into meeting material, Ms. Maclean stated that she and Mr. Dye had discussed the meeting style and decided that it would be best to keep with the formal style of the meetings, rather than fall into a casual style that subcommittee meetings can sometimes become. She asked that everyone follow Mr. Dye's lead as the Chair of the Committee and allow him to direct the meeting as he sees fit.

Mr. Dye expressed support for Ms. Maclean's recommendation and asked for a brief overview of what would be discussed at the meeting.

Ms. Christian gave a brief overview of what the meeting agenda consisted of and started her presentation with the Highlands area of downtown Juneau. Ms. Christian showed a map with the Alternative Development Overlay District (ADOD) boundary lines and which lots are non-conforming, and discussed why minimum lot

size for the highlands area should remain within the range of scope, noting that while the Highlands are more conforming than other neighborhoods, they still experience similar challenges as other neighborhoods during remodeling that changes building footprint and requires variances or an Alternative Development Permit (ADP).

Mr. Dye pointed out that some of the lots highlighted as non-conforming in the Franklin Street area were not included in the boundary lines and asked for the reasoning behind this.

Ms. Liu stated that this was an error in the map, but it did not affect the data that goes with this information.

Mr. Dye asked that the lines be fixed and everything matches up.

Ms. Christian stated they would fix the map and moved forward to the ADOD boundary and the sliding setback method and some pros and cons for this method. Ms. Christian stated that Staff needed specific language on why this would only apply to downtown Juneau, and not the entire borough.

Mr. Dye asked if that language would just be for the introduction.

Ms. Christian replied that it would be just for the introduction and moved forward to show a map that displayed the dimensional standards for each zoning district that was included in the ADOD. She discussed how the underlying zoning for uses and density would remain the same and new dimensional standards would supersede the underlying Table of Dimensional Standards requirements. Ms. Christian then presented some numbers of conformity with the recommended adjustments to setbacks, noting that they extended the setback to 3 feet, rather than just 2.5 feet. She stated they were recommending a minimum 20’ setback sum for all side of a lot.

Mr. Arndt noted that the cases showed more conformity than the minimum.

Ms. Pierce stated that, that was the rationale behind extending to 3 feet. Since 2.5 feet brought most cases up to the minimum conformance, they decided to extend to a 3-foot setback and this brought more cases into conformance.

Mr. Arndt expressed support for this and felt that it should be put in code, especially because people would need to know this information for the fire code requirements.

Ms. Christian pointed out that the Starr Hill case was the least conforming for the examples they chose, but all the others came much closer to conformance with the 3-foot minimum setback.

Ms. Maclean stated that if Committee members were satisfied with the numbers, then consideration should be given for just accepting the Starr Hill case with all of the issues, as is, and knowing that it will not be able to completely come into conformity.

Mr. Dye and Mr. Arndt stated they had no concerns with this.

Ms. Christian stated that even with a setback of 1 foot, they would still not see all non-conforming cases come into conformity. She used the Casey Shattuck case as an example, showing the current existing conformity to compare to the improvement of adopting a 3-foot setback, noting that it is important to

embrace how much it would be improved, rather than focusing on the fact that it doesn't become completely conforming.

Mr. Dye thought the information was good, but might be more easily understood by members of the public if the columns were broken out more and showed just the percentages of conforming, instead of duplicating columns.

Ms. Christian agreed and showed a new slide with conformity examples of a 3-foot setback in the D5 Zoning District.

Mr. Arndt stated that he felt the previous slide was very good and showed a better overview of the improvements for neighborhoods.

Ms. Christian pointed out that the neighborhoods aren't broken up in zoning districts other than D5. .

Mr. Arndt asked if these properties were considered in the previous slide.

Ms. Christian stated that they were not, because this slide showed just the D5 Zoning.

Ms. Pierce stated that this information could be looked at from the public's point of view and adjustments could be made as necessary.

Mr. Dye felt it would be best to concentrate on the neighborhoods, in order to help people better understand the information.

Mr. Arndt agreed and expressed support for showing the improvements in the neighborhoods. He suggested considering showing it via whole zones, as well.

Mr. Dye agreed and felt that the information could be simplified more.

Ms. Christian agreed and stated that Staff had come up a few examples to show how the sliding setbacks work. Ms. Christian showed a new slide with an example of how the sliding setback could work. She noted that Staff had discussed the examples and how to consider changing, or not changing, the lot coverage, because the setback box is not very constraining.

Ms. Crossley pointed out that the ADOD was currently at 60% coverage, but 50% was being suggested in this example. She asked for the reasoning behind this.

Ms. Christian replied that in the D5 zoning district, maximum lot coverage is 50%. If an applicant applied for an Alternative Development Permit through the ADOD section of code, that could be increased to 60%.

Ms. Maclean stated that Ms. Christian was correct. When the ADOD was being discussed, Staff chose a higher number than what they thought would work, based on the variances they had seen at the time and other factors.

Mr. Dye also noted that the ADOD was developed quickly, as people needed a better method to develop than the method that was currently in place. He asked if this example was conforming.

Ms. Christian stated that it was non-conforming, but the porch might be a setback exception. She said that this house was chosen as an example, because it had an extra side.

Mr. Dye expressed concerns with this example, believing that people may think they will lose space, and suggested using a different example for the public.

Ms. Christian agreed. She then moved on to the next example, stating that this case may not be able to come into full conformity, but it could definitely be improved. With the sliding setback box, a 3-foot setback could be applied on each side except the rear. This would bring the house into full conformity, except on one side. Staff could not find a way to fix all sides with this method, but would be able to fix all sides, except one. Ms. Christian then presented the next example, noting that it is a corner lot with standard setbacks, and is non-conforming on the front side.

Mr. Arndt asked how this house was a non-conforming case.

Mr. Dye thought the setback box may not be positioned correctly.

Ms. Christian explained the lot has a front yard and a street side yard setback and also has a side along an Alley.

Mr. Dye asked if the front yard is what was considered the street side.

Ms. Christian replied that this was correct.

Mr. Arndt asked one was allowed to choose which side would be the front and which would be the rear, if there was more than one right-of-way.

Ms. Christian stated that it was possible this house received variances for their development.

Mr. Dye expressed concerns with Mr. Arndt being able to “poke holes” in these examples and felt that it would be best to have examples that more straight forward.

Ms. Pierce stated that this discussion was helpful for clarification, but in terms of the examples shown, Staff could find better examples that were less confusing for the public, and more straightforward. She felt these examples were very helpful for Staff, but explaining them to the public and to the CBJ Assembly might prove more difficult.

Mr. Dye agreed with Ms. Pierce.

Ms. Crossley asked if the alley was considered the front yard for this example.

Ms. Christian stated that it was not.

Mr. Dye clarified this example for Ms. Crossley.

Ms. Crossley then asked if the alley would be considered a side, not a right-of-way, if someone were to take this building down and build a new house.

Ms. Christian stated this would be possible.

Mr. Dye pointed out this would be possible, but not if they used the alley for access.

Ms. Crossley agreed.

Ms. Christian also agreed and noted that with the setback box, they come into conformity.

With as-builts being complicated, Ms. Maclean suggested showing the existing structure with the perimeter, as that may be very helpful, especially for public meetings.

Mr. Dye agreed with Ms. Maclean.

Ms. Christian then moved forward to the next example, showing a Starr Hill lot that is nonconforming under the current standards. She showed that the sliding setback box can get the lot closer to conformity, but not completely. However, conformity could still be possible, if the arctic entry met the setback exception requirements for arctic entries.

Ms. Crossley stated that she is working on a separate project that has outdated as-built drawings and noted that theses as-builts being used as examples may fall into the same era. She wondered if it would be possible to get new as-builts, if the patron came into conformity.

Ms. Christian stated that this would be possible. She asked if anyone had any other questions regarding what had been presented thus far.

Mr. Dye did not have questions, but spoke in favor of a 3-foot setback and the sliding setback box method with 20 feet, as well. Regarding lot coverage, Mr. Dye suggested that the limit for lot coverage should be some kind of function, but tricky lots needed consideration, as well.

Ms. Christian stated that some numbers could be brought to the next Committee meeting regarding lot coverage.

Mr. Dye felt this would be good and moved the conversation on to minimum lot size.

Ms. Liu presented a slide showing the ADOD perimeter and also separately showing the D5 zoning areas within the ADOD perimeter and gave a brief explanation of the boundary.

Mr. Dye asked if the minimum lots size only included the boundary lines drawn.

Ms. Liu stated that a recommendation would be made by Staff and they would go into how it could improve conformity.

Ms. Christian stated that this map did not show the D18 zones, but they would be discussed.

Ms. Liu stated that Staff recommends a minimum lot size of 3500 square feet, but that could be adjusted. Staff is suggesting 3500 square feet, because the D10SF was modeled after the Casey Shattuck case, there is familiarity with it, and it can be compatible with the neighborhoods. Staff broke down examples by

neighborhoods to show conformity by neighborhood. Ms. Liu noted that it is important to take into account what the improvement would be, rather than just looking at if it goes from nonconforming to conforming.

Mr. Dye pointed out that the combined percent conforming goes from 23% to 70%.

Ms. Liu agreed and stated that there was a point to be made on what a 3500 square foot lot looks like. Ms. Liu gave a brief explanation of why staff recommends 3500 square feet and what it would mean for the neighborhoods. She noted that any concern of large increases in neighbors shouldn't be too critical. Ms. Liu then moved forward to hazard areas, showing a map of the ADOD perimeter and the hazard areas within and around the perimeter.

Mr. Dye pointed out that this was still being approached as an overlay, but thought the idea had been suggested that this did not apply to subdivision. He asked if this was correct.

Ms. Maclean stated that she did not recall.

Ms. Arndt remembered talking about the dates of everyone's plats.

Mr. Dye felt the biggest potential is to subdivide, so he thought it best not to start that discussion.

Ms. Christian indicated that subdivision was currently possible, but only for bungalows.

Mr. Dye stated that this wasn't to increase density in terms of number of lots, but he felt it would be advantageous to the public argument.

Mr. Arndt noted that there has been some public comment on it already and the public is not in favor of it.

Ms. Maclean thought it best to move forward with both ideas. She noted that there were many people present, but concerns were only heard from three or four people. Ms. Maclean felt it would be advantageous to pursue both ideas and have multiple options.

Mr. Arndt thought it may be better to let properties try to conform to standards, rather than allow for bungalow subdivisions. He asked if the 6,000 square foot lots meet the standards for the 7,000 square foot lots.

Ms. Liu stated that some lots exceed 14,000 square feet in this area, but they would not be able to subdivide due to the hazard zones.

Mr. Arndt noted that the purple boxes in the presentation are 6,000 square feet, and asked if they stay with the 7,000 square feet.

Ms. Christian stated that she could update the map.

Mr. Dye noted that this may nullify a good portion of this argument.

Mr. Arndt asked about downsizing to a 3,000 square foot lot.

Mr. Dye stated that a 3,000 square foot lot was not a good idea, because there would not be many more lots that come in to conformity by reducing the minimum lot size.

Ms. Liu affirmed that it was sort of diminishing returns, but Staff also tried to take the concerns about subdivisions into consideration and didn't want to provoke more concerns.

Ms. Pierce stated that 3,500 square feet requirements already exist in code, as well.

Mr. Dye thought it would be good to have multiple choices. He asked Staff to show examples with 3,500 square feet and 7,000 square feet to see the difference. He noted that D10SF may have been modeled after Casey Shattuck, however this may not have been the best model, and the 3,500 square foot requirement may be adjustable.

As the models get closer to 3,000 square feet, Mr. Arndt wondered when it would become impractical to build. He felt that a 3,500 square foot lot made sense and maybe shrinking to a smaller lot wouldn't be beneficial, because a developer wouldn't be able to build much.

Ms. Liu presented an example with a 3,500 square foot lot. She pointed out that this lot has 28% lot coverage, which is below the 50% requirement for D5 and Staff wanted to gauge the comfortableness with this lot size and everything that comes with it.

Ms. Maclean asked if the garage was included in the lot coverage percentage.

Ms. Liu stated that is was not included and she had used the Assessor's database to gather the information.

Ms. Maclean felt it would be better to see a different example, or to estimate the garage size and account for it in the coverage.

Ms. Liu stated that this would be possible for Staff to do. She wanted to gauge if the Committee felt it would be appropriate to look at smaller models than this, if lots should be bigger, or if this size was appropriate.

Mr. Dye stated that he does not reside in the Highlands area of downtown, but he thought this example looked more open than what most of the Highlands area looks like.

Mr. Haight thought this was a much smaller house that what is typically seen, as most people develop more and reach the coverage limit.

Ms. Pierce felt this example was a good fit and represented the character of the neighborhood well.

Ms. Maclean thought that this lot being the corner lot might make it look more deceivingly open than what it is and Mr. Arndt agreed with her.

Ms. Liu noted that while there will still be nonconforming properties in this area, most would be in the Casey Shattuck neighborhood. She then moved forward in the presentation, onto minimum lot size.

Mr. Arndt asked if the numbers Ms. Liu was showing were for the rest of the Borough.

Ms. Liu replied that they were.

Mr. Dye asked, hypothetically, if bungalows should have a minimum lot size of 1,000 square feet for the overlay.

Ms. Liu replied that this was not necessarily needed, and that a lot supporting a larger structure should be a bigger lot. She noted that consideration in how it may affect others should be give when making the changes for single-family homes, as well.

Mr. Dye asked if there were issues with common wall dwellings when considering two units versus three units.

Ms. Maclean replied that there were no issues with this. She pointed out that, when looking at this information, it would be helpful to know that there are duplexes and triplexes, what their lot sizes are, and how they could come into conformity.

Mr. Arndt asked what the difference is between common walls and duplexes.

Ms. Maclean replied that residential common walls are located on their own lot, but share a wall, with the lot line running through the shared wall and property. Duplexes are completely on one lot and owned by the same owner.

Mr. Dye stated he struggled with this concept, as well. The Committee had previously decided to stay away from Use completely; however adding duplexes and triplexes opens that topic again. Mr. Dye felt that there isn't a lot of common wall or duplex construction in these subject areas, so discussion on this subject may not be needed.

Ms. Pierce felt it was a worthy topic for conversation and it would be good to consider the diminishing returns numbers.

Ms. Crossley spoke in favor 7,000 square foot minimum lot size and the sliding setback box. She also noted that while there may not be many duplexes now, more options could be left open. Ms. Crossley then departed the meeting at 12:55pm.

Mr. Haight noted that the basic appearance of the subject areas is single-family. He asked if adjusting the common wall duplex would change the appearance and if the original appearance should be maintained.

Mr. Dye stated that he was less nervous about fixing the numbers regarding bungalow lots, but if there was a demand for it, it could be discussed.

Mr. Arndt suggested focusing on the overlay, changing lot coverage and setbacks, and leaving the other topics for a later discussion.

Ms. Christian pointed out that the numbers presented by Ms. Liu show that there aren't many homes that can go from single-family to duplexes.

Mr. Arndt asked for some clarification on the minimum lot size, which was provided by Ms. Christian. Mr. Arndt noted that while the changes weren't large, the Committee may be unnecessarily changing numbers.

Mr. Dye pointed out that the changes were small, but if you change 25% of the character, it means it's not the same. He noted that it largely depended how things progressed.

Ms. Christian also pointed out that on a 3,500 square foot lot someone could have a bungalow today.

Mr. Dye agreed and felt it would be best to leave this topic for a later discussion. He asked if anyone had any questions or if more information was needed at this time.

Ms. Liu asking what the Committee would like to see from Staff at the following meeting, noting that Staff would keep digging into the recommendations.

Mr. Dye spoke in favor of the 3-foot minimum setback and the 20-foot setback sum and felt this should be for all zones. He stated that he would like to see the information on minimum lot size again, with examples of 3,500 square feet versus 7,000 square feet.

Mr. Arndt stated that he would like to see a map with the 3,500 square feet and 7,000 square feet, as well.

Mr. Dye agreed. He also stated that he would like to discuss the underlying zoning districts more and not allowing subdivisions through this, with opinions on what may be best.

Mr. Haight asked about lot coverage and Mr. Dye stated that the Committee would like a recommendation for that as well.

Ms. Maclean stated vegetative coverage should be discussed, as well.

Mr. Arndt felt that changing the table for duplex common walls and exclusion would bring the Committee back to the beginning goal and if the goal is to not create more lots, then that is the path the Committee should take, moving forward.

Mr. Dye pointed out that the ADOD was developed at the Planning Commission's request and was done quickly, with the Committee trying to maintain the character of the neighborhoods. He felt there is good argument to leave subdivisions out of the discussion, but if Staff felt the Committee should discuss it, they would.

Mr. Arndt felt the topic of vegetative coverage would be an easy one to settle.

Mr. Dye asked if there were any other questions or if anyone had anything else to discuss.

Ms. Pierce felt that this discussion was very helpful for Staff and answered a lot of questions they had, giving them more direction to move forward with.

Mr. Arndt and Mr. Haight spoke in favor of the 20-foot setback sum and both felt Staff did a great job in preparing and presenting this information.

Mr. Dye asked when the Committee and Staff would like to meet next. After some deliberation, the group decided the next meeting date would be September 4, 2019.

V. Committee Member Comments and Questions

VI. Adjournment

The meeting adjourned at 1:16pm.

Meeting Agenda of the City and Borough of Juneau
Title 49 Committee of the Planning Commission

Wednesday, September 4, 2019
Community Development Department
Large Conference Room, 12:00 pm

Members Present:
Nathaniel Dye, Travis Arndt, Ben Haight, Ken Alper

Members Absent:
Shannon Crossley

Staff Present:
Jill Maclean (CDD Director), Alexandra Pierce (CDD Planning Manager), Irene Gallion (CDD Senior Planner), Laurel Christian (CDD Planner), Chelsea Wallace (CDD Admin)

I. Call to Order

The meeting was called to order at 12:07pm.

II. Approval of Agenda

MOTION: by Mr. Arndt to approve the agenda.
The motion passed with no objection.

III. Approval of Minutes

A. July 10, 2019 Draft Minutes

MOTION: *by Mr. Arndt to approve the July 10, 2019 minutes.*
The motion passed with no objection.

IV. Agenda Topics

A. <u>Proposed Rezoning of Downtown Juneau Alternative Development Overlay District Area</u>

Ms. Christian had prepared a memo and started a presentation for the Committee, noting that minimum lot size, lot coverage, subdivisions, and dimensional standards would be discussed at this meeting. Ms. Christian stated that when she and CDD Staff were looking at new zoning areas, they had a desire to keep the character of the neighborhoods as they are, but also bring new aspects, as well. Staff recommended 3,500 square feet as the minimum lot size, showing a table with the percent conforming with 3,500 square feet as the minimum lot size. Ms. Christian asked what the Committee thought about this regulation.

Mr. Dye asked what the standard minimum lot sizes were for D10 and D18 zones.

Ms. Christian replied that the standard minimum lot size for is 6,000 square feet and 5,000 square feet for D10 and D18, respectively.

Mr. Alper noted that some houses were within the Alternative Development Overlay District (ADOD) boundary, but were zoned Mixed Use (MU).

Ms. Christian affirmed that there are some MU lots within the ADOD.

Ms. Pierce stated that Staff was trying to focus on the majority of the lots at this time, and will work on the MU lots more, after the bigger parts are reviewed and decided on.

Ms. Christian recalled questions from the previous meeting regarding the red lots toward the bottom of the ADOD boundary that were not fully included within the boundary. To follow up on those questions, she stated that the parcels share a parcel code, so they were unable to separate the parcel on the map.

Mr. Arndt clarified his understanding of the percent conforming with the different lot sizes and asked if the total number of lots within the ADOD was known.

Ms. Christian stated that Staff did not have that information at that time but could get the information for the next meeting.

Mr. Dye asked if Staff had an estimate of the number of MU lots within the ADOD.

Ms. Christian estimated around 30 or 40 MU lots within the boundary, but said she was not sure and could get the exact number

Mr. Dye asked what the minimum lot size in the MU districts is.

Ms. Christian replied that it is 4,000 square feet.

Mr. Alper asked, for the 28% currently nonconforming, if the new code would be the path toward options for development for those properties.

Ms. Christian stated yes.

Mr. Dye asked if a regulation of 3,000 square feet was considered and if there were any particular reasons it might be too small.

Ms. Christian stated that it was more about the balance between building area and creating lots that were conforming. Additionally, if smaller lots were allowed, there would be more future subdivision potential, which some neighbors had expressed was not desirable. The 3500 recommendation mirrored bungalow lot sizes for D5, which is a known number in the community.

Ms. Pierce reinforced this, stating that Staff was trying to tie the regulation to existing developments, but this could be adjusted, if the Committee saw fit. Ms. Pierce noted that there are a lot of buildings on small lots and Staff wanted to keep the character of the neighborhoods. The smaller regulations for minimum lot size also open up more potential for subdivisions.

Mr. Dye thought it might be worth adjusting the regulation, if it brings more developments into conformity, and thought 3,000 square feet would be a good choice.

Mr. Arndt thought if lot coverage drives part of this regulation, then it may be good to discuss that.

Mr. Dye agreed.

Ms. Pierce recommended reviewing a 3,000 square-foot requirement more, and moving forward into the other topics before fully deciding.

Ms. Christian stated that Staff was not recommending a change for the maximum lot coverage regulation, showing slides with more information and some pictures for examples. The first example showed a lot with 51% lot coverage, but noted that the porch on the house was not included in the percentage.

Ms. Maclean asked if the deck on the house was part of the percentage of lot coverage.

Ms. Christian stated that the deck on the rear of the house was not included in the percentage.

Ms. Maclean clarified that anything that has a cover would be included in the percentage; for example, a deck on the house with a roof covering it. If there is no covering, then it is not included in the percentage.

Ms. Christian presented a few more examples including a 4,663 square-foot lot with 30% lot coverage and a 2,698 square-foot lot with 45% lot coverage.

Mr. Arndt thought the last example seemed to have more than 45% lot coverage.

Ms. Christian stated that Staff used the as-built drawings when deciding on the examples. She noted that when thinking about lot coverage, using the sliding setback box helped make things more flexible and Mr. Arndt agreed.

Ms. Christian moved the conversation forward to allowing future subdivisions in the ADOD and the use of ADOD dimensional standards. Staff wanted to match the character of the neighborhoods, but also allow for future development, so they wanted to find the balance, without removing the old feel. Ms. Christian presented a few slides with more information, showing the common ownership and why some areas are not included in the boundary, and some hazard areas, as well.

Ms. Maclean was happy to see which properties crossed the boundary on the map, noting that the ADOD was explicitly only for residential use.

Ms. Christian stated that Staff would like to know if the Committee would like these areas to have the same regulations as the ADOD lots.

Mr. Dye asked how the ADOD was restricted to residential use only.

Ms. Maclean stated that when the boundary line was drawn, it was intended to be temporary. Some changes have come, but Staff tried to follow where there were only residential lots and exclude the MU lots, but some areas have been adjusted. The MU lots already have regulations that are much less strict than the others are. Ms. Maclean suggested looking at the boundary line more and being more specific with the lots that are included.

Mr. Dye noted that the lots from the Starr Hill Church area and down are all zoned MU.

Ms. Maclean suggested looking at redrawing the ADOD boundary to only include residential lots and exclude all MU lots.

Mr. Dye noted that all the calculations have been made with lots that are not zoned MU.

Ms. Christian asked if the Committee would like to see numbers for the MU lots at the next meeting.

Mr. Arndt asked if some lots were zoned MU2, or if all were just MU.

Mr. Dye stated that there were just MU lots, no MU2.

Ms. Pierce recommended that the information regarding the MU lots be heard at the next meeting; for that day's purpose, it might be best to focus on the information at hand and the MU lots could be discussed more when more information was gathered.

Mr. Dye agreed and thought the discussion on the MU lots would be easily completed. He thought it would be good to see the boundary redrawn, showing how many lots were excluded, but wasn't sure if the extra work would be necessary, as there may not be many lots excluded.

Mr. Haight thought it would be good to redraw the map and talk about MU at a later meeting.

Mr. Arndt thought it might be unnecessary, extra work for Staff and Mr. Dye agreed.

Ms. Pierce asked if the Committee was comfortable with the recommendations regarding subdivisions.

Mr. Arndt recalled from the previous meeting that the Committee and Staff wanted to consider having 5,000, 6,000, and 7,000 square-foot regulations to see how things would work and Mr. Dye agreed.

Ms. Maclean stated that the different regulations could be considered. Then, if the hazard maps change, the work would already be done for that portion, as well.

Mr. Arndt asked if Staff had information for the smaller lot sizes.

Ms. Christian stated they just had the information being shown and asked if the Committee would like to see the information for 5,000 square feet, as well.

Mr. Dye and Mr. Alper stated that they would like to see that information at the next meeting.

Ms. Christian then presented a table with some changes and recommendations, stating that Staff recommended no changes to maximum lot coverage, maximum height, or minimum vegetative cover. Staff performed site visits and did not see many situations where vegetative cover and height were a problem. Ms. Christian noted that staff reviewed as-builts for 82 lots in the ADOD boundary and the average lot coverage was 33%.

Staff recommended changing the regulations for common walls to be consistent with what the minimum lot size for a single-family dwelling that is decided on. If a smaller regulation than 3,500 square feet is sought, then the

regulations for bungalow lot sizes may need to be changed, as well. Ms. Christian asked if the Committee was comfortable with the height, vegetative coverage, and maximum lot coverage regulations.

Ms. Maclean stated that Staff had previously discussed decreasing height with the Committee, and the Committee was strongly opposed to reducing the height requirement. She stated that it may not be necessary to address it at this time, but it may be good to discuss what is, and is not, working with the height.

Ms. Christian stated that lot coverage could also be increased, but that topic hadn't been seen, yet.

Mr. Arndt thought it might be more of a paperwork difference, rather than a development difference.

Ms. Maclean stated that, as far as dimensional standards go, Staff was working on common walls and updating the numbers with Title 49. Historically, when common walls were introduced, they were not common at all. Ms. Maclean thought this may have been due to lack of information regarding them and Staff was working on changing it.

Mr. Dye asked if Staff was now looking for recommendations on minimum lot width and depth.

Ms. Pierce stated that the table being shown was why Staff had waited to talk about lot size. She thought this was a good time to talk about considering how a 3,000 square-foot regulation would affect the dimensional standards.

Ms. Christian asked if the Committee would like to hear the information on duplexes.

Mr. Dye stated they would.

Ms. Christian presented a slide on duplex lot size, stating there were a couple options, with pros and cons to each option. She noted that the D5 lots do contradict the D10 lots in some way, but because it's based on density, the square footage per acre is needed and allowing the duplex lot size to be the same in every lot would also contradict matters.

Ms. Maclean thought that, when it comes to density, it would be best to be consistent with how density is regulated in all of the CBJ and consistency should be used for the duplexes, as well. She noted that there is currently an ordinance being worked on to change the accessory apartment regulations. Duplexes currently are not allowed to have accessory apartments, but Staff is working to change that.

Mr. Dye thought that reducing the minimum lot size so drastically would not be remaining consistent with other regulations. He noted that many examples have been reviewed and asked if this would be an opt-in plan or a full rezone.

Ms. Christian stated that Staff planned to move forward with the ADOD overlay boundary and it would not be an opt-in plan.

Ms. Maclean noted that, even if the main focus is on residential, Staff knows there are other zones, as well, and looking at the Table of Dimensional Standards shows the square footage regulations.

Mr. Dye asked how regulations would be adjusted for single-family lots vs. multi-family lots.

Mr. Haight clarified that it would be like the Flats area of downtown having a unique density. The suggestion is to maintain that character, so maintain the density. Everyone wants it set so that it doesn't increase the density.

Mr. Dye thought that, since the ADOD is not an opt-in plan, there may be good argument to rezone to a new district. He asked if the Table of Permissible Uses (TPU) is different enough to worry about this.

Ms. Christian stated that it was a consideration of commercial uses vs. residential uses.

Ms. Maclean stated that there was less concern with the D10 and D18 lots and what could be allowed there. She noted that use in the Flats area is pre-dominantly residential and there is some worry about commercial uses.

Mr. Dye asked if the structure deterred from the harmony of the Flats.

Ms. Pierce thought that it did not. She stated that the purpose of looking at it this way was to maintain the character of the neighborhood. It also helps avoid talking about uses and just considers the residential aspects and gets the lots into conformity.

Mr. Arndt felt that the ADOD, as an overlay, has 3 or 4 goals in mind and if it were changed to a full rezone, instead of an overlay, then that may create many new problems.

Mr. Dye felt there was already information that considers everything with the underlying zoning of the Flats and older neighborhoods only built by the TPU. He thought it might be worth considering two zoning districts, with the dimensional standards being the same and adjusting the TPU with specific regulations.

Ms. Maclean felt there were two trains of thought occurring. This all started to attempt to fix the things CDD consistently received variance applications for, and the uses were not the issue at hand. Creating a new zoning district in Auke Bay is currently ongoing and that committee has had discussions about how many districts should be created. Ms. Maclean felt that opening up the topic for uses would make this a much bigger conversation, that would lead to include the Blueprint Downtown work and future Douglas work.

Mr. Dye agreed, but felt that the uses would not have to be changed, and it could be left to the TPU. Mr. Dye thought that if consideration was being given to rezone all of CBJ, then consideration should be given to making small changes vs. adding overlays and attempting to fix things later.

Mr. Arndt thought that looking at and combining everything would be good, but then the variance problem would ensue. Mr. Arndt thought creating an overlay would be the groundwork for the bigger work that would come later on, but the other process could take 5 to 10 years.

Mr. Haight agreed and spoke in favor of transitioning, with more time to understand the consequences.

Ms. Maclean asked for clarification if the Committee would like to see overlays with changes of uses, or without, noting that there was different timing for the big changes.

Ms. Pierce stated that the new Comprehensive Plan will create the opportunity to update TPU and everything else. She thought that if the Committee would like to look at the TPU in the future, and create a district for downtown Juneau and Douglas, then the guidelines of the overlay could be used to make this happen, without having to go through a rough process around uses. It is possible to solve one problem, see the other problems that come with it, and still make progress.

Mr. Dye stated he was okay with that and the overlay.

Ms. Christian then presented some pictures of duplexes from Staff's site visits, noting that there were 17 duplexes within the ADOD boundary and they did not seem out of character with the existing neighborhood.

Ms. Christian discussed the example duplexes noting that some lots are clearly quite tight, especially on Gastineau Avenue.

Ms. Maclean asked if the example being shown had received a variance.

Ms. Christian stated they had received a variance for the setback. She then showed a new example, noting that it wasn't much different from the others in the area.

Mr. Dye asked if duplexes usually only have one address with and "A" or "B" assigned to each side.

Ms. Maclean stated that, that did not always occur, as people are able to change it.

Mr. Alper went back to the duplexes options, asking how the number of 5,250 square feet was calculated for reducing according to existing ration.

Ms. Christian stated that the number was calculated for D10 and D18 by the density calculation which takes the square footage of an acre and divides is by 10 units per acre then multiplying by two units for a duplex.

Mr. Arndt asked if duplexes were allowed in those districts.

Ms. Maclean stated that they were multifamily lots, so duplexes were allowed and Ms. Christian reaffirmed that the TPU states duplexes are allowed in those multifamily zone districts.

Mr. Dye felt it would be unnecessary to do the math for reducing density. He thought the regulations being used for others would not have to apply, and it would be okay to use what is cohesive for that area. He asked if anyone had any concerns with this.

Ms. Pierce stated she had no concerns with this. She suggested the Committee now discuss minimum lot size and consider how that would apply to a duplex and other dimensional standards. Staff thought 3,000 square feet was reasonable, but wanted to discuss the other topics first.

Mr. Dye stated he would like to see how many subdivisions could be developed if the minimum lot size was 3,000 square feet.

Mr. Alper thought if a smaller regulation was made, adjustments may be needed at a later time due to a need for variances.

Ms. Pierce recapped that at the next meeting Staff would have maps and numbers showing the minimum lot size and subdivision potential for 3,000 and 2,500 square-foot lots. Staff would also adjust the dimensional standards down by ratio for the smaller lot sizes. Ms. Pierce asked if everyone was okay with the concept, theory, and scaling everything down.

Mr. Dye stated he was okay with everything. He asked if it mattered what the minimum lot width and depth square footage should be and if the ADOD needed those numbers.

Ms. Christian stated it would matter for future subdivisions and that the committee should determine if future subdivisions will be allowed at the next meeting

Mr. Alper asked if there were setback requirements.

Ms. Christian stated there are setback requirements, as well.

Mr. Arndt stated that the decision comes back to if the Committee wanted to allow subdivisions. He noted that if they did not want to allow subdivisions, this discussion would go away, so it would be best to decide if subdivisions are wanted or not.

Mr. Dye asked if Mr. Arndt was conceptually okay with them.

Mr. Arndt replied that he was.

Mr. Dye asked if Mr. Arndt was conceptually okay to allow subdivision anywhere in this area.

Mr. Arndt replied that he was, but he would like to think about it more.

Mr. Haight felt it would be best to see more information and see what's actually feasible, before making a decision. He asked if the lots that could subdivide would feasibly work.

Mr. Dye asked if there was a chart with all the lot depths and widths.

Ms. Christian stated they did not have that information on hand.

Mr. Dye stated the Committee would like to see those numbers at the next meeting and see what everything looks like.

Ms. Pierce felt that this information would not drastically change anything. She noted that concerns had been heard regarding losing the option to subdivide, but also with neighbors being able to subdivide.

Mr. Arndt, referencing the ADOD boundary map, noted that the purple lots are already subdivided, so Staff and the Committee would just need to focus on the red lots, unless the Committee decided to force them to combine, which would make the purple lots go away.

Mr. Dye asked, if the square footage regulation was lowered, if the purple lots could potentially subdivide into 3 lots.

Mr. Arndt said with that approach, that potential could then apply to most everything.

Ms. Pierce stated that Staff was mostly looking at the red boxes and staying away from the shared lots and with the existing lots, the red lots would likely not cause much change in this conversation.

Ms. Maclean stated that the big properties, like Telephone Hill and the cemetery, could be removed and areas like park space that is set aside as parks can be excluded, to get a better idea of everything.

Mr. Dye felt that removing the MU lots would also help.

Mr. Arndt stated he would be in favor of moving to lower numbers if subdivisions were allowed and looking at the other square footage didn't show big changes in the numbers.

Mr. Dye asked if there were any other questions.

Ms. Gallion, for clarification for Staff, asked if the Committee wanted to see new boundaries and exclude the MU lots.

Mr. Dye replied that, that was correct and asked if everyone was okay with everything else.

Staff and the Committee stated everyone was okay with what had been discussed.

V. Committee Member Comments and Questions

Mr. Dye asked when everyone would like to meet next.

After some deliberation, Staff and the Committee decided to meet on October 2, 2019.

VI. Adjournment

The meeting adjourned at 1:21pm.

Meeting Agenda of the City and Borough of Juneau
Title 49 Committee of the Planning Commission

Wednesday, October 2, 2019
Community Development Department
Large Conference Room, 12:00 pm

Members Present:
Nathaniel Dye, Travis Arndt, Ken Alper, Shannon Crossley

Members Absent:
None

Staff Present:
Jill Maclean (CDD Director), Alexandra Pierce (CDD Planning Manager), Irene Gallion (CDD Senior Planner), Laurel Christian (CDD Planner), Amy Liu (CDD Planner), Chelsea Wallace (CDD Admin)

I. Call to Order

The meeting was called to order at 12:05pm.

II. Approval of Agenda

MOTION: by Mr. Arndt to approve the agenda.
The motion passed with no objection.

III. Approval of Minutes

A. August 7, 2019 Draft Minutes

MOTION: *by Mr. Arndt to approve the August 7, 2019 minutes.*
The motion passed with no objection.

B. September 4, 2019 Draft Minutes

MOTION: *by Mr. Arndt to approve the September 4, 2019 minutes.*
The motion passed with no objection.

IV. Agenda Topics

A. Proposed Rezoning of Downtown Juneau Alternative Development Overlay District Area

Ms. Liu gave a brief overview of what was discussed at the previous meeting and how the Committee had directed Staff to prepare for the current meeting. This meeting would attempt to cover discussion topics of a revised Alternative Development Overlay District (ADOD) boundary line, minimum lot size, and potential for future subdivisions. With a presentation, and beginning with the new proposed ADOD boundary, Ms. Liu stated that the new boundary line would follow the perimeter of the property lines and zoning district boundary lines. Staff recommended that the Mixed Use (MU) and Mixed Use 2 (MU2) zoning districts be removed from the

boundary, along with the lots in the northeast section of Ross Way and Troy Avenue. Staff recommended retaining the Light Commercial lots within the boundary, so a few Light Commercial lots were left in, however some lots in the northwest area, near the Highlands, were left out. Staff also recommended expanding the ADOD boundary to follow the zoning district boundaries, including around the D5 zoning district above Starr Hill and the D10 zoning district above Gastineau Avenue. Ms. Liu asked if the Committee had any questions regarding these recommendations and adjustments.

Mr. Alper asked if the far northwest area was impacted by the adjusted boundary, or if that was just a "clean-up" of sorts.

Ms. Liu stated that Mr. Alper's interpretation of it being a "clean-up" of sorts was correct.

Mr. Alper also asked about the line above the Starr Hill area and asked what existed there.

Ms. Liu stated that this area include private property along the northern most street, noting that some lots are very long and deep and were only partially included in the previous boundary; however, the new boundary captured them in a better format.

Ms. Christian pointed out that the new proposed boundary follows the zoning district boundary, and not the property line boundaries. Staff felt this would give a cleaner boundary line.

Mr. Alper asked for Staff's reasoning in eliminating the MU districts.

Mr. Dye noted that this was specifically due to setback requirements, as the MU districts due not have any, so they would not benefit from being included in the boundary.

Mr. Alper asked about the process of setbacks where the average of the nearby properties was taken to determine the required setback and if eliminating the MU districts would effect that.

Mr. Dye stated that that process was no longer used and the sliding setback scale requirements are being used instead.

Ms. Maclean noted that Cope Park, Evergreen Cemetery, and public properties that would not be developed had been removed from the boundary, as well.

Ms. Pierce affirmed that these properties had been removed from the calculations and Staff had considered these lots to have potential for subdivision.

Mr. Dye asked Staff for the reasoning in running the boundary line through the middle of the D10 zoning district.

Ms. Maclean stated that the property behind the D10 zoning district is owned by CBJ. She noted that the Telephone Hill property had been added to the boundary and Staff was more focused on the residential use lots.

Mr. Dye noted that the D10 zoning district did not have any current residences when the ADOD was developed and it was being used a quick fix for the issues that had currently been at hand.

Ms. Maclean pointed out that when the boundary was made, it was assumed that it would be changed in the future. There are two islands of D10 zoning districts now, but that is not seen to be much of an issue, and if they are ever rezoned to MU, they will be removed from the boundary.

Mr. Dye noticed that the two D10 zoning districts are in a severe hazard area, and asked if this may be a good reason to include or exclude them.

Given what is currently on these lots, and many single-family homes residing along Gastineau Avenue, Ms. Maclean felt it is better to include them in the boundary.

Mr. Arndt felt that they should remain within the boundary, as well. Even though there would be no potential for the lots to be subdivided due to the severe hazard designation, it would still be good to include them.

Mr. Pierce stated that the Community Development Department (CDD) has received questions from patrons regarding the use of their lots and how they can be developed.

Ms. Liu pointed out that the hazard mapping could change in the future, which could result in more needed changes for the boundary, as well.

Mr. Dye asked if the Committee had any other questions or concerns with these recommendations.

With no one raising any concerns, Ms. Liu moved on to discuss minimum lot size and presented tables showing the recommendations for the different zoning districts, and how the percentage of nonconforming properties would change with the different lot sizes. Staff recommended that Light Commercial zoning districts retain the current minimum lot size requirements for all other zoning districts within the ADOD boundary. Ms. Liu also presented tables showing the potential for future subdivisions in the various zoning districts and a map highlighting parcels that are 5,000 to 5,999 square feet, 6,000 to 6,999 square feet, and 7,000 square feet and larger. These tables showed how the percentage of nonconforming properties would change with different lot sizes, as well. However, she noted that there are many considerations not being accounted for, so the numbers should be taken lightly.

Mr. Arndt asked about some of the smaller lots, wondering if each one was 5,000 square feet in size, or if there is a common ownership and the lots would not be allowed to be subdivided.

Ms. Christian stated that all lots undercommon ownership were removed from this map, so the lots in question are 5,000 square feet or more. Staff removed the lots, because they had the potential to build one single-family dwelling per legally platted lot as they exist today

Ms. Pierce noted that this map could still use a few revisions and Staff could make more improvements to it.

Ms. Maclean pointed out that there are not many lots in the middle of the boundary that had potential for future subdivision.

Ms. Christian stated that the numbers presented in the slides were within the memo provided to Committee members, as well.

Ms. Maclean stated that Staff found good reason to keep the Light Commercial zoning districts within the boundary. The properties that are included in the boundary were taken from Glacier Avenue and the northeast area of the boundary, where there are many single family homes that are zoned Light Commercial.

Mr. Dye asked if Committee members had any suggestions or thoughts on the minimum lot size recommendations.

Mr. Arndt noted the change in percentage of nonconforming properties where the minimum lot size was changed from 2,500 square feet to 3,000 square feet. He thought that a 9% increase was good.

Ms. Pierce asked for the Committee's perspective on the potential for lots that could be subdivided, and if they thought this may trigger any issues.

Mr. Dye asked if Staff had felt a sense of community concern about how subdivisions may play out within the boundary, after conversations with the public.

Ms. Pierce stated that Staff had not received many comments regarding this, but there perspectives on each side, with some of the public wanting the option to subdivide and some of them not wanting the option.

Ms. Maclean felt that, in general, the option to subdivide should be allowed, but thought that 2,500 square feet would not be big enough to do the required work for subdividing. She felt that 3,000 and 3,500 square-foot lots would allow more for the required work.

Ms. Pierce agreed with Ms. Maclean and thought this would help to maintain the character of the neighborhoods and alleviate some of the concerns expressed from the public.

Ms. Christian pointed out that some lots already have the potential to subdivide, such as bungalow lots, so it would may be best to make the requirement 3,500 square feet.

Ms. Maclean stated that the ordinance would allow everyone to keep what they have and to develop the way they want.

Mr. Dye asked if staff had a recommendation of 3,000 or 3,500 square feet.

Ms. Liu noted that in the past Staff had recommended 3,500 square feet.

Ms. Pierce stated that the consensus had been 3,500 square feet, but Staff could agree on 3,000 square feet.

Mr. Dye felt that 3,000 square feet was a good choice for minimum lot size, noting that an 11% increase in conformity was a substantial jump. He asked for the Committee's thoughts on this.

Mr. Alper replied that 3,000 square feet was acceptable to him.

Ms. Maclean asked if Mr. Arndt felt there was a big difference between developing on 3,000 square feet vs. 3,500 square feet.

Mr. Arndt replied that is was mostly just a geometric difference.

Ms. Crossley felt she was on the fence regarding the choices, as she was hoping for more increase in conformity.

Mr. Arndt stated he was not against a minimum lot size of 3,000 square feet, but did not want a requirement of 3,500 square feet. He thought it may be better to enforce a requirement of 2,500 square feet.

Mr. Dye stated that he was leaning towards a 3,000 square-foot requirement, as well. He expressed concerns about this area of topic holding up progress, and felt it would be better to focus on proceeding forward, rather than the function of everything.

Mr. Arndt felt it would be possible to look at this topic further when the ordinance reached the Planning Commission or Assembly level and Mr. Dye agreed.

Mr. Alper stated that if there was no real concern with a minimum lot size requirement of 2,500 square feet, he would be willing to stand behind that.

Ms. Maclean stated she was not disagreeing with the logic, but noted that perception is reality. She felt that even if the public were informed that 60 of the 86 lots would not be able to be subdivided, they would still retort with choosing 3,000 square feet.

Looking at the gains of everything else, Mr. Arndt felt that if the potential of subdividing was causing so many problems, then it be best to take that option away and focus on the improvements.

Mr. Dye felt that the potential of adding more housing units brings more merit to the topic and it is important to have the ability to subdivide.

Ms. Pierce reiterated that there were few concerns heard from the public regarding potential subdivision. She noted Ms. Maclean's point about setback and lot coverage requirements making the ability to develop difficult.

Mr. Dye asked for final thoughts.

Ms. Maclean suggested discussing lot coverage and the other topics at hand and coming back to minimum lots size, as the other topics might help work out some of the concerns.

Ms. Christian moved on to the list of questions needing to be answered, listing questions from previous meetings and new questions. She noted that they didn't all need to be answered at this meeting, but it was a way to help keep track of where the Committee was with the topics.

Ms. Pierce asked that everyone take a look at the list, as Staff would like to get a consensus on each item.

Ms. Maclean noted that it may be good to skip the first two questions, for the time being.

Ms. Christian noted that if the Committee decided not to allow subdivisions, they might not be worth looking at.

The Committee decided that they will allow future subdivisions to meet the ADOD minimum lot size.

Ms. Maclean noted that not allowing subdivisions might create more difficulties as well, so it may be cleaner to allow the ability to subdivide.

Ms. Liu referred to the Table of Dimensional Standards, noting that the numbers are for existing requirements and some adjusting could be done to see what other requirements would look like.

Mr. Alper asked what the driving factors were for the lot width and depth calculations.

Ms. Gallion explained how the numbers were calculated.

Mr. Dye asked for thoughts on this.

Mr. Arndt felt that the numbers should be adjusted to reflect how the lot could be developed, as opposed to being proportional.

Mr. Dye noted that that was also difficult, especially when it comes to the style of house people may want.

Ms. Maclean thought the absolute minimum lot width should be 30 feet, as having anything lower would require changes to Code.

Mr. Dye asked what if the minimum lot width for a panhandle lot was 30 feet.

Ms. Maclean stated that the stem of the panhandle could be 20 feet.

Ms. Christian stated that Code allows for specific exceptions.

Mr. Alper felt that a reasonable ration would be 2:1, so the Committee should try to decide on a number that reflects that. He asked if there was an intent to establish a metric that would make the lots more square.

Mr. Dye replied that that was not an intent.

If 30 feet of frontage is the minimum, Ms. Maclean asked what the other needed minimum would be.

Ms. Christian stated 100 feet, possibly.

Ms. Liu pointed out that it would not necessarily have to equal 3,000 feet.

Mr. Dye asked if lot depth is an important aspect. He felt the key is having practical access to the lot, so lot depth and width might not be as important. He asked if a minimum lot width could be made at the frontage.

Ms. Maclean didn't foresee this being a problem.

Ms. Pierce stated lot depth requirements could be adjusted. Ms. Maclean agreed and noted that it would be good to assess the lots in the Starr Hill area, as well.

Mr. Dye asked if exact numbers were needed for these requirements at this time, or if not deciding on the numbers would cause more difficulty.

Mr. Arndt felt it would be good to at least decide on the minimum numbers.

Ms. Pierce noted that the potential of creating a situation of new lots that are nonconforming wanted to be avoided, and Staff wanted to make this as complementary to the rest of the process as possible.

Mr. Dye asked what the minimum setback is with the sliding scale.

Ms. Liu replied that it is 3 feet.

Mr. Dye felt this wouldn't be a problem and thought that a 20-foot minimum width requirement would work.

Mr. Arndt noted that Common Wall lots in D18 have a 20-foot width requirement, as well, but other do not.

Mr. Dye asked if some other lots had the 20-foot lot width requirement.

Ms. Liu replied that some lots do.

Mr. Arndt stated that the D15 zones go up to 30 feet lot width for common wall dwellings.

Mr. Dye asked what the requirements are for D10 zones and bungalow lots.

Mr. Christian replied that the requirements for D10 are 50' width for a standard lot and 25' for a bungalow lots With the other requirements, Mr. Arndt felt that a 25-foot requirement may work best for this situation.

Mr. Alper asked if a different number was imagined for different zones.

Mr. Dye replied that a different number was not planned on, as the work done is trying to keep everything together and to avoid making many differences. Mr. Dye spoke in favor of a 25-foot requirement for lot width and depth.

Mr. Alper thought this would create some potential problems for lots on a corner, believing that every dimension would have to be at least 25 feet and Mr. Dye agreed.

Mr. Maclean moved forward to question 4, and asked how many duplexes were in the downtown area.

Ms. Liu replied that there are 17 duplexes.

With the lower lot size, Ms. Christian noted that this would allow more accessory apartments without a Conditional Use Permit.

Mr. Alper thought these requirements would reduce the Common Wall minimum lot size.

Ms. Liu noted this was already what was written in Code.

Ms. Maclean asked if the others went on to change and are reduced as they get into the larger zones.

Ms. Christian replied that that was correct.

Mr. Dye noted that requirements were already being reduced substantially. With only 17 duplexes downtown, it may not be keeping in character of the neighborhood. He thought the same idea could be used with lot size, with some adjustments.

Ms. Maclean agreed. She noted that the accessory apartment section of Code was being worked on, with proposals that duplexes would be permitted to have one accessory apartment. There could be one homeowner with two accessory units. She believes keeping the same size standard lot would be beneficial and Mr. Dye agreed.
Mr. Arndt agreed as well, and thought Common Wall lots should have the ability to develop bigger.

Mr. Dye agreed, reiterating that the requirements for duplexes would remain the same and two Common Wall lots should be larger than one duplexwould go bigger. He asked if the neighborhoods being discussed are mostly lived in by the owners, or if they are more so rental properties.

Ms. Maclean was unsure if they were lived in by owners or renters, but noted that someone could buy a duplex, put in an accessory unit, and still not live in one.

Ms. Pierce noted that there is a minimal amount of duplexes downtown and Staff has heard from the public that duplexes don't really pencil out, so Staff is not inclined to be concerned about it. If a lot is large enough to create a duplex, it probably won't change the character of the neighborhood.

Ms. Maclean pointed out that obtaining loans and mortgages was more difficult for duplex developments than Common Wall lots, and the third accessory unit was needed to really make things work.

Mr. Arndt felt this was sort of like an area increase for duplexes and that should be allowed.

Ms. Liu asked if Mr. Arndt meant leaving the requirement as is, or adjusting it.

Mr. Arndt asked what Staff was recommending.

Ms. Christian replied that Staff recommended leaving the requirement at 10,500 feet, because D5 density is measured differently than D10 or D15 density and reducing the lot size for a duplex in D5 would contradict D10 density. A higher density zoning district should not have a higher lot size requirement for two units than a lower density zoning district. Additionally, staff does not feel duplexes are an issue downtown since there are only 17 within the ADOD boundary.…

Mr. Arndt felt the proportions needed to match and Mr. Dye agreed, noting that the 1.5% standard should be helping duplexes, but not be overly helpful.

Mr. Alper noted that if the 3,000-foot requirement was used for minimum lot size, duplexes would have a requirement of 4,500 feet.

Mr. Dye agreed and stated this would start complicating things.

Ms. Maclean noted that the difference is the accessory apartment is going to be 600 square feet, but the duplex is supposed to be a mirror image.

Ms. Christian reiterated that going with a 3,000-foot minimum lot size would give duplexes in the D5 zoning district a 4,500-foot requirement. Currently in the D10 zoning district, you are required to have a 8712 square-foot lot size fot two dwelling units, and in D18 you are required to have a 4840square-foot lot size for two dwelling units. Lowering the minimum lot size to 4,500 square feet contracts density. If the Committee was planning to change the requirement to 4,500 square feet, what is that based on?

Ms. Liu calculated the requirements and noted why it would be logically inconsistent with Code.

Mr. Dye asked if it the area doesn't fit the Code standards already, would it matter it the calculations are not exactly consistent.

Ms. Liu felt that it would not be right to support a higher density in a lower-density zoning district.

Ms. Maclean noted that the zoning requirements don't work for everything around the Troy Avenue area and north of that. The Committee is trying to avoid creating a zoning change, and the D5 zoning district is barely conforming for the highlands. There is less concern with the zoning with the density, because these areas were never built to be that way. If the Committee is looking to preserve the environment, then the concerns are with the uses in the zoning districts.

Mr. Dye agreed and thought that the proposed numbers make sense and work for what the Committee wants them to.

Ms. Christian asked how the Committee would like to calculate the requirements.

Mr. Arndt suggested taking it as a percentage. The minimum lot size for a duplex within the ADOD would be 1.5 times the minimum lot size. This is consistent with how we currently calculate duplex lot size for D5.

Ms. Maclean pointed out that the Committee had also discussed taking away the ability to double dip, recalling that this was mostly in regards to the Light Commercial zoning district. If a lot is within the Light Commercial district, development can have a maximum height of 45 feet, so it would be recommended that if one is going to opt-in, they would have to opt-in completely. If the Committee allows the Light Commercial district to get within 5 feet, then they could build to the maximum height, as this could result in a number of residential lots getting towered over.

Mr. Dye asked if a density component could be added to help adjust for all of this.

Ms. Pierce recalled from the last meeting that there isn't a perfect solution to everything, but a new Comprehensive Plan will be developed and that may be able to sort some of the problems out. This brings some relief in the meantime, so Staff and the Committee might just need to put in some provisions. The Committee is close to having decisions made, and they are much better than what was set up previously. This is a step in the right direction.

Mr. Arndt noted that multifamily districts are similar to the Light Commercial districts, so maybe the Committee should not discuss them either.

Mr. Dye felt that a rezone would be the best fit. This area has been used as an example of bad planning for some time now, and it has been very hard to try to figure it out. The Committee has circled around rezoning and the cost of time and labor, but they are attempting to make a temporary fix. It seems wasteful not to finish it, but it

is understandable that rezoning might not work with the current Comprehensive Plan. He does not have a direct answer, but is okay with the opt-in for single-family and residential use.

In maintaining the ADOD and the opt-in, Ms. Pierce thought improvements could be made through the ADOD until the new Comprehensive Plan comes through. Staff does not want this work to get stuck or fall to the backburner in a waiting situation or create something here that goes against what is developed in the future. If a total rezone was done here, it will have to be done again in the future. She felt it would be better to create something that is more user-friendly for residents and Staff.

Ms. Liu reiterated that it seemed there were three issues standing out: 1) day-to-day basis for Building Permit review, with people remodeling and adding additions; 2) there are only 17 duplexes, so the work put in to develop plans for this would not give much return; and 3) it may not be wise to suddenly incentivizes duplexes downtown.

Mr. Dye suggested having an opt-in for all single-family residential uses and Ms. Maclean agreed with him. Mr. Dye asked if Staff could attempt to develop some ideas for how to tackle that. He then suggested moving forward to attempt to answer some of the easier questions on the list that day.

Ms. Pierce asked for a clear consensus on minimum lot size and the ability to subdivide.

The Committee stated the minimum lot size requirement would be 3,000 square feet and they would allow the ability to subdivide.

Mr. Dye stated the minimum lot width and depth decided on was 25 feet for each. He moved forward to question 5.

Ms. Pierce suggested just determining if question 5 could be answered at this time or if the Committee should wait.

Mr. Dye agreed and suggested using a percentage and applying it to the boundary of the overlay. He also suggested using the same percentage that is used for the Light Commercial zoning districts.

Ms. Pierce stated Staff would look into how that would turn out.

Mr. Alper felt that Mr. Dye's suggestion would be logical, but lot coverage might need to be increased eventually.

Ms. Christian stated that lot coverage in the Light Commercial zoning districts does not have a maximum.

Ms. Maclean noted this would not work for residential uses, though.

Mr. Dye spoke in favor of a 50% requirement for lot coverage.

Mr. Alper asked if decks and similar structures counted towards lot coverage.

Ms. Maclean stated that deck structures only counted if they had a roof.

Mr. Alper stated he was okay with the 50% requirement, as well.

Mr. Dye moved forward to question 6 and stated that the Committee was okay with a 35-foot maximum height requirement. He then moved on to question 7.

Ms. Maclean noted that the Committee may need to come back to this question, as the current ADOD only applies to residential structures.

Mr. Dye agreed it would be best to come back to this question at a later meeting, along with questions 8 and 9. For question 11, he felt that "structure" should not include unheated structures, second story enclosures, vent shafts, air conditioning units, etc. in the setback sum.

Ms. Maclean noted that the Committee may need to come back to this question as well. Even though there are exceptions, a minimum would still be needed.

Mr. Arndt agreed it would be best to come back to this question and noted that this would take out eaves that could currently be extended

Mr. Dye moved forward to question 12, stating this aspect would allow double dipping and the Committee did not want that. He felt it would be best to come back to question 13, as well.

For question 13, Mr. Arndt thought it would be beneficial to reduce the requirement and use the sliding scale.

The Committee agreed to work on this question at a later meeting.

After some deliberation, the Committee decided the next meeting would take place on October 30.

V. Committee Member Comments and Questions

VI. Adjournment

The meeting adjourned at 1:28pm.

Meeting Agenda of the City and Borough of Juneau
Title 49 Committee of the Planning Commission

Friday, November 1, 2019
Community Development Department
Large Conference Room, 12:00 pm

Members Present:
Nathaniel Dye, Travis Arndt, Ken Alper

Members Absent:
Shannon Crossley

Staff Present:
Jill Maclean (CDD Director), Alexandra Pierce (CDD Planning Manager), Irene Gallion (CDD Senior Planner), Laurel Christian (CDD Planner), Amy Liu (CDD Planner), Chelsea Wallace (CDD Admin)

I. Call to Order

The meeting was called to order at 12:05pm.

II. Approval of Agenda

III. Approval of Minutes

IV. Agenda Topics

A. <u>Proposed Rezoning of Downtown Juneau Alternative Development Overlay District Area</u>

Ms. Christian informed the Committee that Staff had prepared a memo with discussion points to go over at this meeting. To summarize from past meetings, the Committee and Staff had made some decisions on the Alternative Development Overlay District (ADOD) standards, including a minimum lot size requirement of 3,000 square feet; allow future subdivisions to use the ADOD standards; minimum lot depth will be 25 feet; lot coverage is not changing; vegetative coverage is being reduced to 15% across the board for all zoning districts. Other decisions made include a maximum height for primary uses is 35 feet and accessory use is 25 feet; if someone is in the Light Commercial Zoning District, the current height is 45 feet, but if they wish to utilize the ADOD standards, it will be reduced to 35 feet. Staff revised the boundary line of the ADOD, as well.

Mr. Arndt recalled discussion regarding changes in lot coverage and developers being allowed to use larger setbacks. He asked if this was decided on, as well.

Mr. Dye recalled that the requirements would remain the same.

Mr. Arndt didn't recall this being an issue and thought it may be good to have the requirements remain the same, but thought there had been some discussion on adjusting them.

Ms. Christian recalled that the decision had been made to keep the requirements for lot coverage as is, because the setback box allows almost all of the lot to become developable, so the lot coverage helps restrict that a little

bit. Moving forward, Ms. Christian stated that Staff was hoping to discuss the outstanding questions. The first question was regarding setback exceptions and how the ADOD relates to the current setback exceptions in Code. Some current Code exceptions are more restrictive that the ADOD exceptions and some are less restrictive. Generally, Staff thinks the less restrictive exceptions should apply, but the more restrictive exceptions should not. Another question Staff is hoping to have answered is how residential uses are treated; Mixed Use (MU), as well as Commercial Uses, and if a different process is needed, such as a Conditional Use Permit if someone wishes to utilize the ADOD dimensional standards.

Mr. Arndt asked if the MU zones were taken out of the ADOD boundary.

Mr. Dye replied that MU had been removed from the boundary, but Light Commercial zones still allow for mixed-use development.

Ms. Christian agreed with Mr. Dye and stated that other questions needing to be answered were regarding how duplexes will be treated and if a separate setback exception needs to be created for lots that are still nonconforming to the new ADOD standards. Ms. Christian suggested working through the memo and noted that Ms. Liu had pulled some purposes from past ADOD discussions and put them in the memo, to help keep the Committee and Staff grounded on what they were originally intended for and how things have changed. The original purpose of the ADOD was to change setbacks, lot coverage, and vegetative coverage; there would be no changes to height, density, or parking.

Mr. Dye clarified where the original intent was spelled out – the bottom of page two of the memo.

Ms. Christian stated he was correct and that new purpose says "New zoning should balance the desire to preserve the existing character of the neighborhood with the desire to construct new dwellings that match the existing character of the neighborhood." It is balancing new development that matches the current character. That is more what purpose has been morphed into from the original ADOD.

Mr. Dye recalled that it had been decided that the ADOD would be a new overlay and not a rezoning, so it may be better not to say "new zoning".

Ms. Christian said the language could be adjusted, because the intent is not to change the zoning.

Ms. Maclean and Mr. Dye made some suggestions for adjusting the language.

Mr. Arndt asked if this would be the purpose statement at the beginning of the Code section, or where this information would be used.

Ms. Pierce stated that it could be the purpose statement used in Code; however, it is not the statement they have been working with. She believes it has good language that distills the concept down in a very straightforward way as the Committee moves forward to try to communicate everything to the public and the Assembly.

Mr. Dye stated it could end up being the premise for the purpose statement in the new ordinance.

Ms. Christian stated that Staff didn't necessarily intend to write the purpose statement at this meeting. Staff included this information to show where they are coming from and what is being aimed towards with the decisions being made. It is more so background information, but the language can be adjusted. Ms. Christian

then moved forward to discuss setback exceptions. She directed attention to a diagram in the memo that shows one of the setback exceptions that would allow someone to have a balcony that is not more than 5 feet wide, which could extend to the front property line. Staff is recommending that less restrictive setback exceptions apply and exceptions that are more restrictive do not. In this case, it is saying the setback can be zero, where the minimum is 3 feet. Staff is not saying that the total sum is reduced; they are saying that the one line can be reduced.

While Mr. Arndt agreed with Staff's idea behind this example, he felt the wording should be adjusted. He thought the dimension and the number is still to the front of the house. He then gave an example of how he thought it should be looked at.

Mr. Alper asked if this example would work for an enclosed structure, as well.

Ms. Christian stated that was not intended for this example. However, there are exceptions for sheds. She asked if the Committee would not want a shed to be included in setback sum, or only the primary structure.

Mr. Arndt asked if a shed could normally fall within the setbacks.

Ms. Christian replied that there were some parameters for things like that.

Mr. Arndt thought that if a shed is allowed under the current guidelines, then it shouldn't be counted. He then gave an example of what he thought the Code could allow for.

Ms. Maclean understood what Mr. Arndt was portraying; however, she did not completely agree that the regulations should follow his suggestion. She though that even if there is an exception, sometimes where the setback is dropped all the way to zero feet, then the setback is zero and the other 20 feet in setbacks should have to be made up on the other sides of the property. Otherwise, it might be considered "double dipping."

Mr. Arndt felt that it would not be considered double dipping, because the part of the single-family dwelling would not be able to get any closer to the perimeter than 3 feet.

Mr. Dye agreed with Mr. Arndt, but felt it would be best to hear more from Ms. Christian.

Ms. Christian stated these regulations wouldn't just be in regard to balconies, but would also include arctic entries, which would appear to be like a single-family home. She thought that would make it more difficult in a Staff review to make that distinction and didn't necessarily agree with Mr. Arndt either.

Ms. Maclean agreed with Ms. Christian. She understood that Mr. Arndt was looking to only allow the single-family structure, or the primary structure, to receive the reduction in setbacks, but she thought the regulation should be looser than that. She felt the regulation should allow for anything, even an accessory apartment, to receive the setback reduction, but if that is the case, it sort of is double dipping.

Mr. Arndt clarified that he was stating that anything that would normally need to meet the setback, is where the setback should be measured to. Anything that is exempt, doesn't actually happen.

Ms. Maclean stated that the problem is not that they don't have to meet a setback. They are meeting setback of some sort and it varies, depending on what it is and where it is. She gave some examples to explain what she meant.

Mr. Arndt stated that what he was trying to have remain the same is that if something required a setback currently, then those items should add up to the 20 feet in setback requirements. The other exceptions should not have to add into the 20-foot requirement.

Ms. Christian stated that Code was not saying that there is no setback, it is saying that it is reducing the setback. There are other exceptions, but they still have setbacks, it's just less than what is generally required.

For the example being shown, Mr. Arndt asked if the house could be placed 3 feet back, if the deck was removed.

Ms. Christian stated this was correct.

Mr. Arndt felt that if the deck is added, it should not affect where the house is allowed to be, because the deck is the exception. The deck can extend in, but none of the uses that normally would be limited to 3 feet should be able to go past 3 feet.

Ms. Pierce asked if Mr. Arndt would use the same reasoning for an arctic entry.

Mr. Arndt asked if the arctic entry is a current exemption.

Ms. Christian and Ms. Maclean replied that it is

Mr. Arndt stated that he would apply the same reasoning, then.

Ms. Christian asked if he would also apply the reasoning to a garage exception.

Mr. Arndt stated that he is not trying to change the current exemptions. He just believes that if something would normally have the 3-foot limit, then it should remain that way and the 3 feet should be counted in the sum of the setback.

Ms. Maclean felt that she was not following correctly. She clarified her understanding of what Mr. Arndt was trying to say.

Mr. Arndt felt that Ms. Christian's example being shown was drawn correctly, but the difference in what he was saying is that she didn't include the number from the front lot line to the part where the setback would be measured.

Mr. Dye clarified that the number should have been subtracted from the other 10 feet in setbacks.

Mr. Alper clarified that the exception wouldn't be counted toward the setback sum total. The whole idea is that the house is the house and it is 3 feet off the line and that is not an exception.

Mr. Arndt stated that, that is what he was suggesting.

Mr. Dye and Mr. Alper agreed with Mr. Arndt's suggestion.

Mr. Arndt felt the exceptions are good and should be allowed as they currently are, but felt developers should not be penalized somewhere else by using one of the exceptions.

Mr. Dye asked if Staff's intention was to "penalize" someone for using this method.

Ms. Christian stated it could be taken that way.

With that interpretation, Mr. Dye asked why this was Staff's intent.

Ms. Christian stated that Staff was okay with reducing the 3-foot minimum items, but wanted to keep the 20-foot regulation. She thought it wasn't as straightforward.

As an example, Mr. Dye asked if there were no sliding setbacks and plans were brought in showing the arctic entry exception, forcing the arctic entry past the setback line, if Staff would just make sure that the setbacks are actually there.

Ms. Christian stated he was correct.

Mr. Dye asked if what is being relied on for Staff analysis is what the plans show what will be used for setbacks.

Ms. Maclean asked if someone was to build a single-family home without a balcony today and they barely meet the 20-foot regulation, would they be able to build a balcony later on and if so, how would that work.

Mr. Arndt stated in that situation a Variance Permit would be required, but for his suggestion, a Variance Permit would not be needed. He then drew an example of what he was suggesting.

Mr. Dye stated that for Ms. Maclean's example, they have already maxed the 20-foot sliding scale, so they couldn't get a balcony. However, if they use the exception and don't have to use the sliding 20-feet for the balcony, then they would be able to get the balcony without the Variance Permit. Therefore, Staff is recommending a more restrictive regulation.

Mr. Arndt explained his suggestion with the example he had drawn. After some deliberation, the Committee and Staff concluded the suggestion was that the setback requirement would be 20 feet on a sliding scale, in addition to any specified uses that have exceptions.

Ms. Christian stated that language would need to be crafted carefully for this, because a definition of a structure also determines what the setback requirements are.

Ms. Pierce suggested using a current, real scenario to better understand the regulations. Using a property in the Starr Hill area as an example, the Committee and Staff worked through the requirements and decided that the property would still be conforming if they developed in the way Mr. Arndt had proposed.

The Committee and Staff agreed that these requirements would work well and Ms. Maclean noted that the language used in Code would need to be very precise for these regulations to avoid misinterpretations.

Ms. Christian moved the conversation forward to nonresidential uses. Since there are some Light Commercial (LC) and D18 zones allow some commercial uses, Staff recommends that commercial or mixed use, as in commercial and residential in one building, be allowed to use the ADOD dimensional standards with a Conditional Use Permit.

Mr. Dye asked if all current uses were opt-in.

Ms. Gallion stated that residential uses would be allowed by right, and commercial and mixed uses would be allowed with a Conditional Use Permit. It was not clarified if both were opt-in to use this process.

Ms. Maclean stated the option would be opt-in. However, if the property is a commercial or mixed use type of building, the owner would not be able to use both regulations. They would have to fully opt-in and agree to use all of those regulations only.

Mr. Dye suggested being very clear with this language in Code and using "mixed use development" for these types of situations, so they are not confused with Mixed Use zoning regulations. He asked if there would be a need for the Conditional Use Permit, if this is an opt-in option, instead of just Staff review.

Ms. Maclean stated that it really had to do with the area of where these developments would occur. Some expansion should have a public hearing. Opting into the new regulations could also give owners less restrictive regulations, as well. There aren't many properties that would need a Conditional Use Permit, but here should be some type of public process for the ones that do.

Mr. Arndt stated that it may be better to move away from requiring Conditional Use Permits and move more towards allowing for Staff to decide. He believes this to be more streamlined for the people who want to develop their land and comply with the regulations. He doesn't see where the Planning Commission would have grounds to deny a Conditional Use Permit if someone were to opt-in, comply with the regulations, and apply for a Conditional Use Permit.

Ms. Maclean agreed, but noted that the intent in Code is to make it very difficult for Conditional Use Permits to be denied. There just needs to be the option for conditions to be added to the permit to make sure the property owners are staying harmonious with the neighborhood. She also noted that having a Conditional Use Permit come before the Planning Commission could attempt to reduce the chance of an appeal and would reduce the chance in a longer delay if only the Director's decision was appealed.

Using the Capital Brew Coffee situation as an example, Mr. Dye asked if the problem had been with the setbacks and driving lanes, or the land use.

Ms. Maclean stated that the problem had been with traffic, circulation, and hours of operation, which are items that the Director does not have discretion to condition. However, the Planning Commission does have the discretion to condition on these items.

Mr. Arndt stated that if they property had been in an LC zone, then the hours of operation would not have been of concern and they wouldn't have needed a Conditional Use Permit. In this type of situation, if they opted in, they would now have more regulations to comply with.

Ms. Maclean stated that the vast majority of uses in the LC zone already require a Conditional Use Permit. It's supposed to work like a buffer between residential and commercial zones.

Mr. Dye asked if this section of Code could be more precise on if a Conditional Use Permit is required or not, and how things would be looked at based on if a Conditional Use Permit was required or not.

Ms. Christian stated that it could be written so minor development wouldn't need the Conditional Use Permit review, but major development would.

The Committee agreed this would work well.

Moving forward to duplexes, Ms. Liu recalled that Staff had been asked if any inconsistency and logic with the existing lot size of duplex needed to be reconciled, as the standard lot size is reduced. She stated that Staff has looked at existing duplexes and areas of the lots where they are located. Staff recommends not changing the minimum area for duplexes. This comes back to the purpose of the ADOD and other information that is outlined in the memo previously presented to the Committee.

Ms. Maclean asked if there were only 8 duplexes in the whole area.

Ms. Liu stated that in the D5 zoning district there are only 8 duplexes. There may be other two dwelling unit properties, but they are likely considered multifamily.

Mr. Arndt gave an example and asked why a benefit would be given to going from 7,000 square feet for a single family, but 10,500 square feet for a duplex, instead of 14,000 square feet.

Ms. Maclean stated this was due to the lot not having separate ownership. This also relates to why a duplex is not allowed to have a accessory apartment, whereas a common wall could each have one, because they are on separate lots.

Mr. Arndt felt like this still gives a benefit to duplexes over common walls, because you don't need as large of a lot for a duplex as you do a common wall lot. He asked for the reasoning behind this.

Ms. Maclean stated that when the common wall ordinance was adopted, there was a desire for the lots to be even. However, the common wall ordinance is being worked on currently and there is a recommendation for a decrease in the lot size.

Ms. Pierce stated that this topic had come up a number of times, recently, and it is being worked on. For the purposes here on duplexes, Staff is saying that there are so few in this area, that making changes to them within the Overlay District are not going to benefit duplexes that already exist and Staff does not see a major benefit in incentivizing duplexes for the purpose of this process.

To clarify, Mr. Arndt gave an example and asked what the minimum lot size of the duplex would be.

Ms. Liu stated it would need to be 10,500 square feet.

With that lot size, Mr. Arndt asked if they would then be able to use the ADOD dimension setbacks.

Ms. Christian stated they could use the ADOD dimension setbacks, Staff would just adjust the lot size to 10,500 square feet. If it were multifamily, it would just be what the density lot size is. Staff is not propose a change to density. She stated that 10,500 square feet could be put into the ADOD dimensional standards table, if that would help clarify things.

Ms. Pierce stated that Staff is not trying to make a full rezone here. Duplexes are such a small part of this and it doesn't seem like providing incentives for duplexes would accomplish much.

Mr. Arndt asked how a property owner should know that they can get more out of a 10,500 square-foot lot, if it isn't made clean and incentivized.

Ms. Maclean stated that everything outside of the D5 zone would consider it multifamily, instead of a duplex, so they would have clear options.

Mr. Arndt asked if the same density math should be used in the table.

Ms. Maclean stated that that math wasn't used for the single-family residential zoning districts.

Ms. Pierce stated there was an option in the table to reduce based on the existing ratio, though.

Mr. Arndt asked if this duplex information work with the new proposals they are making in updating the ordinance.

Ms. Maclean stated that the changes were being proposed in the common wall ordinance, not for duplexes.

Mr. Arndt asked what the parent lot size for the common wall ordinance is and what size the lots could be subdivided into.

Mr. Dye stated that they could be subdivided into two 6,000 square foot lots.

Mr. Arndt felt the duplex regulations should match that of the common wall regulations.

Ms. Pierce stated this could be done with option 2 in keeping the common ratio. However, this could start a cascade effect. She noted that this isn't a problem that CDD sees very often, so that is why Staff recommended no changes.

Mr. Alper felt there shouldn't be such a contradiction between the common walls and duplexes. He noted that going down the Option 2 track may also result in some issues.

Ms. Maclean pointed out that one missing aspect is that a common wall is its own lot and can have an accessory apartment, but an accessory apartment does not count towards density. She asked if a duplex doesn't count towards density either.

Ms. Christian stated that a duplex is two dwelling units.

Mr. Alper noted that in the end this could result in a common wall having accessory apartments for both units resulting in four total units, whereas a duplex with an accessory apartment would only have 3 units total and parking likely wouldn't be much different.

Ms. Maclean stated that the parking actually would be different. Each common wall unit requires two parking spaces and one for the accessory apartment. Whereas, duplexes would be two spaces for the single family and one for the duplex.

Ms. Liu pointed out that calculating Option 2 would still contradict the logic of the D10 zone, because it would be stating that you need a bigger lot in D10 to achieve the same outcome in D5.

Ms. Maclean agreed, and noted that Staff is not trying to change D5 dimensional standards, but trying to change the Overlay District standards. This makes things less uncomfortable, because this won't make D5 contradict with D10, it will only adjust things in the Overlay District standards.

Ms. Christian gave an example of what Option 2 could give a property owner.

The Committee agreed with Ms. Christian's interpretation and felt this would work well.

Ms. Liu gave an example and asked if it would work in the Overlay. After some deliberation the Committee agreed that this example resulted in some problems.

Ms. Pierce pointed out that CDD really sees very few duplexes, so this topic could be tackled when the time came with the Land Use maps in the new Comprehensive Plan. There weren't many problems that could be solved by changing regulations through the ADOD.

Mr. Dye stated he was okay with Option 2 and not altering D10 or D18 would help lay the work for when a rezone came to be to solve more issues. He asked if the Committee was okay with Option 2 and 4,500 square feet for only D5. The Committee agreed this was a good option.

Ms. Christian moved the conversation forward to setback exceptions. Staff proposed that a new setback exception be created to live in the Overlay District for lots that don't meet the minimum lot size, so they can get their sum of setback reduced. She gave an example of how this would work. She stated this would be similar to how the sides and rear are regulated in current practice; Staff is just proposing to expand that.

Mr. Arndt spoke in favor of the ratio idea with a minimum of 12 feet, 3 feet on side.

Mr. Alper like that this created a hard minimum.

Mr. Arndt agreed, but noted that it would be important to do the nonconforming situation review work, before deciding that this regulation could be used.

Ms. Christian stated that work would be required for any building permit, so the review would be done.

Mr. Dye asked if Staff needed language for Code regarding becoming legally nonconforming.

Ms. Maclean stated that was not necessary right now. Language would be worked on, but Staff did not want to add to any confusion on nonconforming.

Ms. Christian asked if the Committee had any outstanding questions for Staff.

Hearing none, Ms. Pierce stated that Ms. Gallion has been working on draft ordinance language.

Ms. Maclean asked if the Committee would like to see the draft ordinance after the Law department made revisions, or if they preferred it go to the Committee of the Whole.

The Committee stated they would like to see it first.

Mr. Alper asked if that would be draft ordinance would be what is before the Committee now in Appendix A.

Ms. Pierce stated that Appendix A was included, because setbacks were being discussed, but it was just part of the thought process.

Ms. Maclean stated that the ordinance would be brought back to the Committee after Law reviewed it. She asked when the Committee would like to meet again, noting some travel coming up. She also noted some topics the Committee needed to discuss and when those items may be ready for discussion.

After some discussion, the Committee decided to meet again on December 12.

V. Committee Member Comments and Questions

VI. Adjournment

The meeting adjourned at 1:31 P.M.

Meeting Agenda of the City and Borough of Juneau
Title 49 Committee of the Planning Commission

Thursday, December 12, 2019
Community Development Department
Large Conference Room, 12:00 pm

Members Present:
Nathaniel Dye, Ken Alper, Shannon Crossley

Members Absent:
Travis Arndt

Staff Present:
Jill Maclean (CDD Director), Irene Gallion (CDD Senior Planner), Amy Liu (CDD Planner), Chelsea Wallace (CDD Admin)

I. Call to Order

The meeting was called to order at 12:06 P.M.

II. Approval of Agenda

MOTION: *by Ms. Gallion to add "Update of public outreach meetings" as an item to the agenda.*
The motion passed with no objection.

III. Approval of Minutes

A. Draft Minutes October 2, 2019 Title 49 Committee Meeting

MOTION: *by Mr. Alper to approve the October 2, 2019 minutes.*
The motion passed with no objection.

IV. Agenda Topics

Ms. Gallion gave an initial debrief of the public meetings held to introduce the Alternative Development Overlay District (ADOD) to the public. She stated that about 45 members of the public attended the meetings. A PowerPoint presentation was given at the meeting, showing the different aspects of the ADOD, along with a handout that people could take home with them and refer to later on. They also gave the option for on-the-spot feedback with comment cards people could fill out. These comments were taken, other comments came in after the meeting as well, and draft responses have been drafted for these comments. Ms. Gallion presented a memo summarizing all of the work from Staff and the comments that had been received. She also presented a draft ordinance for the ADOD for the Committee to review and give feedback on. The draft ordinance was used to capture the opening position of what the Committee has intended with the regulations set forth.

Referring to the graphics on page 4 of the draft ordinance, Mr. Alper asked where these images had come from and if the Committee had seen these before.

Ms. Gallion stated that those images were taken from the existing Code on setbacks.

Mr. Dye asked if Ms. Gallion had anything specific in the draft ordinance or on the public meetings that she wished to discuss at this time.

Ms. Gallion thought it would be good to look at some of the on-the-spot comment cards from the public meetings. In the memo, she had summarized the comments and ordered them by feelings of approval and disapproval. While it is not statistically significant, it was seen that most people were in favor of what the Committee is proposing.

Referring to the column of "Dislikes Strongly" in the comment summary, Ms. Maclean asked if these comments were from one person, or if three separate individuals had given these comments.

Ms. Gallion stated that each person evaluated each topic, but Staff did not track which person commented on each topic. So, it could have been one person who strongly disliked those topics, or it could have been three separate individuals.

Mr. Dye noted that there were about eight people who commented.

Ms. Gallion stated that Staff received seven comments, and one person had commented twice.

Mr. Dye asked Staff's big takeaway from the public meetings and the overall themes of the comments.

Ms. Gallion stated that the more complexes issues are related to nonconformance; how what the Committee is proposing works with nonconformance ordinance that is before the CBJ Assembly now; and if a property is nonconforming to ADOD, can they still participate in the ADOD. There was a lot of discussion about lot size, what it means, and why we care. Staff noticed that the two meetings had very different tones, with the first meeting being very tense.

Ms. Liu agreed with Ms. Gallion and noted that people generally seem to like the direction the Committee is taking. However, some people were not completely comfortable with how small some of the numbers are, such as vegetative cover and lot size. Overall, though, most people are generally happy with the regulations.

Mr. Alper, who was present at the public meetings, stated that he felt a sense of misunderstanding when it came to lot size and most people didn't seem to realize how small some of the lots downtown are. Some people had a perception that these proposals could open up the option to build large apartment buildings in their backyards, but that is not the case.

Ms. Maclean also noted that there were a number of people at the second meeting who acknowledged that they have larger lots, but don't want their neighbors to have the same opportunity. They recognize that they need to be more objective, though. Staff could alleviate some of these concerns by stressing that current zoning won't allow more large apartment buildings to be developed downtown anymore. There were some struggles in communicating that 18 units per acre does not mean someone could build 18 units on their 5,000 square-foot lot. Ms. Maclean believed that more time with the public to discuss these things would help alleviate more concerns.

Ms. Liu noted that Ms. Gallion did a great job of explaining to the public what the ADOD is, but due to the public's limited understanding of how zoning works, there were questions about what it is and what it is not. Communicating what the ADOD is not could help address some of the concerns, as well.

Mr. Dye asked if the name was being changed from ADOD.

Ms. Gallion stated that at the moment Staff was referring to it as the Downtown Juneau ADOD, because that is was is currently in Code. There is some confusion about existing ADOD vs. the new ADOD, though, so the name could be changed.

Mr. Dye thought that giving it a new name may be more helpful for the public.

Ms. Maclean pointed out that, unfortunately, changing the name now would create extra work for Staff, because the permits had been filed with the current name, so a lot would need to be updated.

Mr. Dye suggested informing the public that this is an update to the ADOD, and not a rezone or a new overlay, to help clarify matters and make it easier to understand.

Mr. Alper spoke in favor of continuing with the current name, while communicating that it is an update and not something entirely new. He thought this would be helpful to the public and make things easier for CDD Staff, as well.

Ms. Maclean stated that Staff would also need to check with Law and make sure this doesn't get confused with the work being done for Douglas.

Mr. Dye asked if there was a reason to set the ordinance up in a way that help separate this ADOD update from the Douglas and future updates.

Ms. Maclean stated that some adjustments may be needed, but those would come forth in time. She noted that there are other Overlay Districts currently, as well.

Mr. Dye asked if they are all within 49.70.

Ms. Liu stated that the parking overlays are not in 49.70.

Ms. Gallion asked if the process could be opened up again when the Douglas overlay goes through, if someone strongly disliked the work being done here.

Mr. Dye believed this wouldn't be possible. He asked if there any other overlay districts that are specifically similar to items in the ADOD.

Ms. Liu replied that there is a convenience store overlay that is similar. It is quite small, but it is similar.

He asked what feedback is needed from the Committee at this time.

Ms. Gallion stated that the points at the beginning of the memo highlighted what Staff needed from the Committee. She noted that the public has until the end of January to submit comments, as well.

Ms. Maclean recalled that subdivisions came up as a topic of discussion at the second public meeting, and concerns were expressed. She thought it would be important to give a clear explanation of what lots could and could not be subdivided, especially regarding the mass wasting areas.

Mr. Dye asked if there was a consensus to allow subdivisions through the ADOD.

Ms. Maclean stated that there was a consensus to allow them, but Staff could inquire with the Law department to be sure if they could be allowed through the ADOD process.

Mr. Dye noted that property owners wouldn't be subdividing through the ADOD minimum lot size, but through the current code requirements.

Ms. Maclean pointed out that if a property owner could legally subdivide under current Code, then they could subdivide and then use the ADOD regulations. Law would have to weigh in on if they are allowed to have the reduced lot size for the existing properties, though.

Mr. agreed. He asked what was heard as the biggest concern from the public.

Ms. Liu recalled that the public were very concerned with the small numbers for setback regulations. There were also concerns expressed in the lack of vegetative cover requirements.

Ms. Maclean asked if the Committee thought a walking tour might help the public better understand what current situations look like and compare these to what is being proposed.

Mr. Dye asked if Staff had presented the same slides to the public that had been shown to the Committee.

Ms. Liu stated that Ms. Gallion had given a very informative presentation clearly showing accurate representations of what development could look like.

Mr. Alper recalled his personal experience with an ADOD property. He asked if it was possible to create a metric showing how many lots currently have an average setback of more than three feet.

Ms. Liu stated she had already done this.

Mr. Alper thought this information would be helpful in visualizing development.

Mr. Dye expressed concern with the margin error, since the data was mostly gathered using aerial photos and GIS overlays. The Committee does not want to push information that could be skewed.

Ms. Gallion expressed concerns with a walking tour. She thought this might bring about some adverse feelings between neighbors and one neighbor wanting to make an example of another neighbor. There are some sensitivities in this area. She noted that the slide on lot size showing the map was not shown at the public meetings, but it could be presented at future public meetings, if they occur. She did show an example of what seven feet between neighboring houses looks like, though. She also expressed concerns with the data gathered using GIS overlays.

Mr. Dye felt the big overall pictures paint a pretty good picture, but what is shown on the big map helps a lot, too. Hazard zone mapping could be shown, but those will be changing, so it may not be better to show those now. He suggests pursuing investigation of what can be done to prevent subdivisions. If people can subdivide under current zoning, then they should be able to, and then go into the ADOD, but using the ADOD to rezone could become problematic. He thought the graphic used to portray the sliding scale was beneficial and could be helpful in

clarifying regulations to the public. However, he was surprised that the public didn't like the vegetative cover regulations.

Ms. Gallion suggested waiting to see what kind of comments come in from the public on this to see what the real concerns are, because some people were also okay with it. She then summarized the items the Committee had discussed, and what Staff should plan to work on.

Mr. Dye noted that Staff should be very careful with the language regarding mass wasting when presenting to the public. If the Law department says that subdividing isn't allowed, then the whole topic should not be discussed, so there isn't any confusion.

Ms. Crossley stated that she was surprised about the comments on lot coverage. She noted that what she has seen from the private side is that people are very interested in adding accessory apartments.

Mr. Alper noted that accessory apartments will have a roof and that will work into lot coverage.

Ms. Crossley agreed, but pointed out that it still increases the footprint of the building.

Mr. Alper stated that that is encouraged.

Ms. Crossley asked about the community members that were unhappy, and asked if they were unhappy because something was built in their neighborhood that they didn't necessarily like and don't want that to keep happening.

Ms. Gallion stated that it seemed the concerns were more about future development.

Ms. Crossley asked if Staff had pointed out that these aren't design standards and these regulations don't speak to what a house can actually look like.

Ms. Gallion stated that that could be reiterated more at future public meetings, but Staff had done well in explaining that this isn't about what you can build, but is about where you can build on your lot. They did have a question on how this would interact with the Historic District standards, though. One person expressed that they did not want to see design review boards come into fruition, as well.

Mr. Dye spoke in favor of not having design standards or design review boards. He asked what direction Ms. Crossley was looking to go with that information.

Ms. Crossley stated that she was just curious to see how people feel about new development and how it fits with their neighborhood character.

Ms. Crossley asked how many ADOD permits exist currently.

Ms. Liu stated that there are only a handful of ADOD permits.

Ms. Crossley asked if there were any neighbors who spoke in favor of the changes.

Ms. Gallion stated that there were a number of people who were appreciative of the changes and were happy with what the Committee is proposing.

Ms. Maclean felt that the people who have gone through the Variance process in the past see these changes as an easier way forward with development. Her general impression is that people were concerned with the unknown of the future developments and change, but nothing completely specific.

Ms. Crossley asked if there was any interest heard from the public for future meetings, so they could get their neighbors to come.

Ms. Gallion stated that Staff had not heard requests for more meetings, but they had let people know that they had the option to come in and meet with the planners to ask more specific questions and get more information.

Mr. Dye asked if there were intentions to host more public meetings.

Ms. Gallion stated that more public meetings could be held, but that wasn't necessarily the intention. She also noted that public meetings will be held for the changes coming to Douglas, so there would be more opportunity for outreach then.

Mr. Dye asked if Staff felt they should host more public meetings.

Ms. Gallion replied that the comments received from the public should help Staff decide if more meetings are necessary. However, she had given an overview at the meetings that the public would have another chance to give input when the topics come to the Planning Commission.

Ms. Maclean noted that if Law says subdivision can be excluded, then that would be another reason to host more public meetings.

Ms. Liu asked for the Committee's perspective on the value of reducing lot area in the ADOD and possibly bringing more lots into conformity for lot area, if subdivisions are not allowed.

Mr. Dye stated it would reduce the need for nonconforming status reviews, from that point of view. It would be another avenue of not being labeled nonconforming, which has potential interest of the public and it might feel less daunting for them to develop.

Ms. Maclean asked if the Committee was interested in decreasing the minimum lot size, if subdivisions are not allowed, to help gain more conformity.

Ms. Liu stated that it would also help with regulatory hurdles that are triggered by undersized lots. If a property is no longer an undersized lot, then the owner may no longer have to go through this regulatory hurdle. This would be one way to isolate this effect downtown, and not have necessarily change it for the rest of the Borough.

Mr. Alper asked why the Committee would not want to allow subdivisions within the ADOD.

Ms. Maclean stated that the vast majority of lots large enough to subdivide are in areas that preclude subdividing. If the public's main concern going forward is allowing subdivisions, it may make more sense not to allow them, in order to keep everything moving forward. It would only affect a few lots, as is.

Ms. Liu noted that one potential benefit to becoming conforming is more potential for financial help for the property owner in getting loans or other financial assistance.

Mr. Dye noted that some areas where the ADOD really comes into play is during expansion outside a structure for lot coverage. The ADOD picks up the slack for accessory apartments in the Overlay District, where nonconforming won't. If subdivisions are removed, then you could increase the ability, or ease, of people getting accessory apartment permits on those smaller lots. With this in mind, he wondered if a minimum lot size would need to be written in Code if subdivisions aren't allowed.

Ms. Maclean stated that the accessory apartment ordinance, as drafted, removes the need for a Conditional Use Permit on undersized lots, if you can meet the parking requirement. As to removing the minimum lot size requirement completely, she asked how lot sizes in other zoning districts could be justified if this area didn't need one.

Meeting Agenda of the City and Borough of Juneau
Title 49 Committee of the Planning Commission

Thursday, March 5, 2020
Community Development Department
Large Conference Room, 12:00 pm

Members Present:
Nathaniel Dye, Travis Arndt, Joshua Winchell

Members Absent:
Weston Eiler

Staff Present:
Jill Maclean (CDD Director), Laurel Christian (CDD Planner), Irene Gallion (CDD Planner), Allison Eddins (CDD Planner), Jack Scholz (CDD Admin)

I. Call to Order

The meeting was called to order at 12:09 p.m.

II. Approval of Agenda

MOTION: *by Mr. Arndt to approve the agenda.*

The motion passed with no objection

III. Approval of Minutes

A. Draft Minutes December 12, 2019 Title 49 Committee Meeting

MOTION: *by Mr. Arndt to approve the December 12, 2019 minutes.*

The motion passed with no objection.

IV. Agenda Topics

A. AME2020 0002: Landscape and vegetative cover definitions

B. AME2018 0003: A text amendment to Title 49, Land Use Code 49.70.1200

Ms. Gallion stated that the Alternative Development Overlay District (ADOD) expires in August 2020. She presented the public comments she had received on the proposed ordinance to replace it. She had broken the comments into two sections: one on dimensions, and one on other elements of the proposed ordinance.

Ms. Gallion directed the Subcommittee to the first element: lot size. She asked if they would like to change the standards of lot size.

Ms. Maclean gave an outline of the hoped-for timeline that would move the proposed ordinance through the Planning Commission and on to the City and Borough of Juneau Assembly.

Mr. Arndt asked if this ordinance was the same as the past ordinance, or if it had changed.

Ms. Gallion replied that it was the same ordinance they had gone over in November. She stated that the purpose of compiling the comments on it was to see if they needed to modify it.

Mr. Dye remarked that presented concepts appeared to create confusion with the public.

Ms. Maclean said that the low frequency of housing turnover in the area means that lot size concerns come up infrequently. She surmised that they might not be aware of the difficulties related to lending due to unfamiliarity with the issue.

Mr. Winchell stated that there are a high percentage of lots downtown which can't conform and therefore can't attain lending. The ADOD addresses this issue through floating lot sizes so that they can conform, attain lending, and sell. He approved the changes.

Ms. Christian acknowledged complexities of the issue, especially when considering the overlapping concerns of lot size and density.

The subcommittee reviewed the comments for lot width and depth in light of public comment. They recommended no changes. They did the same with the comments on the sections regarding vegetative cover, structure height, and lot coverage.

When Ms. Gallion moved on to the comments regarding setbacks, Mr. Dye remarked that setbacks were also a complex issue.

The subcommittee decided on no modifications to proposed setbacks.

Regarding yard setback exceptions, Ms. Christian said that the first comment is talking about the exception for ramps and landings to access a dwelling. The commenter asks why that access piece couldn't be in the rear of a dwelling if the inhabitants access it from an alley, for example.

Mr. Arndt asked if there is an issue with adding access via the rear lot line.

Ms. Gallion said they could apply access through unenclosed walkways and stairways to rear lot lines as well.

Mr. Winchell asked about the prohibition on arctic entrances in the rear of a dwelling.

Ms. Maclean said that it is possible to have something that meets the setback requirements for a rear arctic entrance. She added that the setback exceptions apply borough-wide, as a reminder.

Mr. Dye said that downtown has a large number of unusual public right-of-ways. He suggested adding an exception for any property line abutting a public right-of-way. That way, if the alleyway already exists, a property owner could build an arctic entry in the rear.

Ms. Maclean said sliding setbacks already cover many of those cases. She questioned how many properties it would actually affect.

Mr. Arndt asked if the downtown alleys are already right-of-ways.

Ms. Christian responded that yes, they are platted as such.

Mr. Winchell asked if it would be cumbersome to include an exception for arctic entries in the rear and placed it under the purview of the Planning Commission. He noted the Flats neighborhood as an area to which it would be relevant.

Ms. Christian replied that they wouldn't need to bring those cases to the Planning Commission because they have rules in place that are easy to meet.

Mr. Dye said that there is no appropriate process through which those cases come to the Planning Commission, and they should be decided through code.

Ms. Christian said that major developments are the exception.

Mr. Winchell expressed his support. He asked if staff foresee a problem in the Flats neighborhood where property owners wouldn't be able to build arctic entries in the rear.

Mr. Arndt stated that arctic entries already do not qualify.

Mr. Dye said that the ordinance is talking about ramps and allowing for ADA access. He said that being able to get quality access for ramps is a positive.

Mr. Arndt said that it seems like the intent is to access a right-of-way.

Ms. Christian said that by including the phrase "streetside," that meets the intent. She expressed doubt that there would be any issues since they were already increasing flexibility by reducing the required setbacks.

Mr. Dye said that we don't have any traditional front and read sides anymore because they're all sliding.

Ms. Maclean said that property owners can pick their setbacks, but they should be getting access from the front. She said that this is defined in code.

Mr. Dye said that someone could make the argument that the alleyway is the front.

Ms. Gallion said that she thought they should keep the lot line along the street as the front, but give people the ability to include public right-of-ways.

Ms. Maclean said that the current exemption only get property owners down to five feet for the arctic entry. Setbacks would be three feet under the ADOD.

Regarding the comments on the other elements of the ADOD not related to dimensions, Ms. Gallion said that she grouped them together for convenience, and not necessarily any other reason.

Ms. Maclean said that the complexity of the zoning code makes it difficult for property owners to what they can do under current zoning unless they consult with a planner. She said that the CBJ doesn't have design regulations for any neighborhoods, regardless of whether they're historic or not, and that this is going to be an ongoing issue.

Referencing a specific comment, Ms. Maclean asked why the commenter feels that this process should be extended for another year.

Ms. Gallion said that the person feels the process is rushed. She said that this sentiment goes back to the idea that CBJ should be reworking the zoning rather than reworking the ADOD overlay. She explained that reworking the zoning will come after the update to the Comprehensive Plan, which is about seven years off. She said that this is a triage move.

Mr. Dye added that starting on a smaller scale allows people to experience what changes look like before the updates to the Comprehensive Plan and zoning.

Regarding the section on draft zoning, Ms. Gallion said that staff could change "zoning" to "overlay district."

Ms. Maclean said that there might be a legal reason why it's called "zoning." She said that the idea could be brought up to the CBJ legal team.

The subcommittee reviewed some potential wording and organizational changes.

Mr. Dye asked whether a property would have to completely conform in order to be able to use this for their property.

Ms. Christian replied that if a property is nonconforming, the ADOD will help to make them more conforming.

Mr. Dye said that there is no middle ground between conforming and nonconforming.

Ms. Maclean said that the intention was to have property owners opt in or out of the ADOD, so perhaps that needs to be made clearer.

Mr. Winchell said that it brings the owner into conformity for the purpose of loans.

Ms. Maclean asked if the current overlay district only applies to residential uses, and if the new one would apply to commercial as well.

Mr. Dye confirmed that the new overlay district would apply to residential and commercial uses.

Ms. Gallion suggested that staff clarify that this is the case, with Ms. Christian suggesting that they add it into the purpose statement.

Mr. Dye reiterated his concern about aggravating existing nonconforming situations. He asked if this would help the situation.

Mr. Arndt said that it would help.

Ms. Christian said that they can reduce the setbacks of a nonconforming lot in a building permit.

Mr. Dye said that it allows people to attain legal nonconforming status in lot size but then aggravate their nonconforming status through the ADOD.

Ms. Christian disagreed that it aggravated the situation.

Ms. Maclean said that the reduction currently exists. Staff agreed that the ADOD doesn't aggravate the nonconforming situation.

The subcommittee discussed the merits of two separate ways of calculating yard setbacks. Mr. Dye disagreed that they needed to include calculations, and pointed out a potential loophole. The subcommittee agreed to exclude calculations.

Staff remarked that the upfill conditional use permit wasn't included but agreed that it didn't need to be. Staff concluded that they should make a note that the exception already exists.

Current code allows structural projections into setbacks if the lot abuts public land in reserve status. That exemption was carried over into the draft ordinance. Mr. Arndt said that he didn't think the exemption should exist at all, and that this might have to be a bigger conversation due to the complexity.

Ms. Maclean said that the exception does help avoid situations where property owners ask for variances. Often, the properties are on steep slopes so it's already a challenging situation.

Mr. Arndt said that the Planning Commission can't define what qualifies as an "excessively blocked view."

Ms. Maclean mentioned several instances in which the Planning Commission had, in fact, defined it.

Mr. Winchell asked if this allows property owners to exceed minimum standards, so if they meet all of the requirements, the buildings would be even closer together or higher.

Mr. Dye said that he thought it shouldn't be an exemption written into the ADOD. All agree, and the exemption is struck.

Mr. Winchell moved to approve staff findings for AME2018 0003 and to forward it to the Planning Commission Committee of the Whole.

V. Committee Member Comments and Questions

Ms. Gallion asked the subcommittee what support materials they will need for sending AME2018 0003 to the Planning Commission Committee of the Whole.

Mr. Arndt replied that he thought the lot size drawings should be included in the presentation.

Ms. Gallion asked if they wanted to consider how to move forward with something similar in the Douglas area.

Ms. Maclean reported that Alexandra Pierce, the CDD Planning Manager, had started on that process. She said that they intend to ask for a one-year extension on that project.

Mr. Arndt expressed that AME2018 0003 will be a good example for a similar process in the Douglas area.

The subcommittee discussed the tentative schedule for future projects, remarking that CBJ's legal staff had limited time to devote to them.

VI. Adjournment

The meeting adjourned at 1:33 p.m.

Presented by: The Manager
Introduced:
Drafted by: R. Palmer III

ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 2019-XX

An Ordinance Amending the Land Use Code Relating to the Downtown Juneau Alternative Development Overlay District.

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 70 is amended by adding a new article XIV to read:

ARTICLE XII. DOWNTOWN JUNEAU ALTERNATIVE DEVELOPMENT OVERLAY DISTRICT

49.70.1400 Purpose.

The purpose of this chapter is to establish dimensional standards that suit the built environment in historic neighborhoods and reduce the number of non-conforming properties. Improving conformance reduces the need for variances or conditional use permits, lessening the burden to property owners.

Dimensional standards:

(a) Set minimum standards and procedures for construction of new structures;

(b) Set minimum standards and procedures for expansion, restoration or repair of existing structures;

(c) Establish dimensional standards that support public health, safety and welfare of the neighborhood.

49.70.1410 Applicability.

Commented [IG1]: Question for Law: What is the correct term? Do we call this zoning, dimensional standards, or something else?

DRAFT

(a) This ordinance applies to property within the Downtown Juneau Alternative Development Overlay District (ADOD) boundary as shown on the map dated August 30, 2019.

(b) Participation in the Downtown Juneau ADOD is optional, unless required to make non-conforming development more conforming.

(c) This section specifically modifies certain dimensional standards. Unless noted in this section, All remaining requirements of the underlying zoning district apply.

(d) This ordinance does not modify permissible uses or the processes outlined in 49.15 Article II.

(e) When the standards of this section conflict with other parts of code, the more specific code will prevail.

(f) When a land owner chooses to use Downtown Juneau ADOD dimensional standards, they must conform to all the standards outlined in 49.70.1440 below.

(g) Downtown Juneau ADOD standards may be applied in development of subdivisions within the ADOD boundary.

49.70.1420 Downtown Juneau Alternative Development Overlay District procedure.

(a) Developers affirm their participation in the Downtown Juneau Alternative Development Overlay District by submitting an alternative development permit application with their development permit application, and any other applications that may be required.

(b) The processes will be governed by permit type in accordance with Chapter 49.15.

49.70.1430 Downtown Juneau Alternative Development Overlay District Standards.
(a) Applicability. The following dimensional standards shall apply to lots within the ADOD boundary regardless of their underlying zoning district designation.

(a) Lot size.

(1) Minimum lot size is 3,000 square feet.

(2) Minimum lot size for a duplex is 4,500 square feet.

(3) Minimum lot size for a common wall structure is 3,000 square feet.

(4) Lots that do not have minimum lot size may participate in the other dimensional modifications of this part.

(b) Lot width and depth.

(1) Minimum lot width is 25 feet.

(2) Minimum lot depth is 25 feet.

Commented [IG2]: Question for Law: Should this statement remain?

Commented [LEC3R2]:

Commented [IG4]: Question for Law: The intent of this statement is to clarify that people cannot cherry pick between zoning standards and ADOD overlay standards. If they are going with the less restrictive ADOD standards, they need to comply with all the ADOD standards.

Commented [LEC5R4]: Need to make an exception for nonconforming properties.
If my lot doesn't meet lot area, I can still participate in setbacks.

(c) Minimum vegetative cover is 15 percent.

(d) Structure height.

(1) Maximum height for primary uses is 35 feet.

(2) Maximum height for accessory uses is 25 feet.

(e) Setbacks.

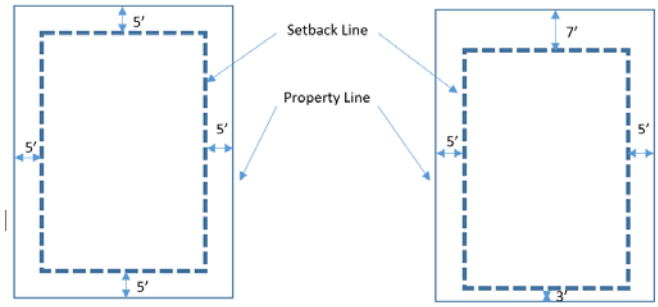
(1) Setbacks will be measured from the structure closest to the lot line.

(2) The minimum setback for any lot line is three feet.

(3) Setback sums

(A) The sum of all setbacks must equal at least 20 feet.

(B) If lot size is less than required in this section, the required setback sum may be reduced proportionally. In no case shall the required setback sum for the lot be less than 12 feet and in no case shall any side setback be less than three feet.



49.70.1440 Yard Setback Exceptions.

(a) Purpose. This section clarifies the exceptions that apply in the Downtown Juneau Alternative Development Overlay District. Exempted structures do not count toward the setback total.

(b) Methodology.

(1) Architectural features and roof eaves may project into a required yard, but can be no closer than two feet from the side and rear lot lines.

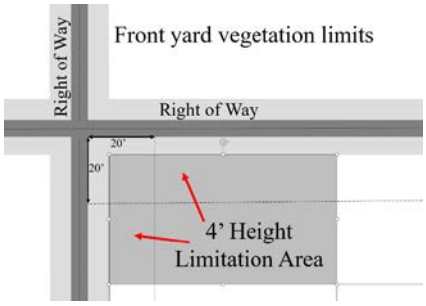
(2) Unenclosed balconies, connecting deck stairways, walkways, ramps and landings with or without roofs, may extend to an abutting public right-of-way provided the structure does not exceed five feet in internal width exclusive of support structure.

(3) A parking deck, no part of which exceeds one foot above the level of the adjoining roadway, and which does not include other uses, is exempt from the setback requirements of this chapter, provided a non-sight-obscuring safety rail not more than 42 inches in height is allowed.

(4) Energy efficiency improvements that do not increase interior square footage, such as exterior insulation, may project up to eight inches into a required yard.

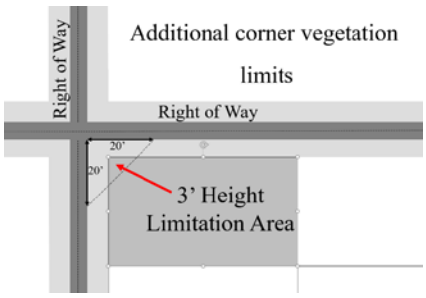
(5) Fences and vegetation. For this section, a "travelled way" is defined as the edge of the roadway shoulder or curb closest to the property.

(A) The maximum height of a sight-obscuring fence or vegetation shall not exceed four feet within 20 feet of the edge of the traveled way. Trees are allowed within 20 feet of the edge of the traveled way provided they do not obscure view from a height



of four feet to a height of eight feet above ground.

(B) On corner lots the maximum height of a sight-obscuring fence or vegetation located within 20 feet of a street intersection shall not exceed three feet. The area in



DRAFT

which sight-obscuring fences and vegetation is restricted shall be determined by extending the edge of the traveled ways to a point of intersection, then measuring back 20 feet, then connecting the three points. In this area, vegetation shall be maintained to a maximum height of three feet. Trees are allowed in this area provided the trees do not obscure view from a height of three to eight feet above the ground.

Section 4. 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

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Comments on Other Elements

49.70.1400 Purpose

General concern for the look and feel of Casey Shattuck. Worry about "quaint" character of the neighborhood (multiple people)
ADOD Process
Why not just update zoning? (1 person doesn't like ADOD as band aid)
Why not extend for another year?
Why not a new zoning district?
To my mind the whole standard review and revision seems rather rushed. I know you were given direction, but it's OK to push back if the direction doesn't seem reasonable, and I think it would be better to extend the current expiring standards for a year to give enough time to finish working through the revisions. Having two standards (and allowing owners to choose) sacrifices consistency for ambiguous expediency, which is a choice I've encountered before, and learned--by bitter experience--to regret.
Conformity
Describe non-conforming better
How many buildings currently conform? Would be good to see more spread on lot size vs. Conformance
We should decide as a community what percentage of zoning conformity we want. Present a wider range of lot sizes and per cent conformity.
Why is non-conforming so important?
Why do we care about conformity for lot size?
How does this interact with non-conforming ordinance?
Neighborhood Standards
These comments are based on the ADOD slide show and proposed development standards presented at the December 5 meeting. We reside in the Casey-Shattuck subdivision (also known as “The Flats”) and our comments come from what we consider to be appropriate for that particular neighborhood. These comments may not apply to other neighborhoods, which is why we strongly support some unique standards for each neighborhood. We interpret the “What does this do?” slide as describing two goals: 1. “More flexibility for improvements and development” Flexibility can be a two-edge sword. We agree that situations arise that require innovative solutions that may not fit within set standards. However, such exceptions should only be allowed if they can be made consistent with the overall character of the specific neighborhood (Goal 2). Universal standards for the entire ADOD area would by necessity need to be generalized and loosely written to meet a wide variety of circumstances that likely apply to certain neighborhoods. This would likely lead to inappropriate application of exceptions in other neighborhoods, diminishing the effectiveness of this whole ADOD effort. Such an approach in turn seems to work directly against goal #2 below. We believe that having neighborhood-specific standards would reduce the need for exceptions because the standards could be written better to fit a particular neighborhood.

Neighborhood Standards, continued
We interpret the "What does this do?" slide as describing two goals: 2. "Maintain character of the neighborhoods" We fully support this goal. Using the plural in "neighborhoods" implies there are neighborhoods that have different characteristics. The logical conclusion would be that, where appropriate, there should be different development standards among the ADOD neighborhoods in order to maintain each neighborhood's particular character. Providing uniform standards to all neighborhoods would tend to result in all the neighborhoods having similar characteristics, which would diminish the existing unique characteristics of each neighborhood. As well, "Character" is a subjective term and the qualities of a neighborhood's character are not described. Qualities of the Casey-Shattuck neighborhood that we consider important to maintain during this process are described below:
Qualities of the Casey-Shattuck neighborhood that we consider important to maintain during this process are described below: - Historic Neighborhood. Please refer to our separately submitted comments about how we believe the proposed ADOD standards are not consistent with existing Historic Neighborhood characteristics and the CBJ Comprehensive Plan.
I understand the need for more housing and working with properties, but the recent "maxi-buildings" in the federal flats are a bit alarming and I believe they are the precedent that the new ADOD would encourage. Maintaining a smaller ADOD lot size requirement continues the critical role of the Planning Commission in maintaining the character of our community.
Overlay v Zoning
As currently zoned, only 36% of the buildings are in compliance. This indicates that the current zoning is inappropriate.
To my mind the whole standard review and revision seems rather rushed. I know you were given direction, but it's OK to push back if the direction doesn't seem reasonable, and I think it would be better to extend the current expiring standards for a year to give enough time to finish working through the revisions. Having two standards (and allowing owners to choose) sacrifices consistency for ambiguous expediency, which is a choice I've encountered before, and learned--by bitter experience--to regret.
I was left wondering why we don't just make the changes to the set back and undeveloped space calculations, but leave the minimum lots sizes as they are until the comprehensive plan and zoning update are done. Is it because being out of compliance with minimum lot size prohibits any increase in the footprint, regardless of compliance with the set back?
49.70.1410 Applicability
My strong preference is to leave Willow Drive lots out of the Overlay as all of our lots meet current zoning (D-5) standards. If the purpose is to bring 80% of the lots within the overlay into compliance, then that was already exceeded in our neighborhood. Please make a slight revision in your map so that we can keep our current zoning standards. *Staff note: One of the ADOD applications completed was on Willow Drive.*
How can someone be nonconforming to ADOD? I want to use ADOD but am non-conforming for lot size - can I?
How does this fit with the historic plan?
One thing bothers me: Owners will be able to decide which standard they want to follow, but what if a property changes hands and the new owner wants to do a new project under the other standard? Do you let them? Or are they stuck with the previous owner's choice?
I got distracted by being exposed first to the map showing lots that could be subdivided, making me think subdivision opportunity was an important motivation (or risk) of the ADOD change. Other meeting participants thought the lot size change would allow new multi-family or apartment buildings.

49.70.1420 Downtown Juneau ADOD procedure
I think it's actually preferable for folks to get variances when they are proposing to build beyond the 4000sf limit, and helps maintain an appropriate level of government/planning commission oversight on buildings that maximize the space on their lots. The cost is high, but is appropriate for many of the proposals that result in new revenue streams for owners such as small rental apartments, B&B's, etc.
What if you have an existing structure on a 2,000 square foot lot, but you decide you want to participate in ADOD for the 3' setbacks? Can you do that without conforming lot size?
I will state what I noted at the public meeting, which is that this makes an already complex code even more complicated.
Zoning codes should be addressed separately from building codes. Zoning codes should establish look, feel and function. Building codes can adapt to zoning restrictions.
How does this impact accessory apartments?
Do not wait until a building permit to decide on if you will participate in ADOD or not. That is too late in the process.
What if we are "grandfathered" in to some things? How to balance.
Avoid design reviews.
More predictability please! (positive toward proposal)
Variances
How does ADOD affect ability to get a variance?
How does this relate to variances?
Other Topics
General
The only other comment I would suggest at this time is that the restrictions on fence height at corners should not apply to lots adjacent to platted ROWs that are not used by vehicles. My house is adjacent to the 5th Street stairs; a tall fence would not impede visibility for motorists.
Qualities of the Casey-Shattuck neighborhood that we consider important to maintain during this process are described below: - Sidewalks. We believe the Casey-Shattuck subdivision is unique from other nearby neighborhoods in that both sides of the streets have sidewalks. Sidewalks help provide a buffer between the house and the vehicles on the roadway, enhancing the feeling of space for the typically small lots in the Casey-Shattuck subdivision. Sidewalks also enhance the feeling of friendliness as described above.
The reduced lot sizes are a big step in the right direction, as are the width, depth, and coverage--I'd like to see 90% of the lots conforming; what would that require?
I generally support the proposal, but have a question about the modified set back requirements.
I am a homeowner in Juneau, and have been in Juneau since 1989. I have owned (including current properties) three properties in Juneau including a 4-plex, duplex, and townhouse. I have had to get easement agreements and permits to meet building/zoning requirements, so I understand working with property boundary issues. I support the need for a new ADOD to replace the expiring ADOD, and appreciate the efforts the team has put into the new proposal.
Thank you for considering these comments, and please consider reducing the proposed ADOD requirements to closer to "half" of what you are proposing.
More flexible where not how tall (….?)
Lots vs. city streets

Attachment H: Public comments on elements of the ordinance other than dimensions

Accessory Issues
Keep parking for AAP. Stop providing waivers.
This will help improve conformance and the ability to get a bank loan.
Avalanche and mass wasting concerns should be worked into this ADOD. (One-on-one comment)
Zone for GROWTH (one-on-one comment)
How does this affect parking?
"Zoning people are crazy"
My address is on one street but my access is on another, how does that impact "front"?
Does this change frontage?
How to deal with disputed property lines?
Would access be limited for raised garages?
How does this interact with avalanche zones?
Parking downtown is an issue.
Miscellaneous
Clarification: Survey costs in addition to ADOD costs
Discussion of relationship between 3' setback and fire code - person's neighbor has a "no construct" agreement - she thinks 3' to the lot line is too close.
Meeting Presentation
Confusion re current ADOD and new ADOD
Define duplex vs common wall vs single family
Clarify that bungalows exist now - not changing
What if houses is not parallel to the lot line? Would be good to show a house that is not parallel in the example.
Definitions need more clarity.
Purpose needs more clarity.
Provide meeting materials ahead of time and on line.
Would like to know how many variances we've had since 1987.
3D models would be very helpful.
Describe difference between existing zoning districts.
Remove Capital Park from map of sub dividable properties (next to Terry Miller building)
How many unbuilt lots do we have in the ADOD?
What is the number of lots that could be subdivided based on lot size?
Describe non-conforming better
Better distinguish between the existing process and the proposed process
Also, perhaps explain why it helps if the ADOD makes more existing/grandfathered construction comply with minimum lot size.
I appreciated the public meeting and came away with better understanding and greater comfort with the proposal.
My observation is that many of us - even those with sufficient interest to attend a meeting- don’t know what current downtown zoning allows and prohibits, so it is easy to jump to incorrect conclusions about the effects of the ADOD

Meeting Presentation, continued
In future presentations, it could help to spend the first 10 minutes setting the stage by explaining the basics of D5/10/18 zoning and the effects of being out of compliance, which you ended up having to do intermittently as a result of questions. (References to variances for repairs were confusing because repairs don't usually affect the building footprint.)
Beyond these questions and suggestions, my primary message is that the meeting was helpful and I appreciated you giving us your evening and Saturday afternoon.

COMPARISON OF VARIANCE AND CONDITIONAL USE

By Lee Sharp

Preston Gates & Ellis LLP

February 1997

Variance	Conditional Use
1. Purpose is to ensure that the application of zoning regulations does not operate to deny all reasonable uses of a property that is peculiar when compared to other nearby property to which the same regulations apply.	1. Purpose is to deal with uses that have a particular, potentially adverse, impact on the surrounding area that cannot be predetermined and controlled by general regulations. Is used to ensure such uses will be compatible with surrounding development by placing conditions on the use to minimize or eliminate adverse impacts.
2. To accommodate peculiarities of the land.	2. Not dependent upon peculiarity of the land, but triggered by the peculiar effect of the use on the neighborhood.
3. Exceptional hardship must be shown.	3. Hardship is not relevant.
4. Deals with density restrictions (and not use restrictions in most places in Alaska).	4. Deals with use and with restrictions on use and density.
5. Allows relaxation of density restrictions where peculiarity and undue hardships are shown. Relaxation not allowed for a trade off.	5. Not for the purpose of relaxing density restrictions but to permit additional restrictions to be placed on the use; however, relaxation of density restrictions may occur if the conditional use procedure is applied to planned unit developments where trade-offs are allowed.
6. Allows a condition expressly prohibited by the regulations.	6. Allows a use that is expressly permitted (but which requires special conditions).
7. Is a dispensation to violate the law.	7. Is a permitted use within the district.

8. Very strict standards apply.	8. More generalized standards apply, e.g., consistency with the comprehensive plan and purpose for the zoning ordinance.
9. Is a property owner right if property meets requirements; is not a flexible planning tool.	9. Generally is not a right if use cannot be made compatible with neighborhood; is a flexible planning tool.
10. Property owner is entitled to a variance if can show peculiarities of property leading to hardship under the regulations.	10. Generally entitled to a permit if property owner can show use is compatible with neighboring property and other permitted uses within the district.
11. Quasi judicial proceeding (little discretion involved in granting or denying).	11. Quasi legislative or quasi judicial proceeding depending on situation, but substantial discretion involved.

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PRESTON GATES & ELLIS LLP
ATTORNEYS

VARIANCES TO LAND USE AND PLATTING REGULATIONS

Planning Commissioners Seminar
Anchorage, Alaska
February 1997

Presented by:
Lee Sharp

"Remember, my friend, a variance is a special dispensation to violate a law that the rest of us must obey."

Anonymous

Extraordinary Remedy For An Extraordinary Situation.

Platting and zoning regulations apply to all property uniformly. Within a particular zone, zoning ordinances apply to all property uniformly. For a particular type of subdivision, the platting regulations apply to that subdivision and all similarly situated subdivisions in the same manner. There is a certain quid pro quo in platting and zoning regulations. A property owner who develops or subdivides his property is required to follow the applicable regulations. He does so knowing that everyone else similarly situated will also have to follow the same regulations. If the regulations were not uniformly applied and special favors were granted to those who applied for them, the regulation of the subdivision and use of land would become a sham.

However, it is also recognized that not every parcel is the same, and some property may be so unusual as to result in an undue substantial hardship on the owner of the property or a denial of all beneficial uses of the property if a uniform and strict application of the regulations is made. When a regulation makes property unusable for any purpose, courts will generally find that there has been a taking of the property. Thus, it is necessary to provide some flex in the joints of zoning and platting regulations to ensure that regulations that must be applied uniformly do not act as a taking of property because of some peculiarity of that property. As was noted by the Rhode Island Supreme Court in Reynolds v. Zoning Board of Review of Town of Lincoln, 191 A.2d 350 (R.I. 1963) at 352,

> A variance . . . is designed to preserve the constitutionality of the legislation. It is invoked to avoid the confiscatory effect that would follow a literal enforcement of some term of a zoning ordinance operating to deprive an owner of all beneficial use of his land.

It has been described as an escape hatch.

> A variance is designed as an escape hatch from the literal terms of an ordinance which, if strictly applied, would deny a property owner all beneficial use of his land and thus amount to a confiscation.

Lincourt v. Zoning Board of Review of the City of Warwick, 201 A.2d 482 (R.I., 1964) at 485-86. In Alaska, our Supreme Court has recognized that variances provide an escape hatch or safety valve for the individual landholder who would suffer special hardships from a literal application of a land use ordinance. City and Borough of Juneau v. Thibodeau, 595 P.2d 626 (Ak, 1979) at 632.

However, because the law should apply uniformly to everyone who falls within its scope, variances are granted sparingly and only under exceptional circumstances. Variances are the exception, rather than the rule. Ivanovich v. City of Tucson Board of Adjustment, 529 P.2d 242 (Ariz. 1975); Heady v. Zoning Board of Appeals for Town of Midford, 94 A.2d 789 (Conn., 1953); Lovely v. Zoning Board of Appeals of City of Presque Isle, 259 A.2d 666 (Me. 1969). The courts rule that variances should be granted sparingly not only because they are justified only in exceptional circumstance, but because they also amount to a special dispensation to violate the law. Board of Adjustment of City of Fort Lauderdale v. Kremer, 139 So.2d 448 (Fla., 1962); Mitchell Land Co. v. Planning and Zoning Board of Appeals of Town of Greenwich, 102 A.2d 316 (Conn., 1953).

It can be seen that the granting of a variance is not an every day occurrence nor a matter that is to be handled lightly. Alaska Statutes Title 29, the Alaska municipal code, recognizes that the granting of variances is an integral part of land use regulations but it specifically prohibits use variances, variances based on self-imposed hardships and those sought solely to relieve pecuniary hardships or inconvenience. AS 29.40.040(b).

Included for your review as Attachment A are the variance provisions from Title 29.

Home rule municipalities are not bound by the above restrictions of Title 29 unless they are a home rule city within a general law borough (other than a third class borough). For example, although the City of Kenai is home rule, it is within the Kenai Peninsula Borough which is bound by the provisions of Title 29. Because a city within a borough may exercise only those planning and zoning powers delegated to it by the borough, its powers are limited to those possessed by the borough, even if the borough were to delegate its full zoning powers within the city to the city. The borough cannot delegate more power than it has.

If you examine the variance provisions of various home rule and general law municipalities within the state, you would find the following common threads running through these ordinances:

1. The property must be peculiar; that is, different from other property in the neighborhood or zoning district (not different from property in the municipality at-large); some ordinances address peculiarity of a building or structure.

2. The peculiarity arises out of natural conditions of the land or surrounding development.

3. Because of the peculiarity, a literal application of the zoning (or platting) regulation would work a hardship on the property owner, i.e., prevent reasonable use of the property or deny the owners rights or uses commonly enjoyed by others in the neighborhood.

4. The variance must be the minimum necessary and must be consistent with the comprehensive plan, safety, welfare, etc.

Peculiarity.

There are thus two main elements that must be considered before a property even qualifies for a variance. The first is the peculiarity element, and the second is the denial of reasonable use or undue substantial hardship element, often characterized as unnecessary hardship. The terms "undue hardship" and "unnecessary hardship" have been viewed as equivalent terms. Lively, supra. The peculiarity element has been viewed from two different aspects. Some courts have said that the regulation must have a peculiar impact on the property, that is, that the impact of the restriction on the applicant's property is different from the regulation's impact on other properties that are similarly situated. Township of West Deer v. Bowman, 333 A.2d 792 (Pa., 1975). Others have indicated that there must be a peculiarity of the property. In Ivanovich, supra, the Arizona Court of Appeals held that for a variance to be granted there must be a finding that the

> . . . situation or condition of the property in question is extraordinary and exceptional and that the application of the zoning requirement would cause peculiar and exceptional practical difficulties or exceptional and undue hardship.

Ivanovich, supra at 248 (emphasis in original). Other courts have indicated that the need for the variance must arise out of unique circumstances without focusing upon either the property or the regulation. Taxpayer's Ass'n of South East Oceanside et al. v. Board of Zoning Appeals of Town of Hempstead, 93 N.E.2d 645 (N.Y. Ct. App. 1950). In Turner v. Richards, 366 A.2d 833 (Del., 1976) the Delaware court held that the hardship justifying a variance had to be inherent in the particular property.

The Alaska Supreme Court stated it this way:

> Peculiarities of the specific property sufficient to warrant a grant of a variance must arise from the physical conditions of the land itself which distinguish it from other land in the general area.

Thibodeau, supra, at 635. Although AS 29.40.040 does not directly address the source of the peculiarity, it does prohibit variances where the "special conditions" are caused by the person seeking the variance, thus shifting the focus from the owner's situation to land.

Whether the analysis proceeds from the basis that there must be some peculiarity of the land or there must be some peculiar impact of the regulation seems immaterial as it is difficult to conceive of a situation where there would be a peculiar impact of a regulation where there was not some peculiarity of the property that caused the unusual impact. In any event, the physical peculiarity of the land approach has been recognized by the Alaska Supreme Court. Stated another way, a condition that is personal to the owner is not relevant. For example, a couple that owns a single family home in a single family zoned area desires to put on a 600 square foot addition that encroaches upon a setback requirement. The addition is needed to house the couple's aged mother because they cannot afford the cost of the necessary nursing home care for her. Their application for a variance should be denied for several reasons, one of which is that the "peculiarity" is not one that is physical or inherent in the land itself; instead, it arises out of the particular needs and desires of the couple. There is no physical feature of the lot to distinguish it from other lots in the area; the lot is not peculiar.

Hardship.

The other major element that must be present is that the peculiarity give rise to a substantial or undue hardship, or deny reasonable use of the property. Numerous courts have been faced with the question of what is meant by an undue or unnecessary hardship. Remembering that the purpose of a variance is to prevent a land use regulation from amounting to a confiscation of property where there is some peculiarity, it is not difficult to understand that undue and unnecessary are equated with what amounts to a taking. Courts require a showing that there is no possible beneficial use of property or that the strict application of the ordinance to that particular parcel would cause a loss of all beneficial use of the property. It has also been interpreted as meaning that there must be a showing that the land cannot yield a reasonable return. Taxpayer's Assn. of South East Oceanside et al., supra; Lincourt, supra; Board of Adjustment of New Castle County v. Henderson Union Association, 374 A.2d 3 (Del. 1977); Franco v. Zoning Board of Review of Town of Smithfield, 156 A.2d 914 (R.I. 1959).

A variance applicant must show that denial of the variance would leave them with no other reasonable use of the property or that no reasonable return could be made on the property. Courts reject the plea of variance applicants that they are unable to make as much money on their property if the variance is denied. In Pincus v. Power, 376 Pa. 175, 101 A.2d 913 (1954),the Pennsylvania Supreme Court held that where the only hardship shown by the applicants for a variance was that their property would be worth 400% more if the variance were granted was not the basis for granting a variance. In Broadway, Laguna Vallejo Association et al. v. Board of Permit Appeals of the City and County of San Francisco et al., 59 Cal. Rptr. 146, 427 P.2d 810 (1967) the California Supreme Court recognized that

virtually any circumstance that could be translated into economic terms would lead a developer to apply for a variance and that the mere desire to construct a more profitable project was not a basis for relief from land use regulations. The court noted at p. 819 that "variances were never meant to insure against financial disappointments." At p. 815, the court noted that if the desire to increase profits was sufficient to justify a variance, then almost all developers would qualify for variances and the public interest "would inevitably yield to the private interest and the maximization of profits." Similarly, the Arizona Court of Appeals in Ivanovich, supra, noted that there would be no occasion for land use regulation if variances were to be granted on the basis of apparent monetary distress of the property owner. In West Deer, supra, the Pennsylvania court held that unnecessary hardship was not demonstrated by evidence showing that the applicant would benefit if relieved of the land use restriction. The loss of economic benefit has been uniformly rejected as a basis for a variance. Cohen v. Zoning Board of Adjustment of the City of Philadelphia, 276 A.2d 352 (Pa., 1971); Blackman v. Board of Appeals of Barnstable, 136 N.E.2d 198 (Me. 1956). And in Alaska, the Supreme Court noted in Thibodeau, supra at 635;

> The assertion that the ordinance merely deprives the landowner of a more profitable operation where the premises have substantially the same value for permitted uses as other property within the zoning classification argues, in effect, for the grant of a special privilege to the selected landowner. We do not believe that the variance provision in the instant ordinance is intended to achieve such an inequitable result.

Alaska Statute 29.40.040(b) dealing with the board of adjustment (zoning) makes this a statutory prohibition. That section provides in pertinent part:

> A variance . . . may not be granted . . . solely to relieve pecuniary hardship or inconvenience.

Self-Imposed Hardships.

As was noted in the preceding discussion, the peculiarity of the lot generally must arise out of some natural condition of the lot. An artificial condition of the lot generally is not relevant. A structure placed on a lot is an artificial condition, not a natural one. Therefore, the existence or placement of the structure on the lot does not generate a peculiarity. As it is the natural condition of the lot that must lead to the hardship; a qualifying hardship generally cannot arise out of an artificial condition of the lot.

Courts have long recognized that self-imposed hardships do not qualify for a variance. In Alaska, this restriction on variances is reinforced in Alaska Statute 29.40.040(b) which provides, in part:

> A variance . . . may not be granted if (1) special conditions that require the variance are caused by the person seeking the variance . . ..

Where the applicants are the ones who caused the nonconforming structure to be built or it was their agent who, for whatever reason, built the structure in violation of ordinance restrictions, it is clear that the "hardship" involved is "because of special conditions caused by actions of" the applicants. They may not point to their builder and cast the blame on him. Even if the builder is totally at fault, that has little or no relevance to the variance proceeding. What is before the board is a determination of whether the land itself meets the requirements of the conditions for granting a variance under the code, not whether the applicant is guilty or innocent or a third party is the direct cause of the violation.

If artificial or self-imposed hardships qualified for a variance, development restrictions on land would soon become a nullity. All one would have to do is build in violation of the regulation and hope that there is a substantial enough improvement in place by the time the administration discovers the violation that one will be able to show a self-imposed hardship of sufficient magnitude to qualify for a variance. If this is the standard adopted, the person who puts his life savings into a three story mini mansion would qualify for a variance while the wealthy person who built a 300 square foot summer cabin probably would not qualify. However, it should be obvious that the encroachment of the larger structure into a setback will have a far greater impact on the neighboring property or water body than would the same amount of encroachment by the smaller structure. Yet it is the larger structure that would be given a dispensation to continue its violation of the law while the smaller structure would not be given such a dispensation. This inconsistency should help bring home the fact that the regulation of the use of land is done independently of any characteristic of the owner. It makes no difference whether the owner is rich, poor, crippled or healthy, nor how "guilty" he or she is in causing the violation. The adverse impact on neighboring property of a nonconforming structure is the same without regard to any characteristic of the owner. It makes no difference whether the structure is the dream house the owners have planned for years and into which they have placed every penny of their assets or whether it is merely one of dozens of houses they might own. It makes no difference whether they ordered their contractor to place the structure in a violating location or to build it too large or too tall, or whether its placement and size were left totally to the discretion of their builder and they had nothing whatsoever to do with its placement or size. The impact on abutting property, the community (and in the case of shoreland property, the water body), will be the same.

The policymakers for the municipalities have determined that water bodies, streets and neighboring property should be protected and that one way to provide that protection is to prohibit any part of a building from being constructed within certain distances of water bodies, street lot lines and side or rear lot lines. There are also other density restrictions such as lot coverage, FARs, building heights, etc. Persons who own or build a structure in violation of these density requirements seek to justify a variance based on the hardship they would have to endure to bring their structure into compliance with the law. No one should be allowed to bootstrap themselves into such a dispensation and, indeed, the courts reject that approach. In Elwyn v. City of Miami, 113 S.2d 849 (1959) the Florida Third District Court of Appeal, at page 852, quoting from a Florida Supreme Court case said:

> The authorities are generally in accord on the proposition that in seeking a variance on the ground of a unique or unnecessary hardship, a property owner cannot assert the benefit of a 'self-created' hardship.

Elwyn, supra at 852.

The New Jersey Supreme Court in Place v. Board of Adjustment of Saddle River, 200 A.2d 601 (1964) ruled that self-imposed hardships were irrelevant. There, a homeowner, after measuring from what he thought were the stakes for his property, commenced construction of a fallout shelter. However, a later survey of the property indicated that the stakes from which the homeowner had taken his measurements were incorrectly located. He had constructed his fall-out shelter 25 feet from a side lot line from which there was a 40 foot setback requirement. The New Jersey Supreme Court noted:

> . . . the hardship to which . . . the statute refers must arise by reason of one of the specified conditions of the property. . . . hardship created by the owner which is unrelated to the physical characteristics of the land is not contemplated by [the statute] and accordingly is not sufficient grounds for the granting of a variance in this case.

Place, supra at 605.

In another New Jersey case, Deer-Glen Estates v. Board of Adjustment and Appeal of the Borough of Fort Lee, 39 N.J.Super. 380, 121 A.2d 26 (1956) the appellate division of the New Jersey Superior Court had before it the appeal of a variance granted where the owner had built a house encroaching eleven inches into a ten foot side yard setback. The court noted that the hardship of which the owner complained was one brought on by his own act or omission. Then, addressing the question of whether the eleven inch encroachment was significant enough for the municipality to require compliance, the court had the following to say:

> If the latter violation is permitted, where will the line be drawn? A municipality need not overlook, nor will we require it to overlook, such a deficiency merely because it arose through the negligence or inattention of the owner and his employees. A builder may not, after his structure is partially completed, come into the building inspector's office with a new plan, and request, belatedly, that a certificate of occupancy be issued because of an alleged mistake by the surveyor, architect, contractor, or any of their employees. To permit him to do so would open the door to unconscionable, if not fraudulent, conduct on the part of builders. "Mistake" would then become nothing more than a guise for evading the legal requirements of a zoning ordinance. The citizens of Fort Lee have a right to rely on the valid provisions of their zoning ordinance, and have a right to demand its protection. (emphasis added)

Deer-Glen, supra at 29. It would be difficult to state more forcefully the case for denial of a variance involving a self-imposed hardship. Other property owners have submitted to the burden of complying with ordinance requirements. Should we expect less of someone who violates the requirement, even through the neglect or inadvertence of themselves or someone they have hired? The adverse impact of the violation is the same, whether the mistake was made in good faith or in bad faith.

The Connecticut Supreme Court in Highland Park, Inc. v. Zoning Board of Appeals of the Town of Newhaven, 229 A.2d 356 (CN 1967) rejected a variance where the hardship was due to either the property owner's own error or an error committed by someone employed by the owner. There, a corporate developer had constructed a house encroaching five feet into a ten foot side yard setback. The variance was sought on the basis that the location of the house was due to an error made either by the surveyor or by the foundation contractor employed by the corporation. They also claimed that the owner of the adjoining lot had demanded an exorbitant price for a strip of land necessary to relocate the dividing line between the lots and that the house could not be remodeled or moved and would have to be demolished unless the variance was granted. The variance request was denied by the board and the denial was appealed. The Connecticut Supreme Court disposed of the appeal in one paragraph. In denying the appeal (upholding the denial of the variance), the Court noted that the board had no power to grant a variance when the claimed hardship arose out of the property owner's own actions.

Owners will often seek to put as much distance between themselves and their contractor as possible and then to cast the blame upon the contractor. However, as noted in the cases above, the owner-builder is responsible for the acts of those whom he or she hires. Even where there is more distance between the applicant for the variance and the person who committed the error, the courts have refused to give such distance any weight. Pollard v. Zoning Bd. of Appeals of Norwalk, 186 Conn. 32, 438 A.2d 1186 (1982) is one such case. There the executrix of an estate hired a surveyor to divide a parcel into two parcels. Through a surveying error one lot was 5.6 feet short of the minimum 50 foot frontage required, although the plat produced by the surveyor showed the lot as meeting the minimum 50 foot requirement. The beneficiaries of the estate who had nothing to do with subdividing the property were denied a variance to the minimum frontage requirement. Even though the surveyor was hired by the executrix, and not the beneficiaries of the estate, the court ruled that the beneficiaries were to benefit from the subdivision of the lot and were suffering from a self-imposed hardship. The court overturned the grant of the variance, recognizing that the lot could not be lawfully used under the zoning ordinance. The court went on to note that the beneficiaries were not without remedy and, in fact, they were already involved in litigation with the errant surveyor. The court also addressed the public policy problem of letting the variance stand. The beneficiaries had claimed that the denial of a variance would have been unfair because they had no knowledge of the errors committed by the surveyor and because the hardship arose out of circumstances that were totally beyond their control. The court believed that in balancing the rights of the beneficiaries and those of the executrix who hired the surveyor against those of the municipality whose regulations had been violated the burden had to fall on the beneficiaries and the executrix. The court concluded:

> The hardship, in this case, arose as the result of voluntary acts on behalf of one whom the variance would benefit and, therefore, was self-created.

Polland, supra at 1191.

Where there is even more distance between the current owner and the person who actually created the nonconformity the courts have refused relief. Where the prior owner of a large parcel consisting of several undersized lots sold the undersized lots, the New Jersey court refused to reverse the denial of a variance to a subsequent owner stating that,

> . . . the claimed hardship was self-created because the plaintiff's predecessor in title had created the nonconformity by selling the undersized lot . . . (emphasis added)

Barnes v. Wyckoff Tp. Bd. of Adjustment, 174 NJ Super. 301, 416 A.2d 431, 432 (1980).

Persons are presumed to have knowledge of ordinance requirements. Country Estates, Inc. v. Schermerhorn, 380 N.Y.S.2d 325, 326 (N.Y.App.Div. 1976). Further, the owner's lack of knowledge of a zoning violation when purchasing the property is not relevant. Camaron Apartments, Inc. v. Zoning Board of Adjustment of Philadelphia, 324 A.2d 805 (Pa.Commw. 1974).

It will be very tempting for a board to respond to the plea that a variance is the applicant's only hope and that they have no responsibility for the situation in which they now find themselves. The case law clearly runs against such applicants and any hardship arising out of their contractor's error is a self-imposed hardship that is not relevant to the grant of a variance. In fact, as noted by several of the courts, boards are not authorized to grant variances based on self-imposed hardships. The Connecticut Supreme Court in Pollard, supra, summed it up quite well at page 1192 as follows:

> Personal hardships regardless of how compelling or how far beyond the control of the individual applicant do not provide sufficient grounds for the granting of a variance . . .. It is not the function or responsibility of the Board of Appeals to seek ways to extricate [the applicant] from his self-created difficulties. (citations omitted) (emphasis added)

Knowledge of Law, Guilt, Innocence, and Good Faith Reliance Are Not Relevant.

As was noted above, the personal situation of the applicant is not relevant. For example, the applicant's health, age, wealth, family size or the number of cars or dogs in the household have no bearing on whether a variance applicant should be granted a dispensation to violate the law that his neighbor, who does not suffer from the same condition, cannot violate.

The focus is on an inherent peculiarity of the property that gives rise to an undue substantial hardship, not on the particular needs, desires or personal situation of the property owner.

Although the old saw "ignorance of the law is no excuse" is familiar to everyone, the argument is nevertheless often raised that the applicant did not know of the restriction and their innocence of any knowledge of the law should be taken into account in granting the variance. In other words, those who do not know of the law need not obey it while those who are aware of the law will be bound by it. As noted in the discussion above, this argument is generally rejected by courts. The court in Denton v. Zoning Board of Review of City of Warwick, 133 A.2d 718 (R.I. 1957) disposed of this assertion in the variance context when it stated that the hardship flowing from a literal application of a zoning ordinance is in no way dependent upon the applicant's knowledge or lack of knowledge of the existence of land use restrictions affecting his land. Further, as noted above, each person is presumed to know the law, Country Estates, supra and each purchaser is responsible for determining whether the property violates the law, Camaron Apartments, supra.

A more troublesome situation arises when the applicant for a variance asserts an equitable plea. The plea asserted in a variance case is sometimes referred to as good faith or detrimental reliance and may also involve a plea of "clean hands." The situation in which such an argument might arise would be as follows. The property owner applies for a building permit. He shows on his permit application an accurate drawing of a plot of his property and the location of the proposed structure. The application is reviewed by the building official and the zoning administrator. The latter notes on the application that all zoning requirements are met. After the house is built in accordance with the plot plan submitted, it is discovered that a setback violation exists and should have been evident from the plot plan. In such a case, the property owner will claim that he relied to his detriment on the issuance of the building permit with the specific notation relating to zoning compliance. He will claim that his hands are clean; that is, he did not mislead anyone, that he relied to his detriment on the permit and the municipality should be equitably estopped from denying a variance. In a few such situations, courts might prohibit a municipality from enforcing the ordinance against the owner. However, there is a vast difference between the ability of the municipality to enforce an ordinance and whether a property meets the requirements for a variance. Detrimental reliance is not one of the standards set out for the grant of a variance. A property is either qualified or not qualified for the variance depending on its peculiarity and the hardship that would be involved in making a reasonable use of the property. Equitable estoppel is a defense to be asserted by the property owner when the municipality attempts to enforce the ordinance. Fields v. Kodiak City Council, 628 P.2d 927 (Alaska 1981). In the case of a setback violation, that might be the demand that the owner move the structure or otherwise bring it into compliance. It could also involve, upon the owner's refusal, a subsequent civil or criminal action against the owner. However, it is up to the courts, and not boards of adjustment, to decide matters of equity such as detrimental reliance. The board decides only whether or not a variance should be granted based on the standards set out in the ordinance. If a variance is granted, no enforcement action could be taken. If a variance is not granted because the property does not qualify under the ordinance then the municipality is in a position to consider what enforcement action it might take. Only if the municipality attempts to

enforce the ordinance would the owner's equitable defenses come into play; and then, it would be up to the enforcing agency, or the courts to deal with the equitable defense.

Do not get the idea that detrimental reliance will usually work for a property owner. For example, such a defense can be defeated if the property owner could have discovered the potential violation by conducting his or her own investigation of the regulations. In New York, the owner of a 31 story building was required to remove the top 12 stores that exceeded the 19 story limit for the zoning district, even though the city had issued a building permit for a 31 story building and the building had been constructed before the error was discovered, Parkview Associates v. City of New York, 525 N.Y.S.2D 1976, 519 N.E.2d 1372 (1988). The building owners were unable to obtain a variance and were not able to assert detrimental reliance as a defense to enforcement.

Alaska has had one case before its supreme court where an equitable defense was asserted as a basis for the grant of a variance. This assertion was rejected by our court. In Fields, supra, our court stated:

> In the zoning context, estoppel is a defensive claim raised to prevent enforcement of a zoning ordinance. . . . But "[i]t is not the function of . . . [the board of adjustment] to consider matters such as estoppel . . . in determining whether a variance should be granted." Nor is the board to decide equitable questions of "clean hands." Rather, the board's power is restricted to that provided by zoning ordinance and its enabling legislation. Thus the Kodiak board of adjustment's function was to determine whether the requirements for a variance were met and, if so, to grant the variance.
> (citations omitted)

As tempting as it might be to take equitable considerations into account, they are not included in the statute nor local ordinances as a basis for granting a variance and are thus not relevant to a variance proceeding. If such considerations are relevant, they will be taken into account outside the variance proceeding.

However, one home rule city in Alaska has what it calls an "exception" it grants in the same manner as it grants variances. As long as the structure was erected in good faith and the violation is from an innocent error that does not violate the spirit or intent of the zoning code, the exception may be granted if not contrary to (but not necessarily consistent with) the comprehensive plan and would not be detrimental to the public health, safety and welfare, and would not result in material damage to other properties. The humanitarian policy that drives this exception approach is clearly at odds with the policy and law as it has developed relating to variances. This approach is not available to general law municipalities nor to any city (home rule or general law) within a borough.

Platting Variances.

Many municipalities have variance procedures for obtaining variances from the requirements of the platting regulations. The standards for granting platting variances are often more relaxed and more general. Because the variance restrictions found in Title 29 apply only to land use regulations, and not to platting regulations, general law municipalities have more leeway in dealing with variances from platting regulations; however, there does not appear to be any basis in policy for a more relaxed standard for granting platting variances than for land use variances.

Findings.

Turning now from some of the substantive elements involved in a variance to the procedural aspects it should be noticed first of all that the variance procedure is handled in two distinct phases. The first is a determination of whether the property qualifies for a variance; the second is a determination of what degree of variance from the regulations should be granted. The distinction between whether and what is often blurred or completely ignored in variance proceedings. Courts, on the other hand, clearly recognize the need for the variance applicant to meet the threshold requirement by showing both peculiarity and hardship. These showings are a condition precedent to the grant of a variance. Nash v. Zoning Board of Appeals of East Hartford, 345 A.2d 35 (Conn. 1973); Ivanovich, supra; BOA of Newcastle County, supra. Not only must the necessary showing be made before the board may even consider granting a variance, but the failure to show any one of the requirements is fatal to the applicant. Blackman, supra; Kunz v. Waterman, 283 N.E.2d 371 (Ind., 1972). Note also that many ordinances require the board to find all of several elements set out in the ordinance. After all the elements have been shown, then the board may decide how much of a variance it will grant. Within many ordinances, however, the elements that go to the extent and effect of the variance are often mingled with the elements that go to hardship and peculiarity.

Not only must all elements be shown to have been met before the board may grant a variance, but the board must make findings setting out the basis for the showing that all elements have been met. Broadway, Laguna, supra. In addition, there must be evidence supporting the findings of the board. Heath et al. v. Mayor and City Council of Baltimore, 49 A.2d 799 (Md. 1946); Broadway, Laguna, supra. In the Heath case, the Maryland Court of Appeals noted at 804 that the board had

> . . . the duty of deciding in accordance with the evidence, and it is arbitrary and unlawful to make an essential finding without supporting evidence.

While it does not appear that the Alaska Supreme Court has gone quite this far, it has recognized that findings must be made. Findings serve at least two important functions. First, findings help the decision making body to focus on the statutory or ordinance elements that must be shown in the particular case before the body. Second, it gives the parties a clear statement of the board's decision so that they may analyze whether or not an appeal is

appropriate. In addition, it eliminates the need for an appellate body to speculate as to the basis for a decision that may be appealed to such appellate body. Mobile Oil Corp. v. Local Boundary Commission, 518 P.2d 92 (Alaska, 1974). See also Kunz, supra.

In Fields, supra, the Alaska Supreme Court had before it the appeal of a variance action. A major issue in that case was the existence and adequacy of the findings below. The Supreme Court discussion on this matter helps illuminate both the need for findings and the detail of such findings. The court noted:

> The statute requires an aggrieved party seeking review to specify the grounds for the appeal. This requirement is also found in the governing local ordinance. A board's failure to provide findings, that is, to clearly articulate the basis of its decision, precludes an applicant from making the required specification and thus can deny meaningful judicial review. We believe that implicit in AS 29.33.130(b) is the requirement that the agency rendering the challenged decision set forth findings to bridge the analytical gap between the raw evidence and the ultimate decision or order. Only by focusing on the relationship between evidence and findings, and between findings and ultimate action, can we determine whether the board's action is supported by substantial evidence. Thus we hold that regardless of whether a local ordinance requires findings, a board of adjustment ruling on a variance request must render findings "sufficient both to enable the parties to determine whether and on what basis they should seek review and, in event of review, to apprise a reviewing court of the basis for the board's action."....
>
> Our ruling finds support in persuasive policy considerations and in other jurisdictions. As the court in Topanga Association noted, a findings requirement forces the administrative body to draw legally relevant subconclusions that are supportive of its ultimate decision. This facilitates orderly analysis on the part of the board and "minimize[s] the likelihood that the agency will randomly leap from evidence to conclusions."
>
> More importantly, findings enable the reviewing court to meaningfully examine the agency's mode of analysis. Absent findings, a court is forced into "unguided and resource-consuming explorations," groping through the record to determine "whether some combination of credible evidentiary items which supported some line of factual and legal conclusions supported the ultimate order and decision" of the board. Finally, as previously noted, findings enable the parties to determine whether and on what basis they should seek review. (citations omitted)

Fields v. Kodiak City Council, 628 P.2d 927, 933-34 (Alaska, 1981) (citations omitted) (emphasis in original).

It stands to reason that if all elements required by the ordinance must be shown and that the board must render a decision containing its findings, the board must, as a minimum, address each of the minimum requirements set out in the ordinance and make findings as to each, if the board grants a variance. Of course, if it denies a variance, it could do so upon the mere finding that one element had not been met.

J:\GLS\SEMINARS\VARIANCE.DOC

ATTACHMENT A

Attachment I: Variances to Land Use and Platting Regulations,
Lee Sharp, 1997

(2) land use permit requirements designed to encourage or discourage specified uses and construction of specified structures, or to minimize unfavorable effects of uses and the construction of structures;

(3) measures to further the goals and objectives of the comprehensive plan.

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

(1) special conditions that require the variance are caused by the person seeking the variance;

(2) the variance will permit a land use in a district in which that use is prohibited; or

(3) the variance is sought solely to relieve pecuniary hardship or inconvenience. (§ 11 ch 74 SLA 1985)

NOTES TO DECISIONS

Requirement for comprehensive plan. — A comprehensive zoning plan is required to be adopted prior to zoning regulations. Lazy Mt. Land Club v. Matanuska-Susitna Borough Bd. of Adjustment & Appeals, 904 P.2d 373 (Alaska 1995).

Quoted in Price v. Dahl, 912 P.2d 541 (Alaska 1996).

Collateral references. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 140 et seq.; 82 Am. Jur. 2d, Zoning and Planning, § 1 et seq.

62 C.J.S., Municipal Corporations, § 224.

Constitutionality of zoning based on size of commercial or industrial enterprises or units. 7 ALR2d 1007.

Exclusion from municipality of industrial activity that is inconsistent with residential character. 9 ALR2d 683.

Zoning regulations applicable to tourist or trailer camps, motor courts or motels. 22 ALR2d 793.

Remedies to compel municipal officials to enforce zoning regulations. 35 ALR2d 1135.

Validity of zoning regulation prohibiting residential use of industrial district. 38 ALR2d 1141.

Spot zoning to permit neighborhood shopping centers. 51 ALR2d 298.

Zoning regulations as to business of selling motor vehicles. 57 ALR2d 1295; 7 ALR3d 1173; 82 ALR4th 624; 51 ALR Fed. 812.

Applicability of zoning regulations to governmental projects or activities. 61 ALR2d 970.

Inquiry, upon review of zoning regulation, into motive of members of municipal authority approving or adopting it. 71 ALR2d 568.

Standing of municipal corporation or other governmental body to attack zoning of land lying outside its borders. 49 ALR3d 1126.

What constitutes "school," "educational use," or the like within zoning ordinance. 64 ALR3d 1087.

Zoning regulations as applied to colleges, universities, or similar institutions for higher education. 64 ALR3d 1138.

Adoption of zoning ordinance or amendment thereto as subject of referendum. 72 ALR3d 1030.

Zoning regulations as applied to private and parochial schools below the college level. 74 ALR3d 14.

Zoning regulations as applied to public elementary and high schools. 74 ALR3d 136.

Sec. 29.40.050. Appeals from administrative decisions. (a) By ordinance the assembly shall provide for an appeal from an administrative decision of a municipal employee, board, or commission made in the enforcement, administration, or application of a land use regulation adopted under this chapter. The assembly may provide for an appeal to a court, hearing officer, board of adjustment, or other body. The assembly shall provide for an appeal from a decision on a request for a variance from the terms of a land use regulation when literal enforcement would deprive a property owner of rights commonly enjoyed by other properties in the district.

(b) By ordinance the assembly may provide for appointment of a hearing officer, or for the composition, appointment, and terms of office of a board of adjustment or other body established to hear appeals from administrative actions. The assembly may define proper parties and prescribe evidentiary rules, standards of review, and remedies available to the hearing officer, board of adjustment, or other body. (§ 11 ch 74 SLA 1985)

NOTES TO DECISIONS

Exhaustion of administrative remedies. — Plaintiff, who claimed that the state had violated his due process rights by revoking his permits to renovate apartment buildings, waived his right to pursue that

Downtown Juneau Alternative Development Overlay District

Planning Commission Committee of the Whole

June 9, 2020

CITY AND BOROUGH OF JUNEAU
ALASKA'S CAPITAL CITY

Purpose and Need

- Preserve character of neighborhood, provide for development, and promote restoration of blighted properties
- Reduce costs to the homeowner
- Facilitate consistent interpretations of dimensional standards
- Update and replace existing ADOD

Agenda

- How we got here
- For each proposed standard
  - Development and implementation
  - Public comments
  - Facilitated discussion

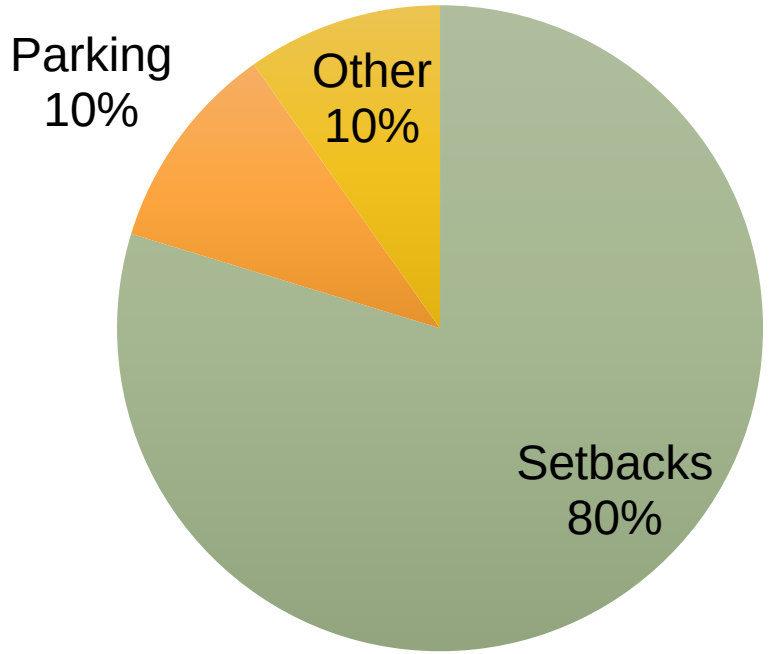
How we got here: "Olmo appeal" (2018)

Challenges for Downtown neighbors:

- Cannot use lot as intended
- Only most extreme costs can be considered
- Cannot be self-imposed
- Distinguishing characteristics of the land

Variances HAD been a tool for flexibility

Variances Downtown Since 1987



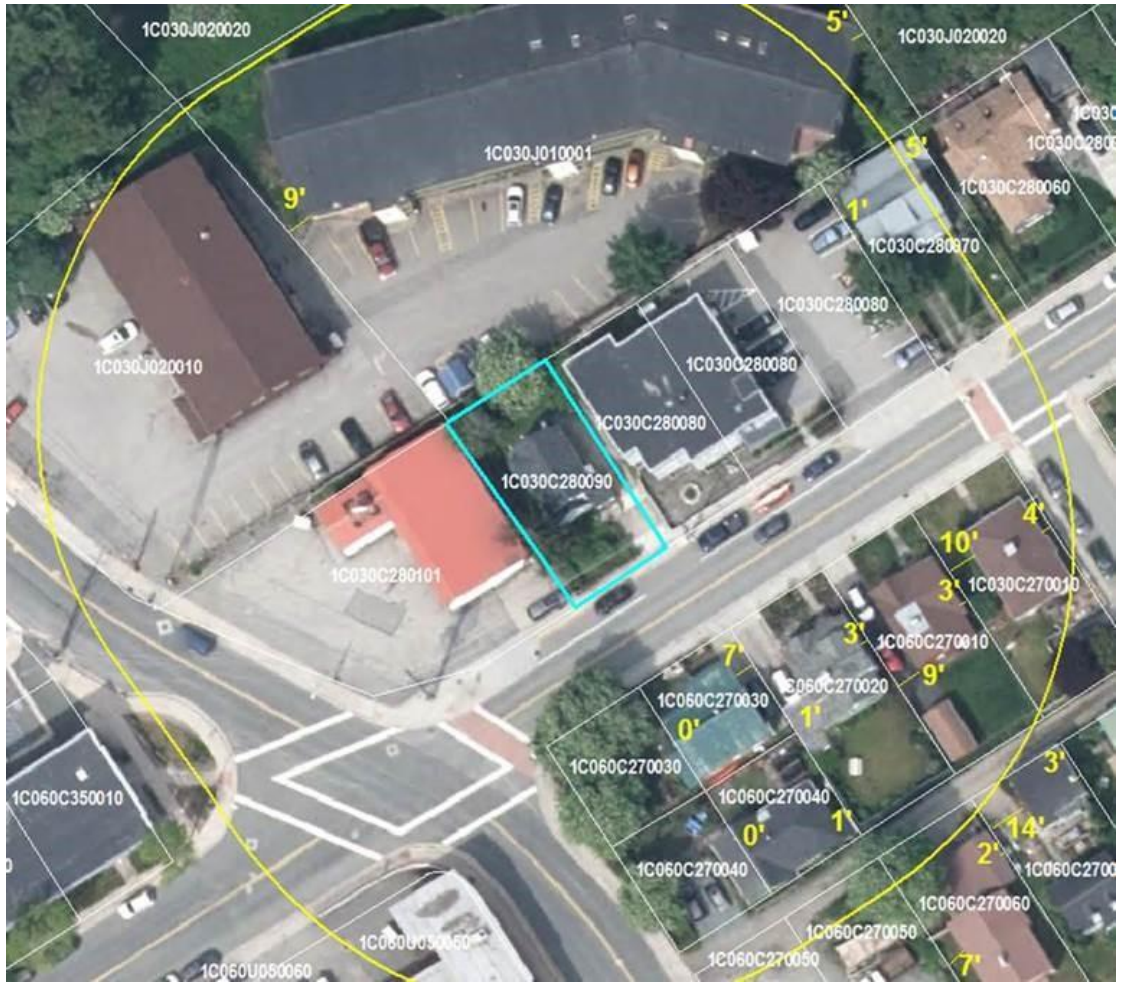
916 downtown structures with residences were built before code (1956)

Original Alternative Development Overlay District

- Code doesn’t match existing built environment
- Modified lot coverage, veg cover and setback requirements
- Planning Commission review for ALL permits
- Sunset August 2020
- Applies to only residential development

CITY AND BOROUGH OF JUNEAU
ALASKA'S CAPITAL CITY

Shortcomings

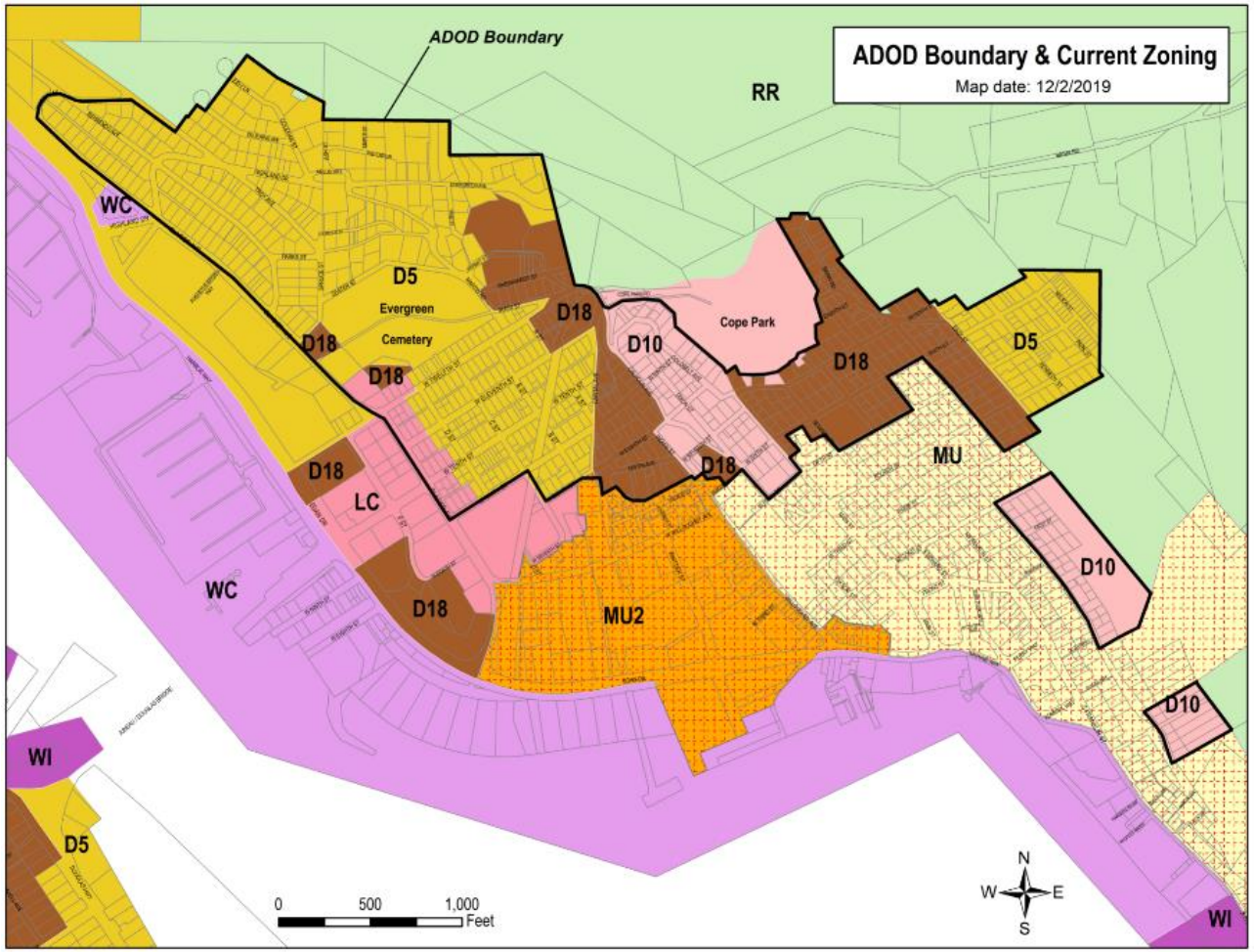


CITY AND BOROUGH OF JUNEAU
ALASKA'S CAPITAL CITY

Proposed changes

- Dimensional standards limit interpretation required
- Could execute through Building Permit process
- Cost to applicant would likely ~~could~~ be reduced
- Applies to commercial and residential development within the boundary

Where?


ADOD Boundary
ADOD Boundary & Current Zoning
Map date: 12/2/2019
RR
WC
D5
Evergreen
Cemetery
D18
D10
Cope Park
MU
LC
MU2
WI
0
500
1,000
Feet
N
W
E
S

Review of proposed standards (49.70.1430)

- Proposed standard & development
- Implementation
- Public comments
- Discussion

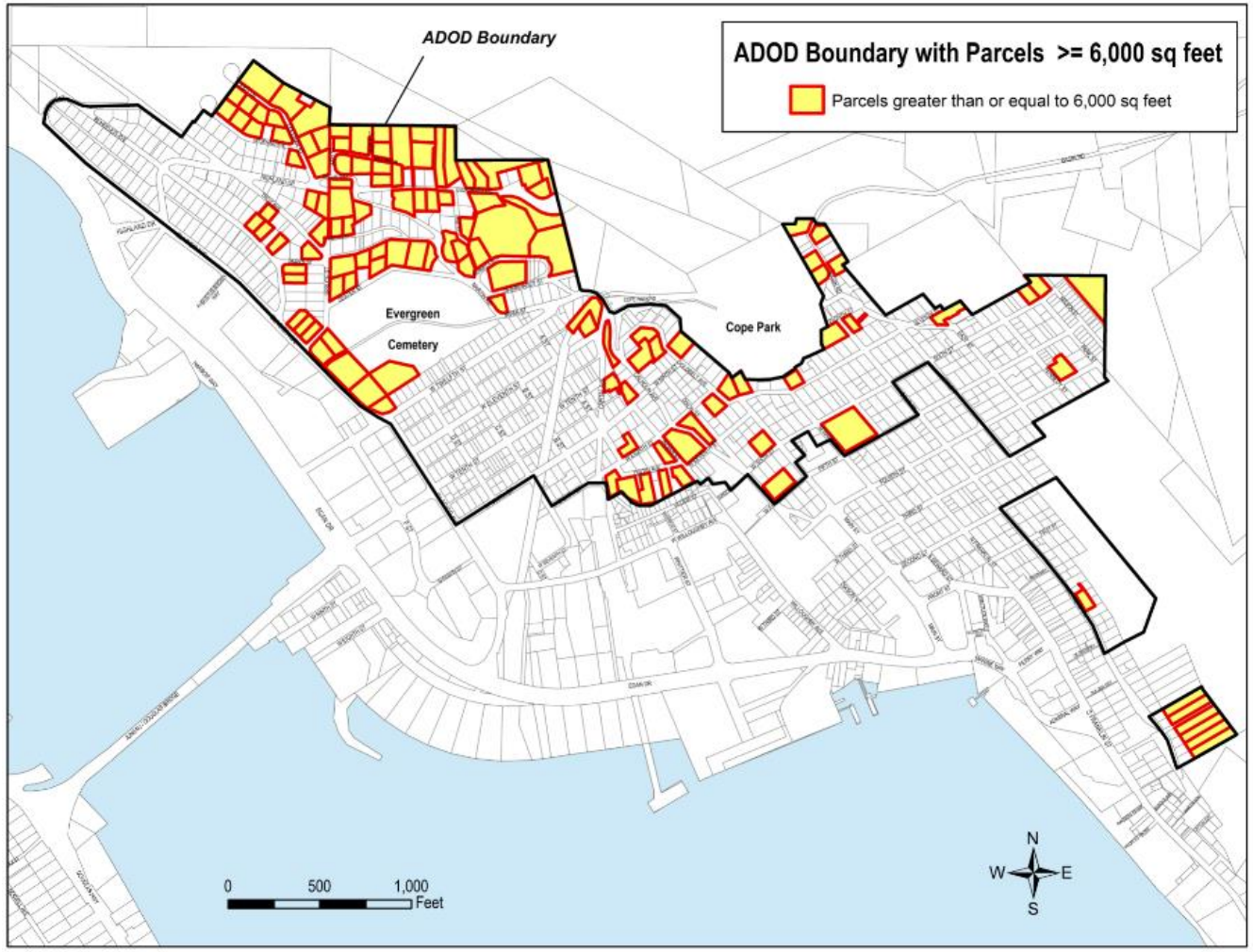
CITY AND BOROUGH OF JUNEAU
ALASKA'S CAPITAL CITY

Minimum lot size

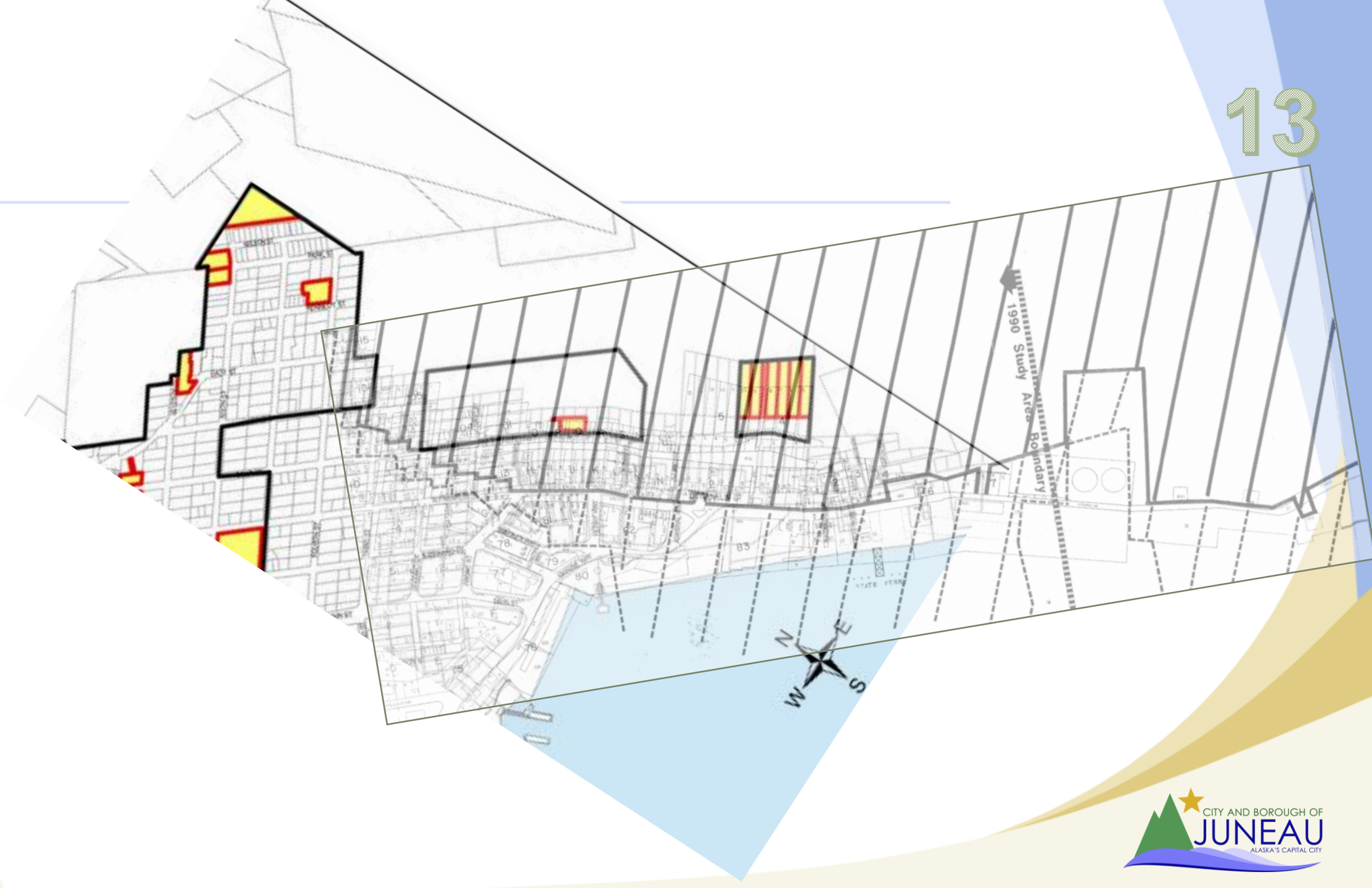
Lot size conformity without ADOD = 36%

Area	Count	Total	% Conforming
4500	450	810	56%
4000	491	810	61%
3500	586	810	72%
3000	632	810	78%
2500	676	810	83%
2000	725	810	90%
1500	775	810	96%

Subdivision



CITY AND BOROUGH OF JUNEAU
ALASKA'S CAPITAL CITY



CITY AND BOROUGH OF JUNEAU
ALASKA'S CAPITAL CITY

CITY AND BOROUGH OF JUNEAU
ALASKA'S CAPITAL CITY

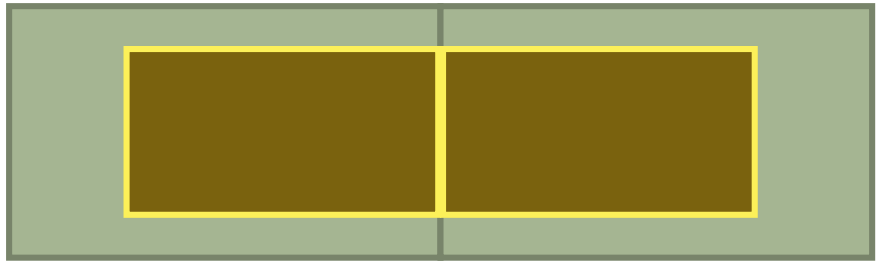

ADOD Boundary
Evergreen
Cemetery

Lot size, duplex or two-unit multi-family

4,500 square feet

Existing duplex lot size = 1.5 x single family lot size

Minimum lot size: CWD vs. Duplex

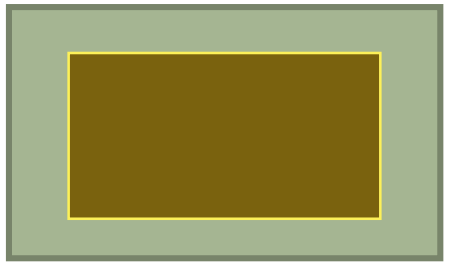


3,000 sf 3,000 sf

Two residences, two lots
Maximum lot coverage = 50%

4,500 sf
Two residences, one lot

Maximum lot coverage = 50%



3,000 sf

Single residence, one lot
Maximum lot coverage = 50%

CITY AND BOROUGH OF JUNEAU
ALASKA'S CAPITAL CITY

Lot size – in your memo

	Proposed	Current			
Structure	ADOD	D5	D10	D18	LC
Single Family Home	3,000	7,000	6,000	5,000	2,000*
Common Wall Dwelling	3.000	7,000	5,000	2.500	
Duplex	4,500	10,500	8,712	4,840	

* Light Commercial has a minimum lot size of 2,000 square feet for permissible uses, which includes residential and commercial development.

Lot size: Public sentiment

- Befuddlement
  - Why this matters
  - Confusion of density and subdivision
- Concerns that 3,000 sf was too small

Lot size discussion

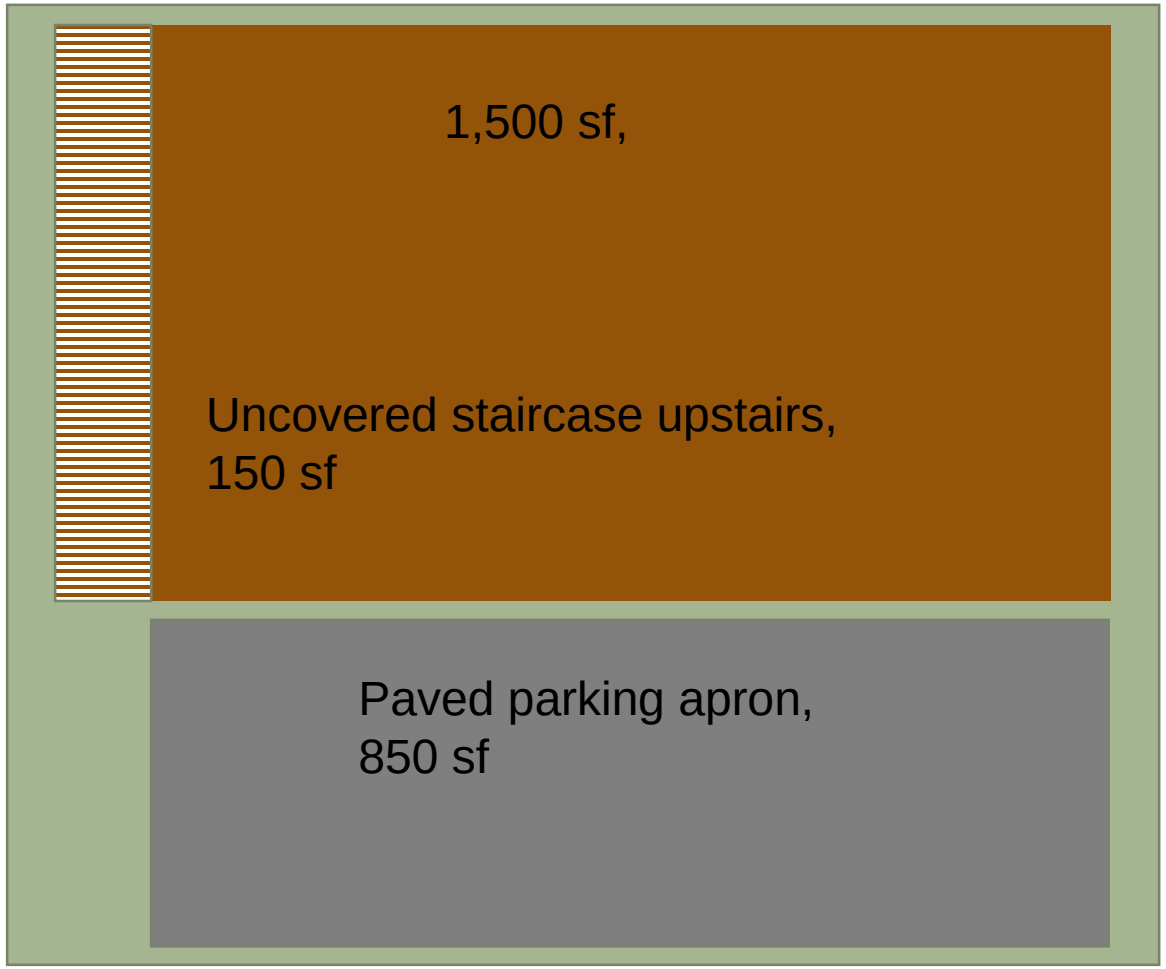
Lot width, depth and coverage

25’ minimum width, 25’ minimum depth

Lot coverage 50% (structures with rooves)

Vegetative cover 15%

Lot width, depth, and coverage



50x60 lot = 3,000 sf

Used surface area = 2,500 sf

~16% vegetative cover

Lot width, depth, and coverage – on your handout

	Proposed	Current			
FEATURE	ADOD	D5	D10	D18	LC
Lot width	25'	70'	50'	50'	20'
Bungalow	25'	35'	25'	25'	
Common wall dwelling	25'	60'	40'	20'	
Lot depth	25'	85'	85'	80'	80'
Vegetative cover	15%	20%	30%	30%	15%
Lot coverage	50%	50%	50%	50%	No Max

BUNGALOWS are smaller than normal lots that host smaller than normal homes – limited to 1,000', have to have public water and sewer.

Lot width, depth and coverage: public sentiment

- 25’ too narrow for width, increase to 30’ or 35’
- Increase lot depth from 25’
- Vegetative cover proposal LOW
- Lot coverage confusion

Lot width, depth and coverages discussions

Structure Height – on your handout

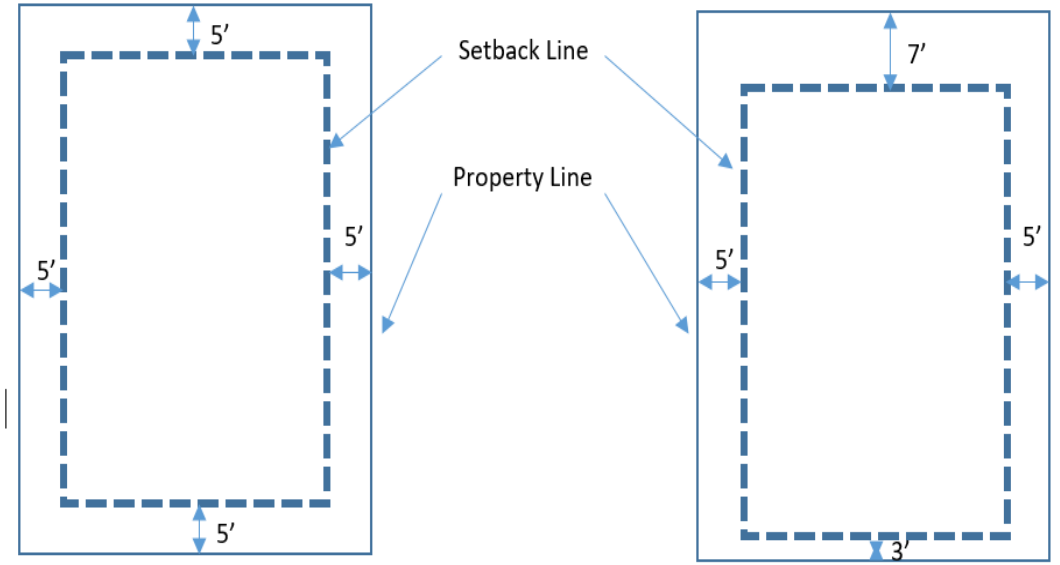
	Proposed	Current	
Height	ADOD	D5, 10, 18	LC
Permissible uses	35'	35'	45'
Accessory uses	25'	25'	35'
Bungalow		25'	

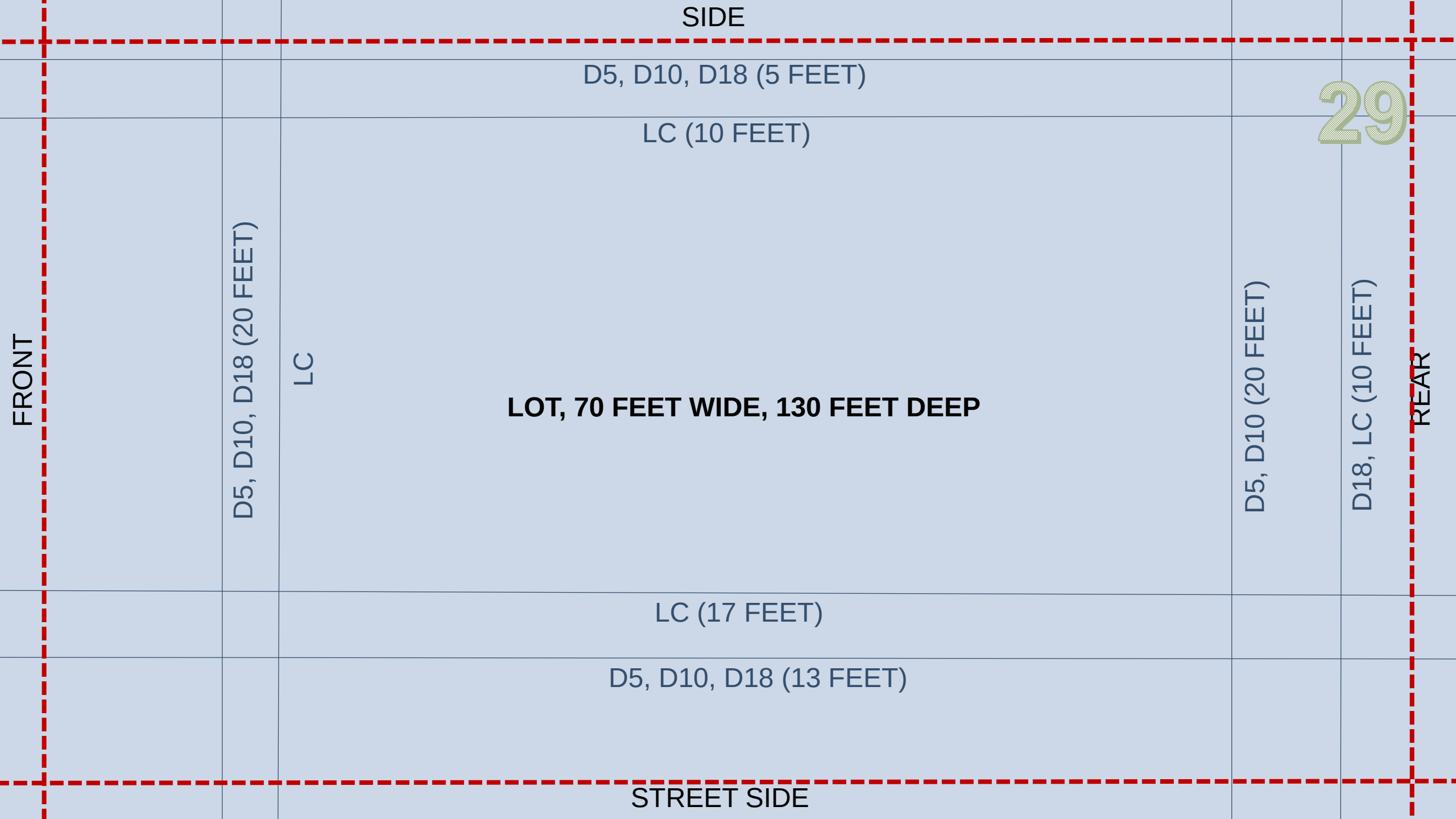
Accessory uses or structures are customarily subordinate to the primary use on the lot.

No public sentiment on structure height

Setbacks

- Measured from structure closest to the property line
- Min setback from any lot line is 3’
- Sum at least 20’
  - Setback sum can be reduced proportionally for substandard lots, but no less than 12’




SIDE
D5, D10, D18 (5 FEET)
LC (10 FEET)
29
FRONT
D5, D10, D18 (20 FEET)
LC
LOT, 70 FEET WIDE, 130 FEET DEEP
D5, D10 (20 FEET)
D18, LC (10 FEET)
REAR
LC (17 FEET)
D5, D10, D18 (13 FEET)
STREET SIDE

Example:

Typical Mount Rainier bungalows on Perry Street. R-55 zoning requires these houses to be 16 feet apart and 25 feet further back. But in reality, they are only 7 feet apart. Image by Brent Bolin.

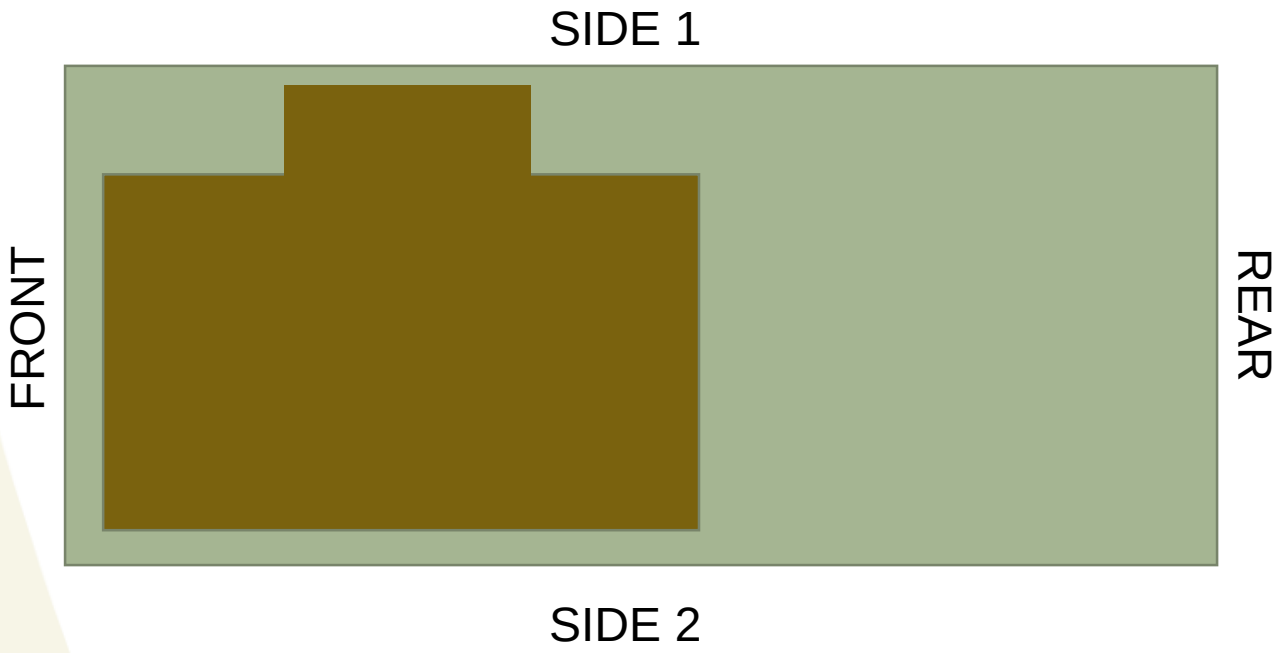
GREATER GREATER WASHINGTON

The Washington, DC region is great » and it can be greater.

7’ between buildings

CITY AND BOROUGH OF JUNEAU
ALASKA'S CAPITAL CITY

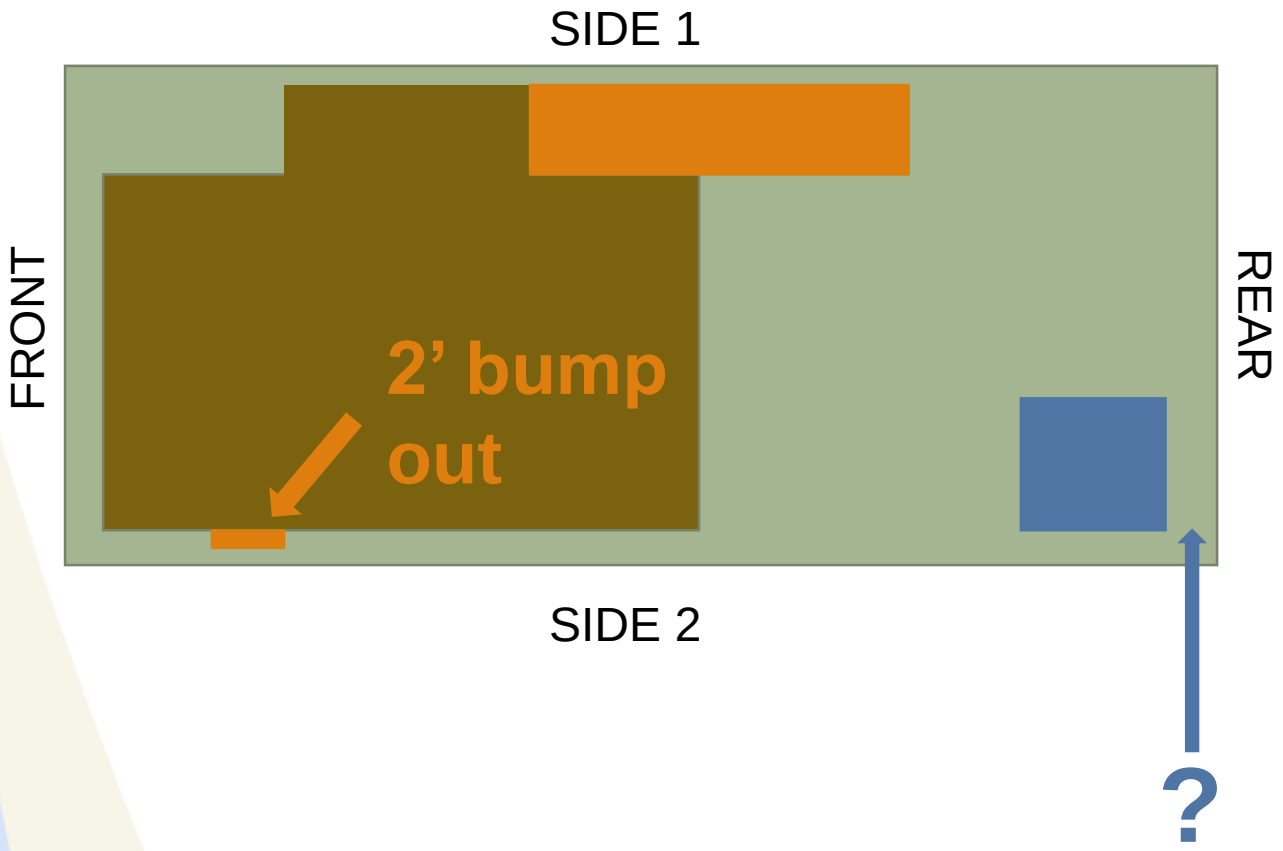
Example: Home in D5



ADOD: 3’ setbacks, 20’ total

	Existing	D5
Front	5'	20'
Side 1	3'	5'
Side 2	5'	5'
Rear	45'	20'
TOTAL	58'	

Example: Home in D5



ADOD: 3’ setbacks, 20’ total

	Existing	D5
Front	5'	20'
Side 1	3'	5'
Side 2	5' x 3’	5'
Rear	45' x ?’	20'
TOTAL	53' x 20’	

20 -11 = 9’ REAR SETBACK

CITY AND BOROUGH OF JUNEAU
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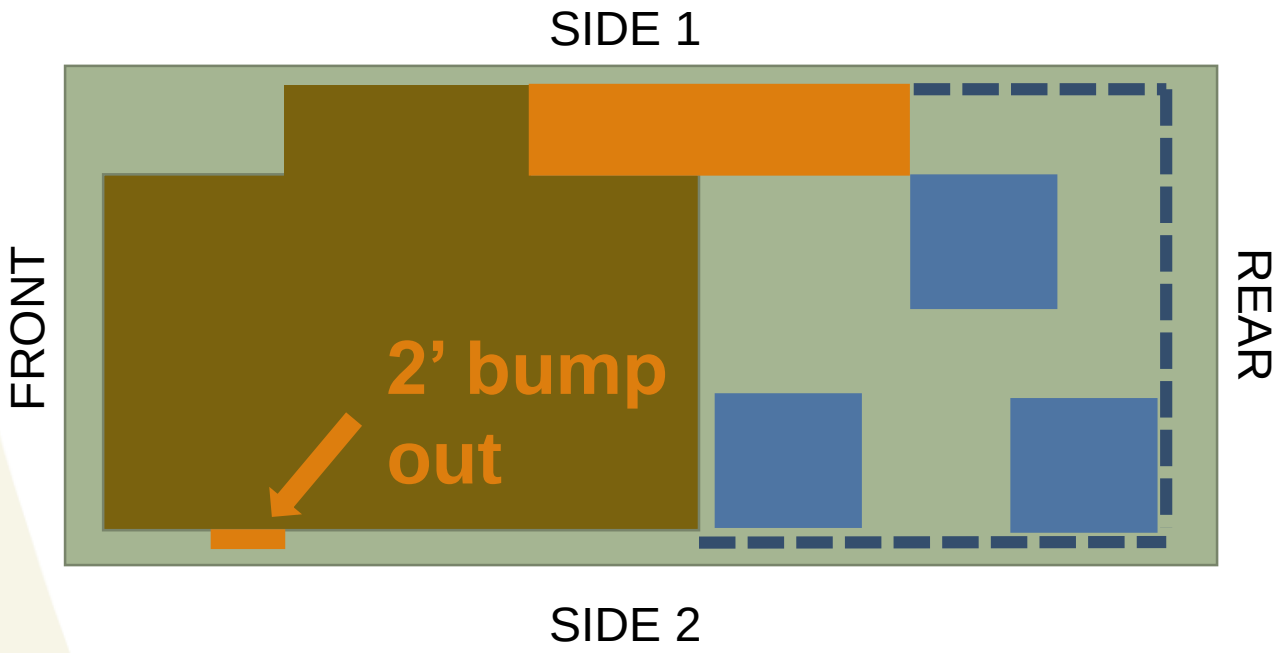
Example: Home in D5



ADOD: 3’ setbacks, 20’ total

	Existing	D5
Front	5'	20'
Side 1	3'	5'
Side 2	5'	5'
Rear	9'	20'
TOTAL	20'	

Example: Substandard Lot

Minimum lot size is 3,000

Your lot size is 2,500 (2,500 = 83% of 3,000)

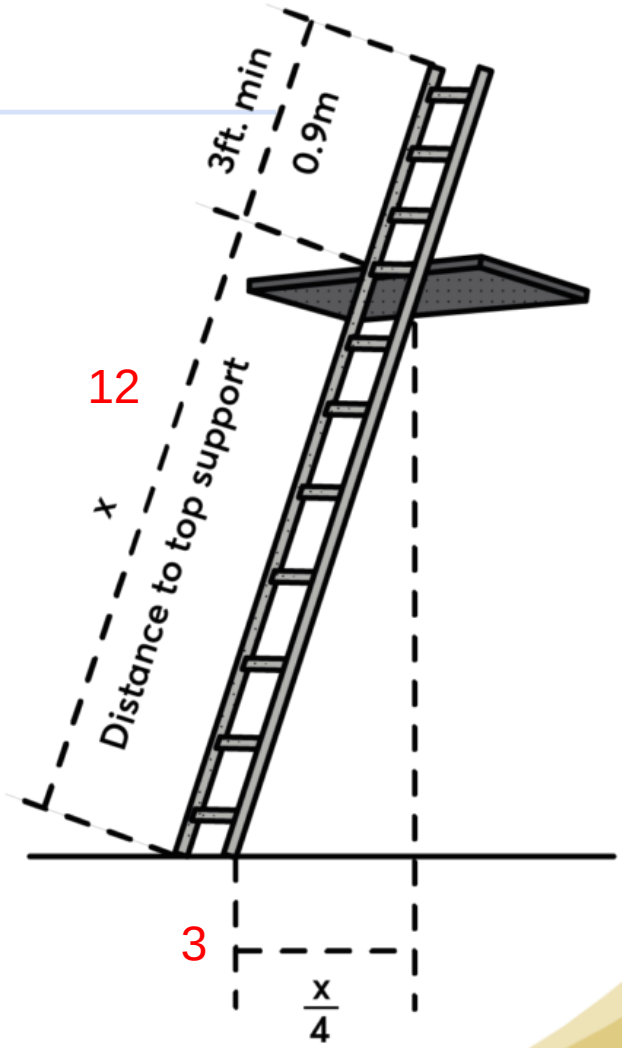
Setback total reduced to 17’ (20x83%)

Minimum setbacks sum is 12’

Setbacks: public sentiment

- Like floating box

- Concerns that 3’ is too low –
  - Have to use your neighbor’s property for maintenance requiring a ladder
  - Fire concerns



Setback discussions

Exceptions to setbacks

- Roof eaves (no closer than 2’ to property line)
- Unenclosed access (up to front and side property line)
- Parking deck
- Fences and vegetation along roadways

Exceptions: public sentiment

- Consider rear yards in the exception
  - For instance, when there is auto access to the rear lot through an alley – could a stairway or walkway go up to the rear lot line?

Discussion of Exceptions

You have to choose

	Proposed ADOD	LC
Lot Size, sf	3,000	2,000
Front Setback	3'	25'
Side Setback	3'	10'
Rear Setback	3'	10'
Lot Coverage	50%	No Maximum
Building Height	35'	45'

…during the Building Permit Application process.

Other issues

Comments on other elements

- Neighborhood standards

Ordinance

- Purpose
- Applicability
- Procedure

Next steps

- Further staff work?
- Ordinance goes to law
- Planning Commission hearing
- Assembly introduction
- Assembly hearing
- + 30 days adoption period

Thank you!

CITY AND BOROUGH OF JUNEAU
ALASKA'S CAPITAL CITY

Agenda
Planning Commission
Committee of the Whole
CITY AND BOROUGH OF JUNEAU
Michael LeVine, Chairman
June 9, 2020

I. ROLL CALL

Michael LeVine, 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 5:04 p.m.

Commissioners present: Michael LeVine, Chairman; Nathaniel Dye, Vice Chairman; Paul Voelckers, Clerk; Travis Arndt, Assistant Clerk; Ken Alper; Dan Hickok; Joshua Winchell; Erik Pedersen

Commissioners absent: Weston Eiler

Staff present: Jill Maclean, CDD Director; Irene Gallion, Senior Planner; Alexandra Pierce, Planning Manager; Emily Wright, CBJ Law Department; Laurel Christian, Planner

Assembly members: None

II. REGULAR AGENDA

AME2018 0004: Juneau Downtown Zoning – Alternative Development Overlay District
Applicant: City and Borough of Juneau
Location: Downtown Juneau

Due to A possible perceived conflict, Mr. LeVine turned the gavel to Mr. Dye to chair this portion of the meeting.

Irene Gallion, CDD, presented **AME2018 0004.**

Mr. LeVine noted that this has been a long-time work in process and wanted to note the amount of work that has gone into getting the AME to this point.

During the explanation of minimum lot size and percentage of conformity, Ms. Maclean explained if a property is nonconforming, it is more challenging for the property owner to obtain a mortgage loan. By making more properties conforming they think this should help homeowners.

Mr. Voelckers asked does the ADOD zoning supplant other zoning districts? Will this truly make the property conforming or will it just make their nonconformity allowed? Ms. Maclean said depending on how the ADOD is decided it could make them conforming. Later in the meeting, Ms. Wright clarified that this would make them 'more conforming' but they would not be conforming.

Mr. Voelckers had questions regarding subdividing in hazard areas. While they cannot subdivide, would they be allowed to add a kitchen or bedroom? Ms. Maclean answered yes and that is what is allowed today.

Mr. Voelckers asked what is the standard lot size in the Flats? Staff answered it is about 3,600 square feet. Mr. Voelckers asked why the Title 49 committee settled on a 3,000 square foot lot size when there was so much negative public testimony saying that was too small size. Mr. Dye explained the factors the committee considered and how they reached that decision saying that while there were concerns, there were mitigating factors as well.

Mr. Arndt explained that once the properties in hazard areas were removed from eligibility, only a handful of properties were left with subdivision potential. Mr. Winchell added the residential properties impacted by ability to subdivide was small and the intent is more to allow owners to use their land. Ms. Pierce explained that their goal was conformity and not so much subdividability. Mr. LeVine reminded the commission that the ADOD is an option for property owners to opt in to be compliant and it is not a requirement.

During discussion of setbacks, Mr. LeVine asked if a dwelling was built to the lot line with zero setback, and they wanted to add to it, could they build on the zero setback or would they have to observe the three-foot requirement. Staff answered, the property was already nonconforming and would not be allowed to add to the nonconformity. They would need to observe the three-foot setback for the addition.

Mr. Voelckers said he appreciates the flexibility the ADOD allows but has concerns with the setbacks as small as three feet and asked how staff came to find three feet acceptable and had concerns regarding the reduced setback requirements for the smaller sized lots. He also found the 50% limitation on lot coverage to be too stringent. He expressed surprise at the proposed reduction in setbacks to the very small lots and suggested the same percentage reduction be applied to the coverage requirement.

Mr. Arndt commented that the focus of the Title 49 Committee was on existing dwellings and not on new construction and explained that the majority of the lots affected by this are already built. Committee members discussed conforming versus more conforming nonconformity and the possibility of grandfathering the existing properties as conforming altogether.

Mr. Arndt reminded the Committee of the August 1 2020 sunset date saying they either need to extend the current ADOD or complete this to bring to the Assembly. Mr. Winchell asked what happens if the deadline is missed and how many properties would be affected. Ms. Maclean said the vast majority are nonconforming. If they cannot meet the sunset deadline, they could ask for an extension or if it is missed altogether, it could just become the standard zoning and there would be no sunset date. Mr. Dye explained the reason for continuing the ADOD is that would allow for additions and other options for the properties that would not be available if the sunset expires.

Mr. LeVine said he likes the postage stamp (setback box) approach but had trouble with the three-foot setbacks. He wondered if they could ask Ms. Wright to investigate other options in code that would allow the properties to become conforming rather than *more conforming* nonconformity without any possibility of unintended consequences that would eliminate the need for the phrase more conforming.

Mr. Winchell and Mr. Voelckers spoke in agreement with Mr. LeVine. Mr. Voelckers also had an issue with the percentages of required vegetative cover.

It was decided to keep this at the Committee of the Whole for further discussion.

Mr. Dye turned the gavel back to Mr. LeVine for the remainder of the meeting.

III. **OTHER BUSINESS** - None

IV. **REPORT OF REGULAR AND SPECIAL COMMITTEES** - None

V. **ADJOURNMENT** – 6:49 pm