



**PLANNING COMMISSION STAFF REPORT
FLOOD ZONE EXCEPTION FZE2023 0001
HEARING DATE: APRIL 11, 2023**

(907) 586-0715

CDD_Admin@juneau.org

www.juneau.org/community-development

155 S. Seward Street • Juneau, AK 99801

DATE: March 29, 2023
TO: Michael LeVine, Chair, Planning Commission
BY: Teri Camery, Senior Planner, CFM
THROUGH: Jill Maclean, Director, AICP

PROPOSAL: Applicant requests a Flood Zone Exception renewal for bathrooms at Statter Harbor

STAFF RECOMMENDATION: APPROVE WITH CONDITIONS

KEY CONSIDERATIONS FOR REVIEW:

- The development is a renewal of FZE2018-0002, which was approved on January 22, 2019.
- Due to staffing changes, CBJ Docks & Harbors (D&H) omitted obtaining a building permit prior to undertaking the work. D&H notified CDD when they realized the mistake, and are applying for a new Flood Zone Exception as the previous permit expired in 2020.
- There have been no changes to the project description, flood zone, or flood zone exception regulations since the previous approval.
- The development meets all criteria for a Flood Zone Exception.

GENERAL INFORMATION	
Property Owner	CBJ Docks and Harbors
Applicant	Matthew Sill
Property Address	11520 Auke Bay Harbor Road
Legal Description	USS 2664 & ATS 16 LT 3C
Parcel Number	4B2801010032
Zoning	Waterfront Commercial
Lot Size	3.36 acres
Water/Sewer	CBJ Water and Sewer
Access	Glacier Highway
Existing Land Use	Statter Harbor

ALTERNATIVE ACTIONS:

1. **Approve:** Approve the permit and adopt new findings for items 1-2 below that support the approval. Approval may require conditions.
2. **Continue:** To a future meeting date if determined that additional information or analysis is needed to make a decision, or if additional testimony is warranted.

ASSEMBLY ACTION REQUIRED:

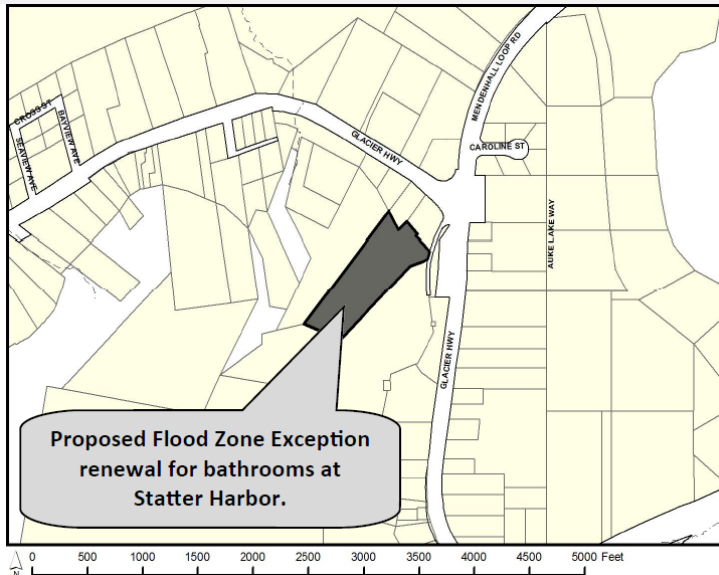
Assembly action is not required for this permit.

STANDARD OF REVIEW:

- Quasi-judicial decision
- Requires five (5) affirmative votes for approval
- Code Provisions:
 - CBJ 49.70.400
 - CBJ 49.70.410
 - CBJ 49.80

The Commission shall hear and decide the case per CBJ 49.70.410 Exceptions. The Planning Commission shall hear all Flood Zone Exceptions and shall either approve, conditionally approve, modify or deny the request based on the criteria in section CBJ 49.70.410(b)(c)(d)(e)(f) and (g).

SITE FEATURES AND ZONING



SURROUNDING ZONING AND LAND USES

North (GC)	Glacier Highway
South (Zone)	Auke Bay
East (WC)	Statter Harbor upland facility
West (WC)	Bay Creek; Auke Bay Towers Condominiums

SITE FEATURES

Anadromous	n/a
Flood Zone	VE
Hazard	n/a
Hillside	n/a
Wetlands	n/a
Parking District	n/a
Historic District	n/a
Overlay Districts	n/a

BACKGROUND

Project Description and Background –

The applicant, CBJ Docks and Harbors, requests a Flood Zone exception per CBJ 49.40.410 to allow a public restroom to be constructed below the Base Flood Elevation (BFE) at Statter Harbor. The proposed project is in Phase III and IV of the Statter Harbor Master plan.

The 12,500 square foot structure includes a shelter and a second floor. However only the 30' x 35' restroom facility requires a Flood Zone exception; the open shelter is not subject to flood zone restrictions, and the second floor is above the BFE.

The applicant first received a Flood Zone Exception (FZE) approval for the development as FZE2017-0001 on June 27, 2017. This approval expired and was renewed with FZE2018-0002. This approval expired on July 22, 2020. Both approvals required the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a letter from a licensed professional engineer indicating that the fill will be designed to withstand the 100-year storm force which is described in the City & Borough's currently adopted Flood Insurance Study.
2. Prior to issuance of a building permit, the applicant shall provide additional backflow prevention within the plumbing disposal system to prevent floodwaters from infiltrating the CBJ wastewater system, to be approved by the CBJ Engineering Department.

While Docks and Harbors has proceeded with construction and building permits on other Statter Harbor developments in the immediate area (per USE20180002), the restroom was not constructed before the FZE approval expired.

ANALYSIS

The following is a summary of what has and has not changed for the proposed development since the last approval:

- The flood zone designation has not changed.
- The flood zone exception regulations have not changed, except to change the reference for the Board of Adjustment to the Planning Commission. Flood zone exception criterion are established by the Federal Emergency Management Agency and adopted into local code, as required for participation in the National Flood Insurance Program.
- The FZE2018-0002 analysis, which demonstrates that the development meets all flood zone exception criterion, has not changed.

FLOOD ZONE EXCEPTION STANDARDS

Pursuant to CBJ 49.70.410(b)(c)(d)(e)(f) and (g), a Flood Zone Exception may be granted to provide an applicant relief from the requirements of the Title 49, Land Use Code.

Per CBJ 49.70.410(b)(c)(d)(e)(f) and (g), a Flood Zone Exception may be granted to provide an applicant relief from requirements of this title after the prescribed hearing and after the Planning Commission has made a determination in accordance with the following requirements:

The FZE2018-0002 analysis and findings established that the proposed development meets all flood zone exception criteria per code requirements. This analysis remains current and factual, and is therefore adopted into the current review.

AGENCY REVIEW

An agency review period was not conducted.

PUBLIC COMMENTS

In accordance with CBJ 49.20.230(b) public notice was mailed to property owners within 500 feet of the lot, a public notice sign was posted on-site two (2) weeks prior to the hearing, and ads were placed in the Juneau Empire. No public comments have been received to date.

FINDINGS

1. Is the application for the requested Flood Zone Exception complete?

Analysis: No additional analysis required.

Finding: Yes. The application for the required Flood Zone Exception is complete.

2. Does the Flood Zone Exception as requested meet the criteria of CBJ Section 49.70.410(b)(c)(d)(e)(f), and (g),

Flood Zone Exceptions?

Analysis: As discussed above, the criteria have been met.

Finding: Yes. The requested Flood Zone Exception meets the criteria of CBJ Section 49.70.410(b)(c)(d)(e)(f), and (g), Flood Zone Exceptions.

RECOMMENDATION

Staff recommends that the Planning Commission adopt the Director's analysis and findings and APPROVE WITH CONDITIONS the requested Flood Zone Exception. The Flood Zone Exception would allow construction of bathrooms at Statter Harbor with the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a letter from a licensed professional engineer indicating that the fill will be designed to withstand the 100-year storm force which is described in the City & Borough's currently adopted Flood Insurance Study.
2. Prior to issuance of a building permit, the applicant shall provide additional backflow prevention within the plumbing disposal system to prevent floodwaters from infiltrating the CBJ wastewater system, to be approved by the CBJ Engineering Department.

STAFF REPORT ATTACHMENTS

Item	Description
Attachment A	Application Packet
Attachment B	Abutters Notice
Attachment C	FZE2017-0001 staff report
Attachment D	FZE2017-0001 Notice of Decision
Attachment E	FZE2017-0001 Minutes
Attachment F	FZE2018-0002 staff report
Attachment G	FZE2018-0002 Notice of Decision
Attachment H	FZE2018-0002 Minutes



DEVELOPMENT PERMIT APPLICATION

NOTE: Development Permit Application forms must accompany all other Community Development Department land use applications. This form and all documents associated with it are public record once submitted.

To be completed by Applicant	PROPERTY LOCATION		
	Physical Address 11520 Auke Bay Harbor Road		
	Legal Description(s) (Subdivision, Survey, Block, Tract, Lot) USS 2664 & ATS 16 LT 3C		
	Parcel Number(s) N/A 4B2801010032		
	☐ This property is located in the downtown historic district ☐ This property is located in a mapped hazard area, if so, which _____		
	LANDOWNER/ LESSEE		
	Property Owner CBJ Docks and Harbors Dept.	Contact Person Matthew D. Sill, P.E.	
	Mailing Address 155 South Seward Street, Juneau, AK 99801	Phone Number(s) (907)586-0398	
	E-mail Address Matthew.Sill@juneau.gov		
	LANDOWNER/ LESSEE CONSENT		
Required for Planning Permits, not needed on Building/ Engineering Permits. Consent is required of all landowners/ lessees. If submitted with the application, alternative written approval may be sufficient. Written approval must include the property location, landowner/ lessee's printed name, signature, and the applicant's name.			
I am (we are) the owner(s) or lessee(s) of the property subject to this application and I (we) consent as follows: A. This application for a land use or activity review for development on my (our) property is made with my complete understanding and permission. B. I (we) grant permission for the City and Borough of Juneau officials/employees to inspect my property as needed for purposes of this application.			
Carl J. Uchytel, P.E. Landowner/Lessee (Printed Name) Port Director/Landowner Title (e.g.: Landowner, Lessee)			
X Carl J. Uchytel, P.E. Landowner/Lessee (Signature) Digitally signed by Carl J. Uchytel, P.E. Date: 2022.12.19 15:40:06 -09'00' 12/19/2022 Date			
Landowner/Lessee (Printed Name) Title (e.g.: Landowner, Lessee)			
X Landowner/Lessee (Signature) Date			
NOTICE: The City and Borough of Juneau staff may need access to the subject property during regular business hours. We will make every effort to contact you in advance, but may need to access the property in your absence and in accordance with the consent above. Also, members of the Planning Commission may visit the property before a scheduled public hearing date.			
APPLICANT If same as LANDOWNER, write "SAME"			
Applicant (Printed Name) SAME		Contact Person Matthew D. Sill, P.E.	
Mailing Address 155 South Seward Street, Juneau, AK 99801		Phone Number(s) (907)586-0398	
E-mail Address Matthew.Sill@juneau.gov			
X Carl J. Uchytel, P.E. Applicant's Signature Digitally signed by Carl J. Uchytel, P.E. Date: 2022.12.19 15:40:58 -09'00' 12/19/2022 Date of Application			

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

Intake Initials

AS

INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED

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

Case Number

FZE 23-001

Date Received

2/13/23



FLOOD ZONE EXCEPTION APPLICATION

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

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

PROJECT SUMMARY

Construction of new restroom and covered shelter, seawalk and uplands surface improvements.

Base Flood Elevation 27 ft

Flood Insurance Rate Map Panel # 02110C_1156

Elevation of Lowest Floor of all Structures Including Basement 25

Elevation to which the Structure has been Floodproofed 25

ALL REQUIRED MATERIALS ATTACHED

- ☒ Complete application per CBJ 49.70.410
- ☒ Narrative including:
 - ☒ Exceptional hardship if not granted
 - ☒ Elevation at lowest floor
 - ☒ Elevation structure(s) have been floodproofed
 - ☒ Certification that floodproofing meets generally accepted standards
 - ☒ Extent to which any watercourse will be altered or relocated
 - ☒ Plan for maintenance of altered or relocated watercourse
 - ☒ If the base flood elevation will change as a result of the proposed activity, and why
 - ☒ Why a flood zone exception is needed
 - ☒ How the proposed exception will effect life and property in the event of a flood
- ☒ How susceptible the proposed facility is to flooding
- ☒ How the proposed facility/use serves the public
- ☒ If the facility/use requires a waterfront location
- ☒ Availability of alternative locations
- ☒ Compatibility of proposed use with surrounding existing and proposed uses
- ☒ Relationship of proposed use to the Comprehensive Plan and Flood Management programs
- ☒ Expected heights, velocity, duration, rate of rise, and sediment transport
- ☒ Other applicable information as outlined in CBJ 49.70.410(b)
- ☒ Plans (details on page 2)

DEPARTMENT USE ONLY BELOW THIS LINE

FLOOD ZONE EXCEPTION FEES	Fees	Check No.	Receipt	Date
Application Fees	\$ <u>400</u>			
Admin. of Guarantee	\$ _____	\$100 sign deposit		
Adjustment	\$ _____	\$50 sign fee		
Total Fee	\$ <u>550.</u>			

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

INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED

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

Case Number

FZE-23-001

Date Received

2/13/23

Flood Zone Exception Application Instructions

Flood zone exceptions are outlined in CBJ 49.70.410

Each application for a Flood Zone Exception is reviewed by the Board of Adjustment at a public hearing. The permit procedure is intended to provide the Board the flexibility necessary to make decisions tailored to individual applications. The Board may stipulate conditions to mitigate external adverse impacts from the proposed use. If it is determined that these impacts cannot be satisfactorily overcome, the permit shall be denied.

Pre-Application Conference: Prior to submitting this application the applicant will meet with City & Borough of Juneau staff to discuss the proposed development, the permit procedure and to determine the application fees. To schedule a pre-application conference, please contact the Permit Center at 586-0770 or via e-mail at Permits@juneau.org.

Application: An application for a Flood Zone Exception will not be accepted by the Community Development Department until it is determined to be complete. The items needed for a complete application are:

1. **Forms:** Completed Flood Zone Exception and Development Permit Application forms.
2. **Fees:** The fee is \$400.00. Any development, work or use done without a permit issued will be subject to double fees. All fees are subject to change.
3. **Project Narrative:** A detailed narrative describing the project according to the criteria under CBJ 49.70.410 Exceptions.
4. **Plans:**
 - A. Site plan showing the dimensions of the parcel, existing and proposed structures, mean lower low water line, topographical contours shown at **2 foot** intervals, and elevation drawings illustrating the land and structures.
 - B. Floorplan.
 - C. Profile views.
 - D. If applicable:
 - A. Certification that the floodproofing methods for any nonresidential structure meet generally accepted floodproofing standards.
 - B. Description of the extent to which any watercourse will be altered or relocated as a result of the proposed development.
 - C. Description of the plan for maintenance of the altered or relocated portion of the watercourse so that the flood-carrying capacity is not diminished.

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

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

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

Review: As part of the review process the Community Development Department will evaluate the application for consistency with all applicable City & Borough of Juneau codes and adopted plans. Depending on unique characteristics of the permit request, the application may be required to be reviewed by other municipal boards and committees. During this review period, the Community Development Department may also send the application out for a 15-day agency review period. Review comments may require the applicant to provide additional information, clarification, or submit modifications/alterations for the proposed project.

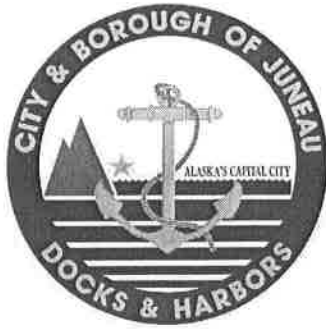
Hearing: All Flood Zone Exceptions must be reviewed by the Board of Adjustment. Once an application has been deemed complete and has been reviewed by all applicable parties the Community Development Department will schedule the application for the next appropriate meeting.

Public Notice Responsibilities: Flood Zone Exception requests shall be given proper public notice, which consists of the following:

Community Development Department: Will give notice of the pending Planning Commission meeting and its agenda in the local newspaper a minimum of 10-days prior to the meeting. Furthermore, the department will mail abutters notices to all property owners within 500-feet of the project site.

FROM THE FLOOD ZONE; IT MAY SEVERELY LIMIT OR PREVENT THE ABILITY TO RECEIVE FEDERALLY-BACKED FLOOD INSURANCE; AND, IF REQUIRED, FLOOD INSURANCE MAY INCREASE WITH THE APPROVAL OF THE REQUEST.

INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED



Port of Juneau

155 S. Seward Street • Juneau, AK 99801
(907) 586-0292 Phone • (907) 586-0295 Fax

Application for an Exception to Flood Elevation for **Statter Harbor Improvements**

NARRATIVE

Submitted by:
Matthew D. Sill, P.E., Port Engineer
On Behalf of the Applicant
CBJ Docks and Harbors
Phone: 907-586-0398
Fax: 907-586-0295
Matthew.Sill@juneau.gov

February 9, 2023

BACKGROUND

The City and Borough of Juneau (CBJ) Docks and Harbors (D&H) proposes improvements at Statter Harbor to include a new restrooms and shelter structure; improved bus staging and circulation; kayak launch ramp; and pedestrian BayWalk. The proposed project is Phase III and IV of the Statter Harbor Master Plan.

PROPOSED PROJECT

The proposed project, is to continue making improvements at Statter Harbor to enhance safety, reduce congestion, and increase efficiency at the facility. The goals are to provide safe vehicular access to the harbor; improve pedestrian access; provide adequate onsite staging and parking; and reduce conflicts between various uses. The proposed development has consists of uplands improvements to support the recently completed passenger for hire floats. The proposed uplands improvements and recently completed floats together make up the “charter fleet facility” referenced in this document.

The charter fleet facility includes side tie moorage; upland bus staging and vehicular parking; public restrooms and covered pedestrian area; a new kayak launch ramp; Sea Walk; and support area for storage, fuel tanks, and associated uses.

The new moorage facilities have been built at the current moorage facility, the project was completed in 2020.

FLOOD ZONE INFORMATION

The Federal Emergency Management Agency (FEMA) flood maps (see map right) categorize the project area as Zone VE with a velocity flood elevation of 27 feet above Mean Lower Low Water (MLLW). The existing project area has an elevation of approximately 23 feet above MLLW. The elevation of the top of the newly completed launch ramp is 25 feet and the adjacent area near the Statter Harbor Office is at 25 feet elevation. Raising the grade of the proposed project by approximately 4 feet to meet the flood elevation of 27 feet is impractical for a couple of reasons.

First, there would be a substantial cost associated with filling the existing property to the full 27 foot elevation. In addition, raising the area of the proposed project would elevate the grade to be much higher than surrounding areas and buildings thus creating difficult maneuvering



on the site; causing drainage issues; increase the length of gangway to the floats in order to maintain ADA standards; and be unsightly in relationship to the surrounding areas of the harbor facility.

FLOOD HAZARD

The proposed project is located within a VE flood hazard area as identified in “The Flood Insurance Study” and maps dated August 19, 2013. The potential flood event for this coastal area is from wave action. The base flood elevation is 27 feet above MLLW. Docks and Harbors understands that CBJ Community Development Department (CDD) has had discussions with FEMA personnel where it was determined that the flood zone study for the Statter Harbor property did not consider the potential protective merits of the floating breakwater or the floating moorage facility in establishing the flood elevation. The indication was the FEMA would perform a new study for the Statter Harbor area if requested by CDD. At this point we are not aware that such a request has been submitted. It is likely that completion of a new flood study would require a significant amount of time and would not be complete in a timely fashion relative to the design schedule for this proposed project. Based on the existing situation regarding the flood zone map designations, it was CDD’s recommendation that an exception be sought to allow this project.

The proposed project features two elements that might be impacted by velocity flood levels (27 feet). They include a Mechanically Stabilized Earth (MSE) retaining wall constructed to support fill and grading for the restroom/shelter structure and the uplands staging and parking area. The finish elevation of the retaining wall and the first floor of the proposed restroom/shelter structure would be approximately 2 feet below the FEMA flood elevation for this area. Further, it is believed that the coastal benchmarks in the Auke Bay area have not been resurveyed for many years. It is likely that the Auke Bay area has risen between one and two feet due to isostatic rebound since the last survey based on local observations in other areas.

The MSE wall would be constructed similar to the new block faced wall of the Statter Harbor Launch Ramp project recently completed (see photo right). The wall will be designed with angular shot rock fill, geotextile reinforcement fabrics, concrete block faced MSE walls, and heavy armor rock shore protection materials designed to withstand a 100 year storm event. Where inundated by tide and flooding, final surfaces would be designed with heavy reinforced concrete slabs, asphalt paving, and foundations to protect from flood caused erosion.



The other element that might be impacted by velocity flood forces is the restroom/open shelter building. This building would be constructed on a concrete foundation that would be protected by the MSE wall. The building is unique in that half of the floor area is open with no walls. The restroom side of the building would be constructed with flood and vandal resistant materials such as: concrete floor; concrete block walls; stainless steel fixtures; and steel doors.

If flooding were to occur in this area the water would flow over the open shelter area and around the restroom portion of the building. In addition, a concrete plaza around the building will be constructed that would help protect the area from erosion. The uplands parking and bus staging area would be paved with asphalt thereby offering erosion protection.

FLOOD HAZARD STANDARDS

CBJ Code Section 49.70.400 - *Floodplain* was established to promote public health, safety and general welfare to minimize public and private losses due to flood conditions in specific areas. The Code contains standards for development in flood areas which address two general flood hazard types. One is re-occurring flood events caused by rising creek and river levels during high rain or high snow melt periods. The other type is during more singular catastrophic events caused by high wave action due to greater than normal storm events. The proposed project is in a VE flood zone which relates to the flood velocity caused by higher than normal wave action.

REQUEST FOR EXCEPTIONS

CBJ Code Section 49.70.410 - *Exceptions* allows the Planning Commission to make exceptions to the flood hazard standards. CBJ Docks and Harbors requests an exception to the flood hazard standards to allow construction of a new restroom and open air shelter building.

Specifically the requested exception relates to the standard to construct the base floor level of a building at the currently mapped flood elevation of 27 feet above mean lower low water. The first floor elevation of the proposed building would be at approximately 25 feet above mean lower low water. Raising the elevation to 27 feet would result in significantly higher construction costs for the project. The building site is between two existing elements of the overall Statter Harbor facility. The new work needs to blend with the adjoining uses to avoid abrupt grade changes to meet ADA access standards and adequate maneuvering space for the intended use.

The proposed project represents a unique situation that does not easily fit the general flood hazard standards. The building would be constructed on a site that currently does not exist. The site would be created with the installation of an engineered wall that would protect the uplands from erosion with its concrete mass and capping of the immediate grade surrounding the building.

The foundation for the building would be integral with the protective wall thus as a whole would withstand wave action velocity forces. The base elevation of the lower floor of the building would be below the recommended base flood elevation. However, the building foundation design would provide protection for the building through integral design with the protective MSE and coastal armor rock wall along the shore side of the project. Embankments and retaining wall structures placed for the building would be designed with angular shot rock fill, geotextile reinforcement fabrics, concrete block faced MSE walls and heavy armor rock to protect the structure and building during 100 year storm events.

Given the information provided in this document it appears that the project meets the criteria under CBJ Code Section 49.70.410(h) – *Exceptions shall only be issued upon:*

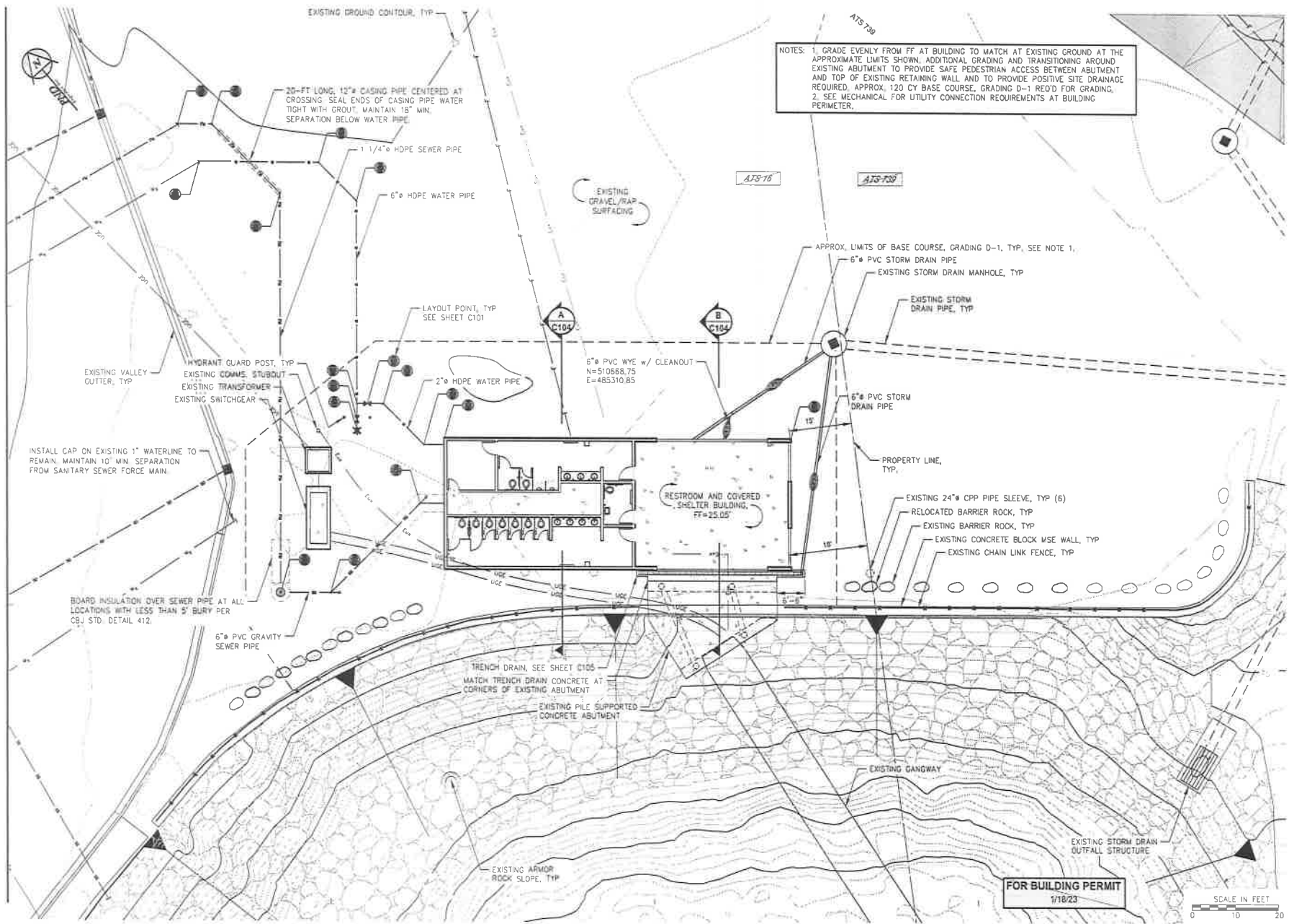
- (1) *A showing of good and sufficient cause;* The exception requested would allow needed facilities to be constructed to serve the new launch ramp and the proposed charter fleet facility. The project addresses important goals and objectives of the overall Statter Harbor Master Plan. The development is consistent with the Comprehensive Plan; the Auke Bay Area Plan; and is allowed in the Waterfront Commercial zoning district.

- (2) *A determination that failure to grant the exception would result in exceptional hardship to the applicant;* The exception requested would result in a base floor elevation approximately two feet below the recommended elevation. Any amount less than that requested would cause additional expense to the project; result in difficulty to attain ADA access standards to the moorage and loading floats; impact drainage patterns; and result in undulating parking and staging surfaces relative to surrounding harbor facilities that would impact maneuvering on the site for users and maintenance operations.
- (3) *A determination that the granting of an exception will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances or conflict with existing local laws or ordinances.;* Currently the shore line is not protected such that high wave action could cause erosion and damage the uplands portion of the site. The new engineered wall and armor rock placement will provide additional protection in this area from flooding caused by higher than normal wave action. The proposed building will be open-air on one side and enclosed on the restroom side. The restroom is planned to be concrete block construction that would provide protection if water breaches the engineered wall. The building would divert flood waters around the building and onto the paved parking and staging area however it is not expected to cause damage to the building due to its construction type. The new site elevation will be raised approximately two feet above the existing condition.

Raising the site to the flood elevation would be a costly activity due to the amount of fill material needed. In addition, raising the site would not blend with the immediately surrounding area and cause issues with drainage; maneuvering on the site; and meeting ADA grading standards. The completion of the project with an exception granted would not be in conflict with other zoning and ordinances pertaining to the proposed project.

ATTACHMENTS

A. Proposed Project Site Plan



**Jensen
Yorba
Wall Inc.**

1000 West 10th Street
Juneau, Alaska 99801
907-586-1070
ALSC#139
jwall@jwallinc.com

ENGINEERS, INC.

1005 GLACIER HIGHWAY, SUITE 100
JUNEAU, ALASKA 99801
907-586-1070
ALSC#139
jwall@jwallinc.com

**CITY AND BOROUGH OF JUNEAU
STATTER HARBOR PHASE IIIC
RESTROOMS AND COVERED SHELTER
CBJ CONTRACT NO. DH23-010
JUNEAU, ALASKA**

REVISIONS

- 1
- 2
- 3

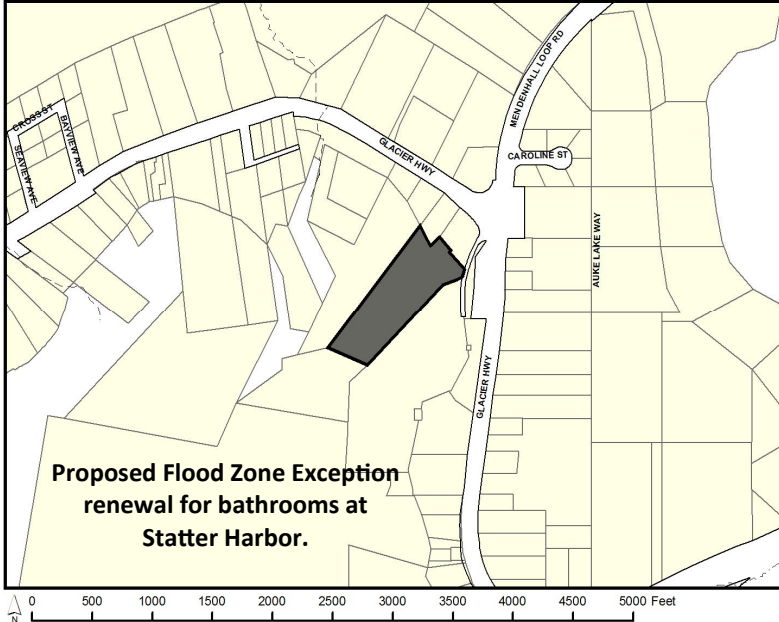
SHEET TITLE
GENERAL SITE PLAN

DATE: SEPTEMBER 24, 2023
FILE: C103

C103

Invitation to Comment

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



COMMUNITY DEVELOPMENT

155 S. Seward Street Juneau, Alaska 99801

TO:

An application has been submitted for consideration and public hearing by the Planning Commission for a **Flood Zone Exception renewal for bathrooms** at 11520 Auke Bay Harbor Rd. (**Statter Harbor**) in a **Waterfront Commercial Zone**.

PROJECT INFORMATION:

Project Information can be found at:

<https://juneau.org/community-development/short-term-projects>

PLANNING COMMISSION DOCUMENTS:

Staff Report expected to be posted **April 3, 2023** at

<https://juneau.org/community-development/planning-commission>

Find hearing results, meeting minutes, and more here, as well.

Now through April 3

Comments received during this period will be sent to the Planner, **Teri Camery**, to be included as an attachment in the staff report.

April 4 — noon, April 7

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

HEARING DATE & TIME: 7:00 pm, April 11, 2023

This meeting will be held in person and by remote participation. For remote participation: join the Webinar by visiting <https://juneau.zoom.us/j/84670425826> and use the Webinar ID: 846 7042 5826 OR join by telephone, calling: 1-253-215-8782 and enter the Webinar ID (above).

You may also participate in person in City Hall Assembly Chambers, 155 S. Seward Street, Juneau, Alaska.

April 12

The results of the hearing will be posted online.

FOR DETAILS OR QUESTIONS,

Phone: (907)586-0753 ext. 4129 ♦

Email: pc_comments@juneau.gov

Mail: Community Development, 155 S. Seward Street, Juneau AK 99801

Case No.: FZE2023 0001

Parcel No.: 4B2801010032

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



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

DATE: June 16, 2017

TO: Board of Adjustment

A handwritten signature in black ink, appearing to be 'Teri Camery', is written over the 'TO:' line.

FROM: Teri Camery, Senior Planner
Community Development Department

FILE NO.: FZE2017 0001

PROPOSAL: A request for a Flood Zone Exception to allow construction of a public restroom below the Base Flood Elevation at Statter Harbor

GENERAL INFORMATION

Applicant: CBJ Docks and Harbors

Property Owner: CBJ Docks and Harbors

Property Address: 11520 Auke Bay Harbor Road

Legal Description: Lot 3C, USS2664 & ATS 16

Parcel Code Number: 4-B28-0-101-003-2

Site Size: 3.36 Acres

**Comprehensive Plan Future
Land Use Designation:** Marine Mixed Use

Zoning: Waterfront Commercial

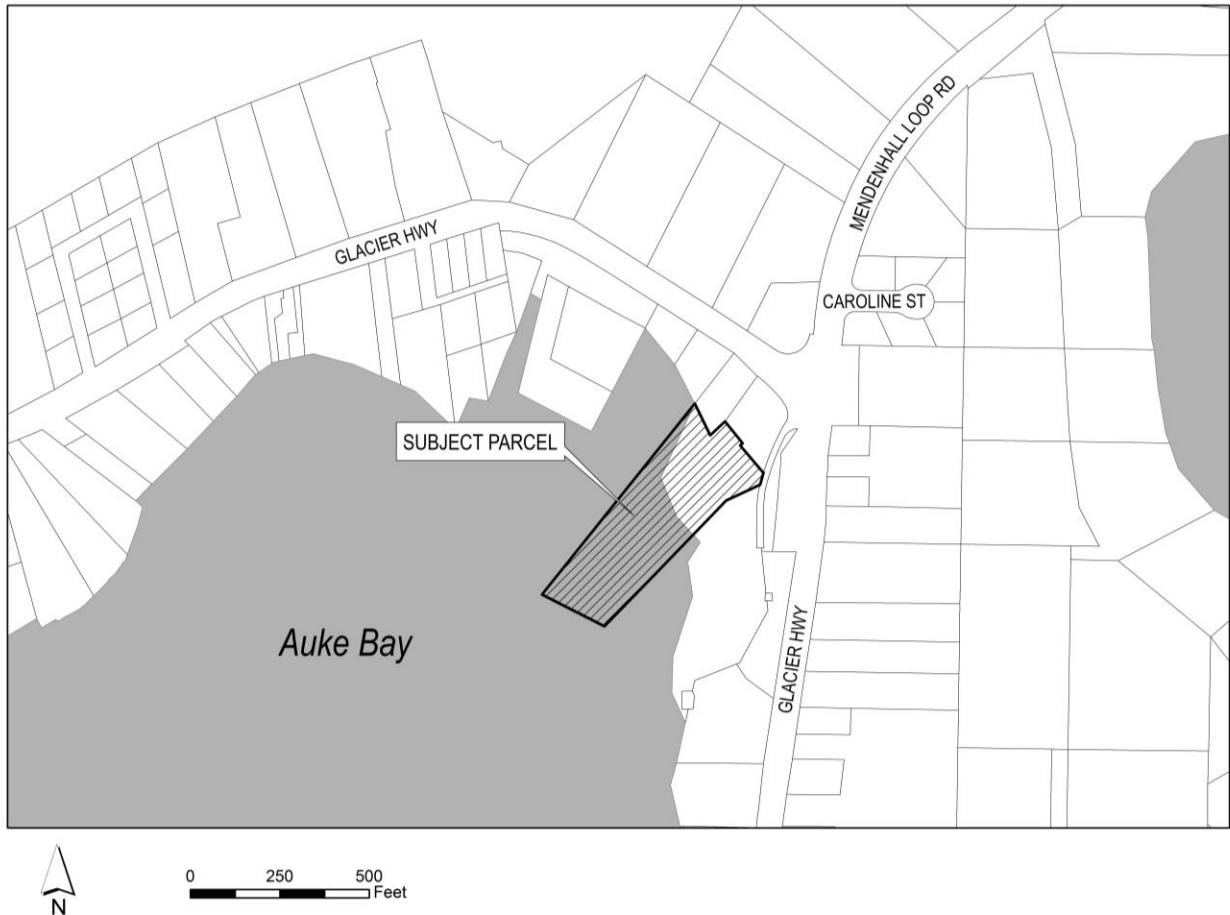
Utilities: CBJ Water and Sewer

Access: Glacier Highway

Existing Land Use: Statter Harbor

Surrounding Land Use: North - Glacier Highway; General Commercial
South - Auke Bay
East - Statter Harbor Upland Facility; Waterfront Commercial
West - Bay Creek; Auke Bay Towers Condominiums; Waterfront Commercial

VICINITY MAP



ATTACHMENTS

- Attachment 1 Development Permit Application
- Attachment 2 Flood Zone Exception Application
- Attachment 3 Project Narrative
- Attachment 4 Statter Harbor Master Plan
- Attachment 5 Statter Harbor Master Plan Phase III
- Attachment 6 Restroom structure site plans
- Attachment 7 November 30, 2016 Planning Commission minutes
- Attachment 8 Email message from applicant clarifying elevation 6/13/17

PROJECT DESCRIPTION

The applicant, CBJ Docks and Harbors, requests a Flood Zone Exception, per CBJ 49.40.410, to allow a public restroom to be constructed below the Base Flood Elevation at Statter Harbor. The proposed project is in Phase III of the Statter Harbor Master Plan.

The 12,500 square foot structure includes a shelter and potential second floor retail space. However only the 30' x 35' restroom facility requires a Flood Zone exception; the open shelter is not subject to the flood zone restrictions, and the second floor is above the Base Flood Elevation.

The Federal Emergency Management Agency (FEMA) flood maps categorize the project area as Zone VE with a velocity flood elevation of 27 feet above Mean Lower Low Water (MLLW). Zone VE indicates an area with a one percent annual chance flooding with velocity hazard (wave action). This categorization is shown in the map below:



The existing project area has an elevation of approximately 25 feet above MLLW, two feet below the Base Flood Elevation.

CBJ 49.70.400(g)(2) prohibits habitable construction in areas seaward of the reach of mean high tide in velocity flood zones due to the increased potential for damage from a 100-year storm event. However with an approved flood zone exception, habitable construction may exist in this area. The proposed restroom meets the FEMA definition of a habitable structure, as follows:

Finished (habitable) area means an enclosed area having more than 20 linear feet of finished interior walls (paneling, etc.) or used for any purpose other than solely for parking or vehicles, building access, or storage.

The elevation of the top of the newly completed launch ramp is 25 feet, and the adjacent area near the Statter Harbor Office and boat launch ramp is also 25 feet. The applicant states that raising the grade of the proposed project by over two feet to be above the 27 foot Base Flood Elevation is impractical, due to the substantial cost of filling the existing property to that height. In addition, raising the area of the proposed project would elevate the grade to be higher than surrounding areas and building, thus creating difficult maneuvering on the site. This would cause drainage issues; it would increase the length of the gangway to the floats in order to maintain ADA standards; and it would be unsightly in relationship to the surrounding areas of the harbor facility.

BACKGROUND

The proposed restroom and shelter, with potential second floor retail space, is a component of Phase III of the Statter Harbor Master Plan. Phase III and IV of the Statter Harbor Master Plan are under review by the Planning Commission as USE2017 0008, to be heard at the June 27, 2017 Planning Commission meeting. The design of the Statter Harbor development proposed in USE2017 0008 is contingent upon approval of this Flood Zone Exception. If the Flood Zone Exception is not approved, USE2017 0008 will have to be amended.

USE2013 0005, a Conditional Use Permit for construction of a two-lane boat ramp and associated parking, was approved in June 2013 as Phase II of the Statter Harbor Master Plan.

Staff further notes that CSP2017 0002, A City Project Review for acquisition of submerged lands, also before the Commission on June 27, 2017, does not relate to USE2017 0008 or the Flood Zone Exception application. Those submerged lands are for construction of the two-lane boat launch ramp, which was approved in June 2013. The ramp was completed in September 2016.

CDD staff conducted an Agency Review Period from May 24, 2017 through June 1, 2017. No comments were received from the CBJ Lands Division, CBJ Building Division, AELP, or the Alaska Department of Transportation and Public Facilities.

CBJ Engineering and Public Works stated, "As long as the structure is plumbed with safeguards that would not allow floodwater to enter the wastewater system there should be no problem. The bathrooms will be unoccupied during a flood event. Water and electric would be shut-off in advance of any forecasted flooding. The structural stability of the wall will require a special inspection and the approval by others prior to acceptance by CBJ." CDD requested specific recommendations from CBJ Engineering and Public Works regarding project conditions to ensure public safety. Engineering replied with a recommendation regarding backflow prevention, which will be addressed in the Analysis section of this report.

The Alaska Department of Environmental Conservation stated, "The Department of Environmental Conservation, Division of Water, Non-Point Source section has no issues with this Flood Zone Exception for construction of restrooms at Statter Harbor."

ANALYSIS

The potential flood event of this coastal area is from wave action. CDD planning staff have had discussions with FEMA in the past regarding how the flood study for the Statter Harbor property did not consider the potential protective benefits of the floating breakwater or the floating moorage facility in establishing the flood elevation.

Furthermore, the applicant states that the coastal benchmarks in the Auke Bay area have not been resurveyed for many years, and it is likely that the Auke Bay area has risen between one and two feet due to isostatic rebound, based on local observations in other areas. CDD and FEMA have discussed a new flood study for the area, however a study has not yet been undertaken or scheduled.

The applicant has explained that the project has two elements that might be impacted by velocity flood levels. One is the Mechanically Stabilized Earth (MSE) retaining wall constructed to support fill and grading for the restroom/shelter/commercial structure and the uplands staging and parking area. The finished elevation of the retaining wall and first floor of the structure would be approximately two feet below the FEMA base flood elevation.

The MSE wall would be similar to the block-faced wall at the recently completed Statter Harbor Launch Ramp, the primary two-lane launch ramp completed in Phase II of the Statter Harbor Master Plan. The wall will be designed with angular shot rock fill, geotextile reinforcement fabrics, concrete blocked faced MSE walls, and heavy armor rock shore protection materials designed to withstand a 100 year storm event. Where inundated by tide and flooding, final surfaces would be designed with heavy reinforced concrete slabs, asphalt paving, and foundations to protect from flood-caused erosion.

The second element that could be impacted by velocity flood forces is the actual structure, the

restroom/shelter building with potential second floor commercial space. The building would be constructed on a concrete foundation that would be protected by the MSE wall. Half of the lower floor area would be open with no walls, as shown in the project design (Attachment 6). This portion of the structure is not considered a habitable structure by FEMA because it is not enclosed and is therefore not a part of this Flood Zone Exception request. The first floor restroom side of the building would be constructed with flood and vandal resistant materials such as a concrete floor, concrete walls, stainless steel fixtures, and steel doors. The first floor structure would be designed to carry the loads of the potential second floor commercial use. The second floor of the building is outside of the VE zone and is therefore not a part of this Flood Zone Exception request. If the FZE request is not approved, the second floor commercial space could still be located at this site if the first floor is entirely open.

If flooding occurred, water would flow over the open shelter area and around the restroom portion of the building. The concrete plaza around the building would protect the area from erosion. The uplands parking and bus staging area would be paved with asphalt, thereby offering erosion protection.

As noted earlier, the structure is part of Phase III of the Statter Harbor Master Plan. The Statter Harbor Master Plan has been in various stages of development since 2008. The many features of the plan, including parking, launch ramps, vessel and vehicular circulation patterns, pedestrian pathways, structures, and user amenities, have all been developed through extensive collaborative efforts among the public and state and federal agencies. Specifically, the intertidal fill footprint for the development was dictated through an extensive federal review process that required minimizing the fill to the greatest extent while meeting the project purpose.

Other locations for the restroom were considered, however locations were limited due to a view plain restriction along the northwest portion of the project area. Moving the restroom outside of the VE zone to another area could potentially violate this restriction. However the most critical reason to locate the shelter and restroom on the water side is for pedestrian safety. Tour boat passengers gather along the harbor side at the beginning and end of the tours, and these passengers would be forced to walk through internal traffic routes and bus staging areas, across the parking lot, if the restroom was not located on the water side.

These review processes have cumulatively led to placement of the proposed structure at its location along the waterfront. Placement in other areas would require a major reassessment of circulation and parking patterns and potentially alter the carefully mandated project footprint.

49.70.400 Floodplain

CBJ Code 49.70.400(a) states the purpose of the CBJ flood regulations, which may provide

guidance for the Planning Commission in its review.

Purpose. The purpose of this article is to promote the public health, safety, and general welfare and to minimize public and private losses due to flood conditions in specific areas. Other purposes are to:

- (1) Reserved;*
- (2) Prevent the erection of structures in areas unfit for human usage by reason of danger from flooding, unsanitary conditions, or other hazards;*
- (3) Minimize danger to public health by protecting the water supply and promoting safe and sanitary drainage;*
- (4) Reduce the financial burdens imposed on the community, its governmental units, and its individuals by frequent and periodic floods and overflow of lands;*
- (5) Reserved;*
- (6) Ensure that potential buyers are notified that property is in a special flood hazard area; and*
- (7) Ensure that those who occupy the special flood hazard area assume financial responsibility for their development.*

Section 49.70.410 (b) lists 11 evaluation criteria for the Board of Adjustment to consider in its review of Flood Zone Exceptions, which will be reviewed below. Section 49.70.410(d) states:

Upon consideration of the factors of subsection (b) of this section and the purposes of this article, the board may deny or grant the application and may attach such conditions to the grant of an exception as it deems necessary to further the purposes of this article.

At the November 30, 2016 Planning Commission meeting, Commissioners had an extensive discussion regarding whether all eleven criteria must be met, or just considered. This discussion occurred during deliberations on FZE2016 0001, a flood zone exception for an outdoor restaurant structure. Final minutes indicate that the Commission concluded that all criteria needed to be considered, but not met. These minutes are included here for reference (Attachment 7).

49.70.410 Exceptions.

(a) The board of adjustment shall hear all applications for an exception from the provisions of this article, and shall be limited to the powers granted in this article and those necessarily implied to ensure due process and to implement the policies of this article.

(b) In passing upon such application, the board of adjustment shall consider all technical evaluations, all relevant factors, standards specified in other sections of this article, and:

- (1) The danger that materials may be swept onto other lands and cause injury to other persons or property;*

The proposed restroom structure is located at 25 feet MLLW, two feet below the Base Flood Elevation. The application indicates that potential wave forces will be dissipated by the breakwater and moorage facilities. Also, the armored rock wall and additional concrete plaza around the structure will further eliminate risk. The application indicates that the restroom will be engineered and constructed to withstand the 100-year storm force, therefore minimizing the likelihood of materials being swept away during a flood event. Finally, the Base Flood Elevation may be in error due to incorrect survey data and the effects of isostatic rebound.

Though already noted in the applicant's project description, staff recommends an additional condition to confirm that the structure will be built to withstand a velocity flood, as follows:

1. Prior to the issuance of a building permit, the applicant shall submit a letter from a licensed professional engineer indicating that the retaining wall and the structure will be designed to withstand the 100-year storm force which is described in the City and Borough's currently adopted Flood Insurance Study.

To specifically address wastewater from the restroom, staff recommends the following condition as suggested by the CBJ Engineering:

2. Prior to issuance of a building permit, the applicant shall provide additional backflow prevention within the plumbing disposal system to prevent floodwaters from infiltrating the CBJ wastewater system, to be approved by the CBJ Engineering Department.

With acceptance of recommended conditions, no evidence indicates that there is any significant danger that materials may be swept onto other lands and cause injury to other persons or property.

This criterion is met.

(2) The danger to life and property due to flooding or erosion damage;

With the proposed project design and recommended conditions, no evidence indicates that granting the Flood Exception will endanger life or property.

This criterion is met.

(3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

With the proposed project design and recommended conditions, no evidence indicates that the restroom or its contents will be susceptible to flood damage. The Statter Harbor facility

includes many features, such as the breakwater and moorage facility, that may reduce the flood risk. The proposed structure is supported by a protective Mechanically Stabilized Earth retaining wall and half of the lower floor of the building is an open shelter. Final surfaces would be designed with heavy reinforced concrete slabs.

This criterion is met.

(4) The importance of the services provided by the proposed facility to the community;

The restrooms and shelter structure, with potential second floor commercial space, is an integral piece of the Statter Harbor facility and Statter Harbor Master Plan. The Statter Harbor Master Plan and its project components comply with the CBJ Comprehensive Plan, Auke Bay Area Plan, and Juneau Economic Development Plan. The harbor facility provides an important service to the community.

This criterion is met.

(5) The necessity to the facility of a waterfront location, where applicable;

The necessity of locating the restroom on the waterfront has been explained in the Analysis section. In brief, the Statter Harbor Master Plan has been developed through extensive collaborative efforts among the public and state and federal agencies since 2008. Specifically, the intertidal fill footprint for the development was dictated through an extensive federal review process. Changing the location of the restroom at this stage would require a significant alteration of these plans and potentially open up a new review process that would involve changing areas that have already been constructed.

Other locations for the restroom were considered, however locations were limited due to a view plain restriction along the northwest portion of the project area. However the most critical reason to locate the shelter and restroom on the water side is for pedestrian safety. Tour boat passengers gather along the harbor side at the beginning and end of the tours, and these passengers would be forced to walk through internal traffic routes and bus staging areas, across the parking lot, if the restroom was not located on the water side.

These review processes have cumulatively led to placement of the proposed structure at its location along the waterfront. Placement in other areas would require a major reassessment of circulation and parking patterns and potentially alter the carefully mandated project footprint.

The harbor facility is obviously required to be at the waterfront location. In addition, evidence indicates the necessity of placing the restroom/shelter/commercial space at the water's edge.

This criterion is met.

(6) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;

As addressed in the Analysis section and Criterion Five, alternative locations for the restroom were evaluated. There are few locations, or perhaps none, that are not at risk for flooding or erosion damage since the restroom needs to be near passenger loading areas to avoid other issues, including pedestrian safety as previously described. Furthermore, the risk of flood and erosion damage is expected to be minimal because of construction methods and because the other half of the foundation, the shelter, is open and water would flow freely in the event of a flood event.

This criterion is met.

(7) The compatibility of the proposed use with existing and anticipated development;

The proposed structure is compatible with existing and anticipated development and is necessary to support it.

This criterion is met.

(8) The relationship of the proposed use to the Comprehensive Plan and floodplain management program for that area;

The site is located in the Marine Mixed Use land use designation of the Comprehensive Plan and the Auke Bay Area Plan. This designation is appropriate for the proposed structure. The 2013 Juneau Comprehensive Plan does not have any flood-related policies specifically relating to development along Velocity flood zones. Recommended staff conditions will ensure that the structure is built to withstand a 100-year flood force, consistent with general flood-related policies in the Comprehensive Plan that call for regulation of development in floodplains.

This criterion is met.

(9) The safety of access to the property in times of flood for ordinary and emergency vehicles;

Access to the property is provided from Glacier Highway through the Statter Harbor parking lot. The proposed restroom can be accessed safely during a flood event.

This criterion is met.

(10) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and

According to the project design and with staff's recommendation, the project will be designed to withstand 100-year flood forces. The restroom is only two feet below base flood elevation for a one percent per year event. The engineered restroom incorporates measures to reduce erosion and thereby reduces sediment transport. Approval of the project will have no impact on expected heights, velocity, duration, rate of rise, sediment transport of floodwaters, or effects of wave action.

This criterion is met.

(11) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

The applicant has indicated that any flood waters would flow through the open shelter portion of the building and would not infiltrate the restroom. The engineered project design incorporates measures to reduce, if not eliminate, erosion. The recommended project condition to require additional backflow prevention within the plumbing disposal system will ensure further protection of CBJ water systems. The Statter Harbor Facility is insured. No evidence indicates that the costs of providing governmental services during and after flood conditions will be significant.

This criterion is met.

Criterion B, numbers 1-11, has been met.

(c) Exceptions may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing subsections (b)(1)—(b)(11) of this section have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the exception increases.

The restroom portion of the structure, the only portion subject to the Flood Zone Exception, is 30' x 35', or 1,050 square feet. The entire structure has a footprint of approximately 2800 square feet and is located on a 3.36 acre parcel. The code states that "as the lot size increases beyond the one-half acre, the technical justification required for issuing the exception increases."

Staff analysis indicates that all sub-criterion of subsection (b)(1-11) have been met. The applicant has provided significant technical justification to support the exception. Subsections (b)(1-11) have been fully considered and staff analysis indicates they have been met. Furthermore, municipal harbor development can scarcely be accommodated on parcels of a half-acre or less as required in this section. All other elements of the Statter Harbor facility comply with CBJ's flood requirements; only the 1,050 feet of the proposed restroom is not in full compliance.

Staff concludes that there is sufficient evidence to recommend compliance with this criterion despite the larger parcel acreage.

This criterion is met.

(d) Upon consideration of the factors of subsection (b) of this section and the purposes of this article, the board may deny or grant the application and may attach such conditions to the grant of an exception as it deems necessary to further the purposes of this article.

Staff analysis indicates that all sub-criterion of (b)(1-11) have been met, with approval of recommended staff conditions.

This criterion is met.

(e) Exceptions may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the state inventory of historic places, without regard to the procedures set forth in the remainder of this section.

The proposed development is not located on the National Register of Historic Places.

This criterion is not applicable.

(f) Exceptions shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

There are no floodways along Auke Bay.

This criterion is not applicable.

(g) Exceptions shall only be issued upon a determination that the exception is the minimum necessary, considering the flood hazard, to afford relief.

Evidence indicates that the proposed structure must be in its current location to protect public

welfare and safety, as determined through many years of development of the Statter Harbor Master Plan and its project components. Extensive engineering measures have been put in place to ensure the long-term protection and stability of the structure. Only the restroom, which is 1,050 square feet, requires a Flood Zone Exception. The requested exception is the minimum necessary to afford relief.

This criterion is met.

(h) Exceptions shall only be issued upon:

(1) A showing of good and sufficient cause;

The applicant has demonstrated that the raising the structure above the base flood elevation would be costly, would not blend with surrounding developments, and would cause issues with drainage, vehicle maneuvering on the site, and compliance with ADA standards. The applicant has explained that the engineering retaining wall and structure will be built to withstand any flood forces and resist erosion. Additionally, the applicant has shown that the restroom location is necessary to protect pedestrian safety. Furthermore, staff has recommended conditions that require that the 1,050 square feet of restroom will be engineered to withstand a 100-year flood event and measures to protect the public water and sewer system.

This criterion is met.

(2) A determination that failure to grant the exception would result in exceptional hardship to the applicant; and

As explained above, failure to grant the exception will result in exceptional hardship to the applicant, because it would require raising the structure with two feet of additional fill. In addition to the expense, this height increase would impact drainage, site maneuvering, ADA compliance, and would not be compatible with other harbor features. The only other option would be to move the structure outside of the flood zone to another area of the harbor, which would create pedestrian safety issues and/or require a re-evaluation of the Statter Harbor layout, which has been developed over a period of approximately eight years through an extensive local, state, and federal review process.

This criterion is met.

(3) A determination that the granting of an exception will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances or conflict with existing local laws or ordinances.

With the recommended conditions, the project will not increase flood heights, threats to public

safety, extraordinary public expense, or create nuisances. If the Board of Adjustment grants the requested exception the project will not conflict with existing local laws or ordinances.

This criterion is met.

FINDINGS

Staff concludes that Section 49.70.410 (b), (c), (d), (e), and (f) Exception criteria have all been met.

RECOMMENDATION

Staff recommends that the Board of Adjustment adopt the Director's analysis and findings and grant the requested Flood Zone Exception, FZE2017 0001. The Flood Zone Exception would allow construction of a public restroom in a Velocity Flood Zone, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a letter from a licensed professional engineer indicating that the fill will be designed to withstand the 100-year storm force which is described in the City & Borough's currently adopted Flood Insurance Study.
2. Prior to issuance of a building permit, the applicant shall provide additional backflow prevention within the plumbing disposal system to prevent floodwaters from infiltrating the CBJ wastewater system, to be approved by the CBJ Engineering Department.

DEVELOPMENT PERMIT APPLICATION

Project Number FZE17-01 VAR2017-0003	CITY and BOROUGH of JUNEAU	Date Received: 3/21/17
Project Name (City Staff to Assign Name)		

INFORMATION

Project Description Construction of new moorage and loading floats; uplands development; kayak launch ramp; restroom and covered shelter area.		
PROPERTY LOCATION		
Street Address 11520 Auke Bay Harbor Road	City/Zip Juneau, 99801	
Legal Description(s) of Parcel(s) (Subdivision, Survey, Block, Tract, Lot) Statter Harbor Lot 30, USS 2664 : ATS 16		
Assessor's Parcel Number(s) 4B2801010032		
LANDOWNER/ LESSEE		
Property Owner's Name CBJ Docks and Harbors	Contact Person: Gary Gillette	Work Phone: 586-0398
Mailing Address 155 S Seward St, Juneau, AK 99801	Home Phone:	Fax Number:
E-mail Address gary.gillette@juneau.org	Other Contact Phone Number(s):	

PROJECT / APPLICANT

LANDOWNER/ LESSEE CONSENT ****Required for Planning Permits, not needed on Building/ Engineering Permits****		
I am (we are) the owner(s) or lessee(s) of the property subject to this application and I (we) consent as follows:		
A. This application for a land use or activity review for development on my (our) property is made with my complete understanding and permission.		
B. I (we) grant permission for officials and employees of the City and Borough of Juneau to inspect my property as needed for purposes of this application.		
X	(Signature) ACTIVE	Date 3/20/17
X		
NOTICE: The City and Borough of Juneau staff may need access to the subject property during regular business hours and will attempt to contact the landowner in addition to the formal consent given above. Further, members of the Planning Commission may visit the property before the scheduled public hearing date.		
APPLICANT If the same as OWNER, write "SAME" and sign and date at X below		
Applicant's Name CBJ Docks and Harbors		Contact Person: Gary Gillette
Mailing Address 155 S Seward St, Juneau, AK 99801		Work Phone: 586-0398
E-mail Address gary.gillette@juneau.org		Fax Number:
		Other Contact Phone Number(s):
X	Applicant's Signature	Date of Application

OFFICE USE ONLY BELOW THIS LINE

STAFF APPROVALS

	Permit Type	***SIGN	Date Received	Application Number(s)
☒	Building/Grading Permit			
	City/State Project Review and City Land Action			
	Inquiry Case (Fee In Lieu, Letter of ZC, Use Not Listed)			
	Mining Case (Small, Large, Rural, Extraction, Exploration)			
	Sign Approval (If more than one, fill in all applicable permit #'s)			
	Subdivision (Minor, Major, PUD, St. Vacation, St. Name Change)			
	Use Approval (Allowable, Conditional, Cottage Housing, Mobile Home Parks, Accessory Apartment)			
	Variance Case (De Minimis and all other Variance case types)		3/21/17	VAR17-003 FZE17-001
	Wetlands Permits			
	Zone Change Application			
	Other (Describe)			
***Public Notice Sign Form filled out and in the file.				
Comments:				Permit Intake Initials TJR

FLOOD ZONE EXCEPTION APPLICATION

Project Number	Project Name (15 characters)	Case Number FZE 2017-001	Date Received 4/10/17																														
DESCRIPTION OF ACTIVITY REQUIRING A FLOOD EXCEPTION: <u>Construction of public restroom below base flood elevation at Statter Harbor</u>																																	
Base Flood Elevation _____		Flood Insurance Rate Map _____																															
Elevation of Lowest Floor of all Structures Including Basement <u> X </u>		Elevation to which ANY Structure has been Floodproofed _____																															
WILL THE BASE FLOOD ELEVATION CHANGE AS A RESULT OF THE PROPOSED ACTIVITY: ☐ YES ☒ NO If Yes, please explain.																																	
PROPOSED USE OF LAND OR BUILDING(S): <u>Public Restroom</u>																																	
UNIQUE CHARACTERISTICS OF LAND OR BUILDING(S): <u>Coastal land subject to FEMA flood elevations.</u>																																	
WHY WOULD A FLOOD EXCEPTION BE NEEDED FOR THIS PROPERTY/STRUCTURE REGARDLESS OF THE OWNER? <u>This is publically owned property not likely to ever be owned by another party. The physical characteristics of the property remain no matter who owns the property</u>																																	
WHAT HARDSHIP(S) WOULD RESULT IF THIS EXCEPTION WAS NOT GRANTED? <u>Would be unable to construct public restroom at Statter Harbor to serve Launch Ramp and new charter fleet facility.</u>																																	
For more information regarding the permitting process and the submittals required for a complete application, please see the reverse side. If you need any assistance filling out this form, please contact the Permit Center at 586-0770.	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th colspan="2">FLOOD ZONE EXCEPTION FEES</th> <th>Check No.</th> <th>Receipt</th> <th>Date</th> </tr> <tr> <th></th> <th>Fees</th> <th></th> <th></th> <th></th> </tr> </thead> <tbody> <tr> <td>Application Fees</td> <td>\$ <u>320</u></td> <td>_____</td> <td>_____</td> <td>_____</td> </tr> <tr> <td>Admin. of Guarantee</td> <td>\$ _____</td> <td>_____</td> <td>_____</td> <td>_____</td> </tr> <tr> <td>Adjustment</td> <td>\$ _____</td> <td>_____</td> <td>_____</td> <td>_____</td> </tr> <tr> <td>Total Fee</td> <td>\$ <u>320</u></td> <td><u>PATC</u></td> <td><u>4/10/17</u></td> <td>_____</td> </tr> </tbody> </table>			FLOOD ZONE EXCEPTION FEES		Check No.	Receipt	Date		Fees				Application Fees	\$ <u>320</u>	_____	_____	_____	Admin. of Guarantee	\$ _____	_____	_____	_____	Adjustment	\$ _____	_____	_____	_____	Total Fee	\$ <u>320</u>	<u>PATC</u>	<u>4/10/17</u>	_____
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Adjustment	\$ _____	_____	_____	_____																													
Total Fee	\$ <u>320</u>	<u>PATC</u>	<u>4/10/17</u>	_____																													

NOTE: MUST BE ACCOMPANIED BY DEVELOPMENT PERMIT APPLICATION FORM



Port of Juneau

155 S. Seward Street • Juneau, AK 99801
(907) 586-0292 Phone • (907) 586-0295 Fax

Application for an Exception to Flood Elevation for **Statter Harbor Improvements**

NARRATIVE

Submitted by:
Gary Gillette, Port Engineer
On Behalf of the Applicant
CBJ Docks and Harbors
Phone: 907-586-0398
Fax: 907-586-0295
gary.gillette@juneau.org

March 21, 2017

BACKGROUND

The City and Borough of Juneau (CBJ) Docks and Harbors (D&H) proposes improvements at Statter Harbor to include a new charter fleet loading float; new moorage floats; new restrooms and shelter structure; improved bus staging and circulation; kayak launch ramp; and pedestrian BayWalk. The proposed project is Phase III and IV of the Statter Harbor Master Plan.

PROPOSED PROJECT

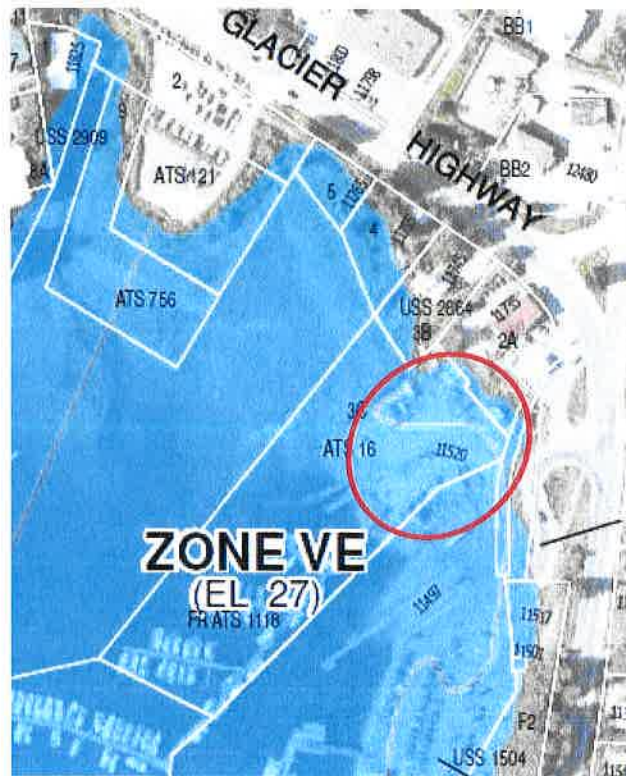
The proposed project, subject of the accompanying Conditional Use Permit and City/State Project Review, is to continue making improvements at Statter Harbor to enhance safety, reduce congestion, and increase efficiency at the facility. The goals are to provide safe vehicular access to the harbor; improve pedestrian access; provide adequate onsite staging and parking; and reduce conflicts between various uses. The proposed development has two primary features: 1) a new charter fleet float facility, and 2) new moorage slips (see Attachment A).

The charter fleet facility would include approximately 866 lineal feet of side tie moorage; new fuel dispensary; upland bus staging and vehicular parking; public restrooms and covered pedestrian area; a new kayak launch ramp; BayWalk; and support area for storage, fuel tanks, and associated uses. There is also the potential to include commercial space for restaurant or water related retail use on a second level above the restrooms and shelter structure.

The new moorage facilities would be developed at the current moorage facility. The plan is to provide about eleven new forty-two foot slips and approximately 234 lineal feet of side tie moorage and/or loading space.

FLOOD ZONE INFORMATION

The Federal Emergency Management Agency (FEMA) flood maps (see map right) categorize the project area as Zone VE with a velocity flood elevation of 27 feet above Mean Lower Low Water (MLLW). The existing project area has an elevation of approximately 23 feet above MLLW. The elevation of the top of the newly completed launch ramp is 25 feet and the adjacent area near the Statter Harbor Office is at 25 feet elevation. Raising the grade of the proposed project by approximately 4 feet to meet the flood elevation of 27 feet is impractical for a couple of reasons.



First, there would be a substantial cost associated with filling the existing property to the full 27 foot elevation. In addition, raising the area of the proposed project would elevate the grade to be much higher than surrounding areas and buildings thus creating difficult maneuvering on the site; causing drainage issues; increase the length of gangway to the floats in order to maintain ADA standards; and be unsightly in relationship to the surrounding areas of the harbor facility.

FLOOD HAZARD

The proposed project is located within a VE flood hazard area as identified in "The Flood Insurance Study" and maps dated August 19, 2013. The potential flood event for this coastal area is from wave action. The base flood elevation is 27 feet above MLLW. Docks and Harbors understands that CBJ Community Development Department (CDD) has had discussions with FEMA personnel where it was determined that the flood zone study for the Statter Harbor property did not consider the potential protective merits of the floating breakwater or the floating moorage facility in establishing the flood elevation. The indication was the FEMA would perform a new study for the Statter Harbor area if requested by CDD. At this point we are not aware that such a request has been submitted. It is likely that completion of a new flood study would require a significant amount of time and would not be complete in a timely fashion relative to the design schedule for this proposed project. Based on the existing situation regarding the flood zone map designations, it was CDD's recommendation that an exception be sought to allow this project.

The proposed project features two elements that might be impacted by velocity flood levels (27 feet). They include a Mechanically Stabilized Earth (MSE) retaining wall constructed to support fill and grading for the restroom/shelter structure and the uplands staging and parking area. The finish elevation of the retaining wall and the first floor of the proposed restroom/shelter structure would be approximately 2 feet below the FEMA flood elevation for this area. Further, it is believed that the coastal benchmarks in the Auke Bay area have not been resurveyed for many years. It is likely that the Auke Bay area has risen between one and two feet due to isostatic rebound since the last survey based on local observations in other areas.

The MSE wall would be constructed similar to the new block faced wall of the Statter Harbor Launch Ramp project recently completed (see photo right). The wall will be designed with angular shot rock fill, geotextile reinforcement fabrics, concrete block faced MSE walls, and heavy armor rock shore protection materials designed to withstand a 100 year storm event. Where inundated by tide and flooding, final surfaces would be designed with heavy reinforced concrete slabs, asphalt paving, and foundations to protect from flood caused erosion.



The other element that might be impacted by velocity flood forces is the restroom/open shelter building. This building would be constructed on a concrete foundation that would be protected by the MSE wall. The building is unique in that half of the floor area is open with no walls. The restroom side of the building would be constructed with flood and vandal resistant materials such as: concrete floor; concrete block walls; stainless steel fixtures; and steel doors. A second story commercial use space may be constructed if interest and funding is attained. The first floor structure would be designed to carry the loads of the potential second story.

If flooding were to occur in this area the water would flow over the open shelter area and around the restroom portion of the building. In addition, a concrete plaza around the building will be constructed that would help protect the area from erosion. The uplands parking and bus staging area would be paved with asphalt thereby offering erosion protection.

FLOOD HAZARD STANDARDS

CBJ Code *Section 49.70.400 - Floodplain* was established to promote public health, safety and general welfare to minimize public and private losses due to flood conditions in specific areas. The Code contains standards for development in flood areas which address two general flood hazard types. One is re-occurring flood events caused by rising creek and river levels during high rain or high snow melt periods. The other type is during more singular catastrophic events caused by high wave action due to greater than normal storm events. The proposed project is in a VE flood zone which relates to the flood velocity caused by higher than normal wave action.

REQUEST FOR EXCEPTIONS

CBJ Code *Section 49.70.410 - Exceptions* allows the Planning Commission to make exceptions to the flood hazard standards. CBJ Docks and Harbors requests an exception to the flood hazard standards to allow construction of a new restroom and open air shelter building with potential future second level for commercial space.

Specifically the requested exception relates to the standard to construct the base floor level of a building at the currently mapped flood elevation of 27 feet above mean lower low water. The first floor elevation of the proposed building would be at approximately 25 feet above mean lower low water. Raising the elevation to 27 feet would result in significantly higher construction costs for the project. The building site is between two existing elements of the overall Statter Harbor facility. The new work needs to blend with the adjoining uses to avoid abrupt grade changes to meet ADA access standards and adequate maneuvering space for the intended use.

The proposed project represents a unique situation that does not easily fit the general flood hazard standards. The building would be constructed on a site that currently does not exist. The site would be created with the installation of an engineered wall that would protect the uplands from erosion with its concrete mass and capping of the immediate grade surrounding the building.

The foundation for the building would be integral with the protective wall thus as a whole would withstand wave action velocity forces. The base elevation of the lower floor of the building would be below the recommended base flood elevation. However, the building foundation design would provide protection for the building through integral design with the protective MSE and coastal armor rock wall along the shore side of the project. Embankments and retaining wall structures placed for the building would be designed with angular shot rock fill, geotextile reinforcement fabrics, concrete block faced MSE walls and heavy armor rock to protect the structure and building during 100 year storm events.

Given the information provided in this document it appears that the project meets the criteria under CBJ Code *Section 49.70.410(h) – Exceptions shall only be issued upon:*

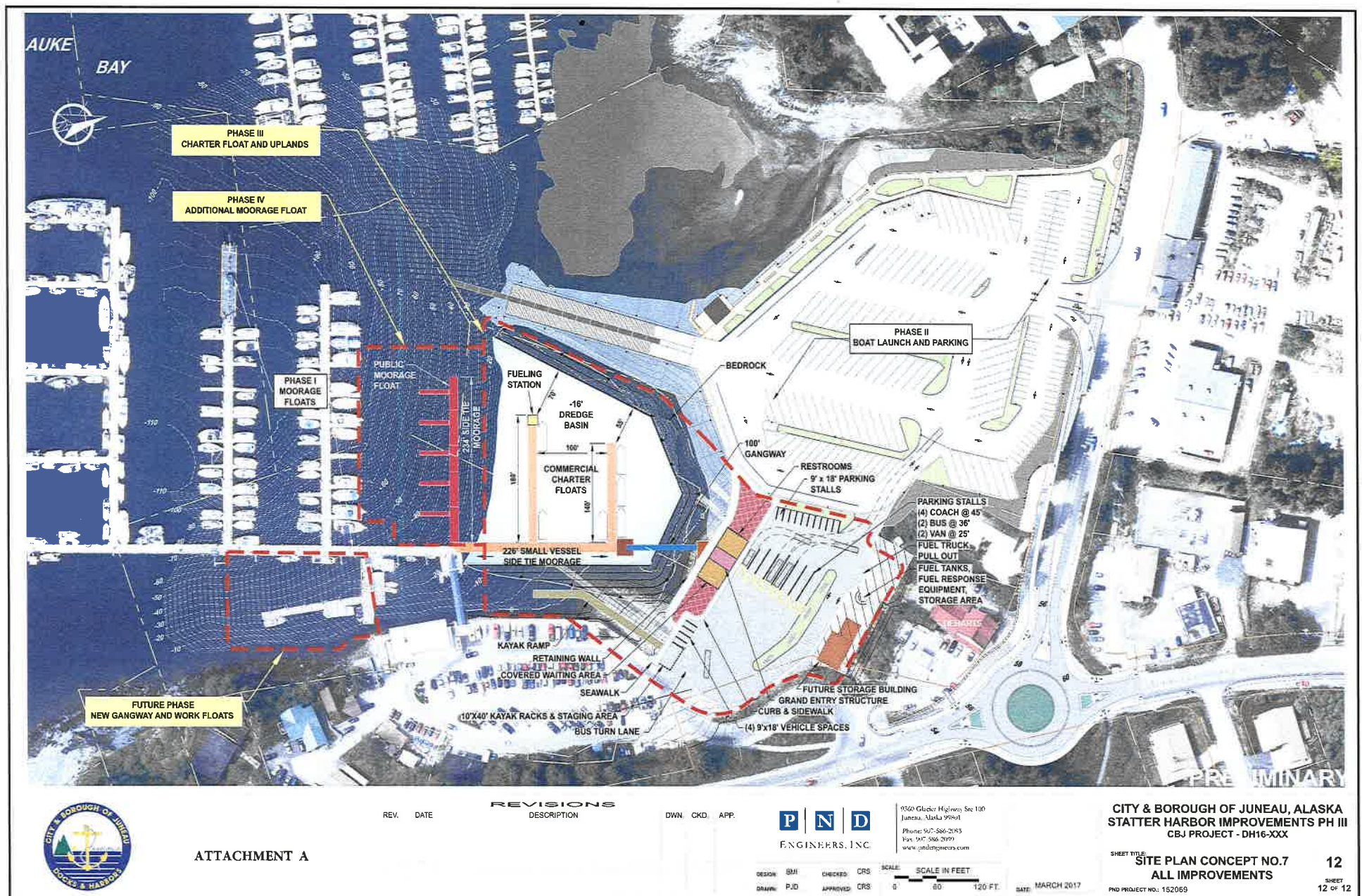
- (1) *A showing of good and sufficient cause;* The exception requested would allow needed facilities to be constructed to serve the new launch ramp and the proposed charter fleet facility. The project addresses important goals and objectives of the overall Statter Harbor Master Plan. The development is consistent with the Comprehensive Plan; the Auke Bay Area Plan; and is allowed in the Waterfront Commercial zoning district.
- (2) *A determination that failure to grant the exception would result in exceptional hardship to the applicant;* The exception requested would result in a base floor elevation approximately two feet below the recommended elevation. Any amount less than that requested would cause additional expense to the project; result in difficulty to attain ADA access standards to the moorage and loading floats; impact drainage patterns; and result in undulating parking and staging surfaces relative to surrounding harbor facilities that would impact maneuvering on the site for users and maintenance operations.
- (3) *A determination that the granting of an exception will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances or conflict with existing local laws or ordinances.;* Currently the shore line is not protected such that high wave action could cause erosion and damage the uplands portion of the site. The new engineered wall and armor rock placement will provide additional protection in this area from flooding caused by higher than normal wave action. The proposed building will be open-air on one side and enclosed on the restroom side. The restroom is planned to be concrete block construction that would provide protection if water breaches the engineered wall. The building would divert flood waters around the building and onto the paved parking and staging area however it is not expected to cause damage to the building due to its construction type. The new site elevation will be raised approximately two feet above the existing condition.

Raising the site to the flood elevation would be a costly activity due to the amount of fill material needed. In addition, raising the site would not blend with the immediately surrounding area and cause issues with drainage; maneuvering on the site; and meeting ADA grading standards. The completion of the project with an exception granted would not be in conflict with other zoning and ordinances pertaining to the proposed project.

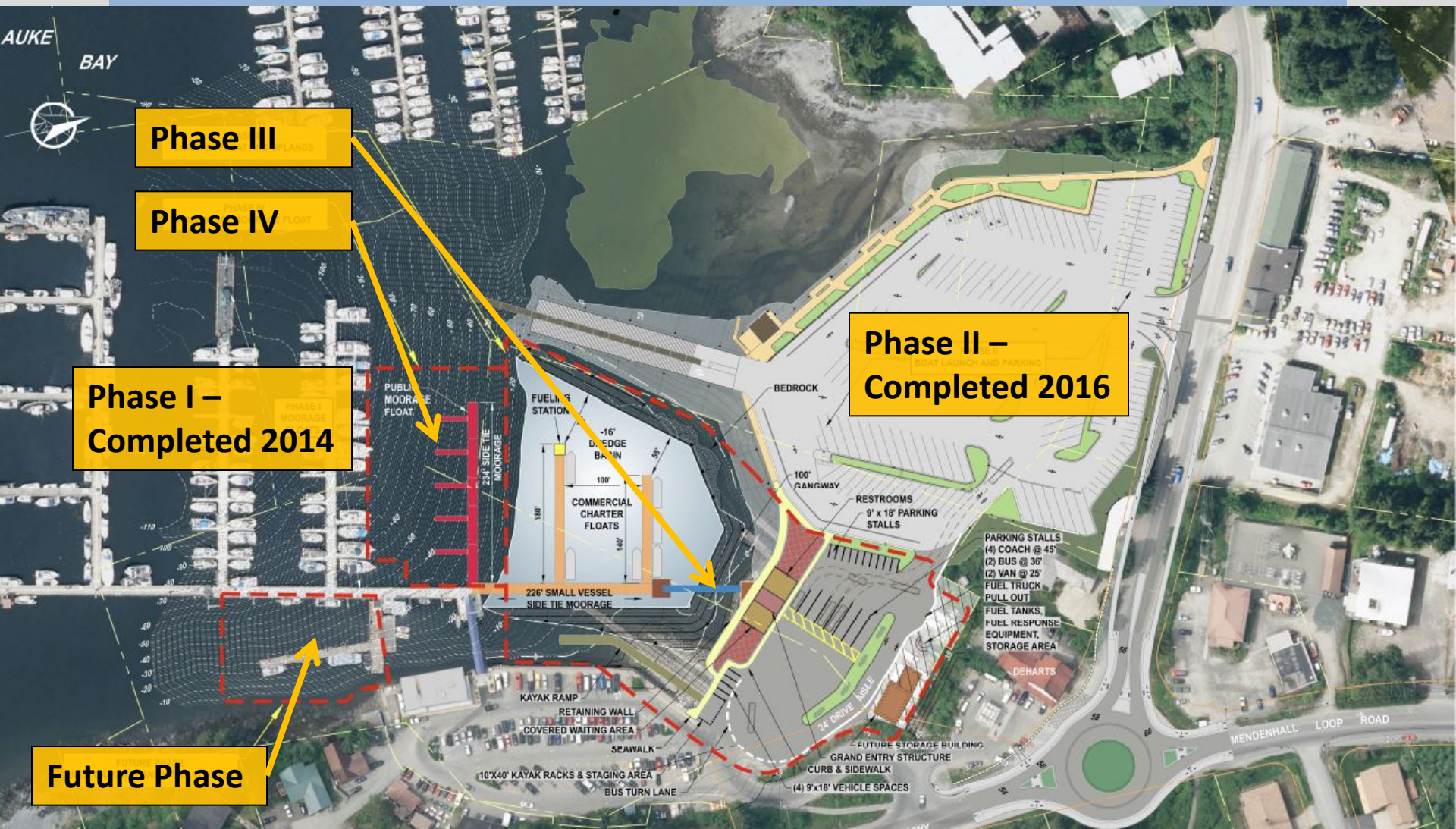
ATTACHMENTS

A. Proposed Project Site Plan

ATTACHMENT A – Proposed Project Site Plan



Statter Harbor Master Plan

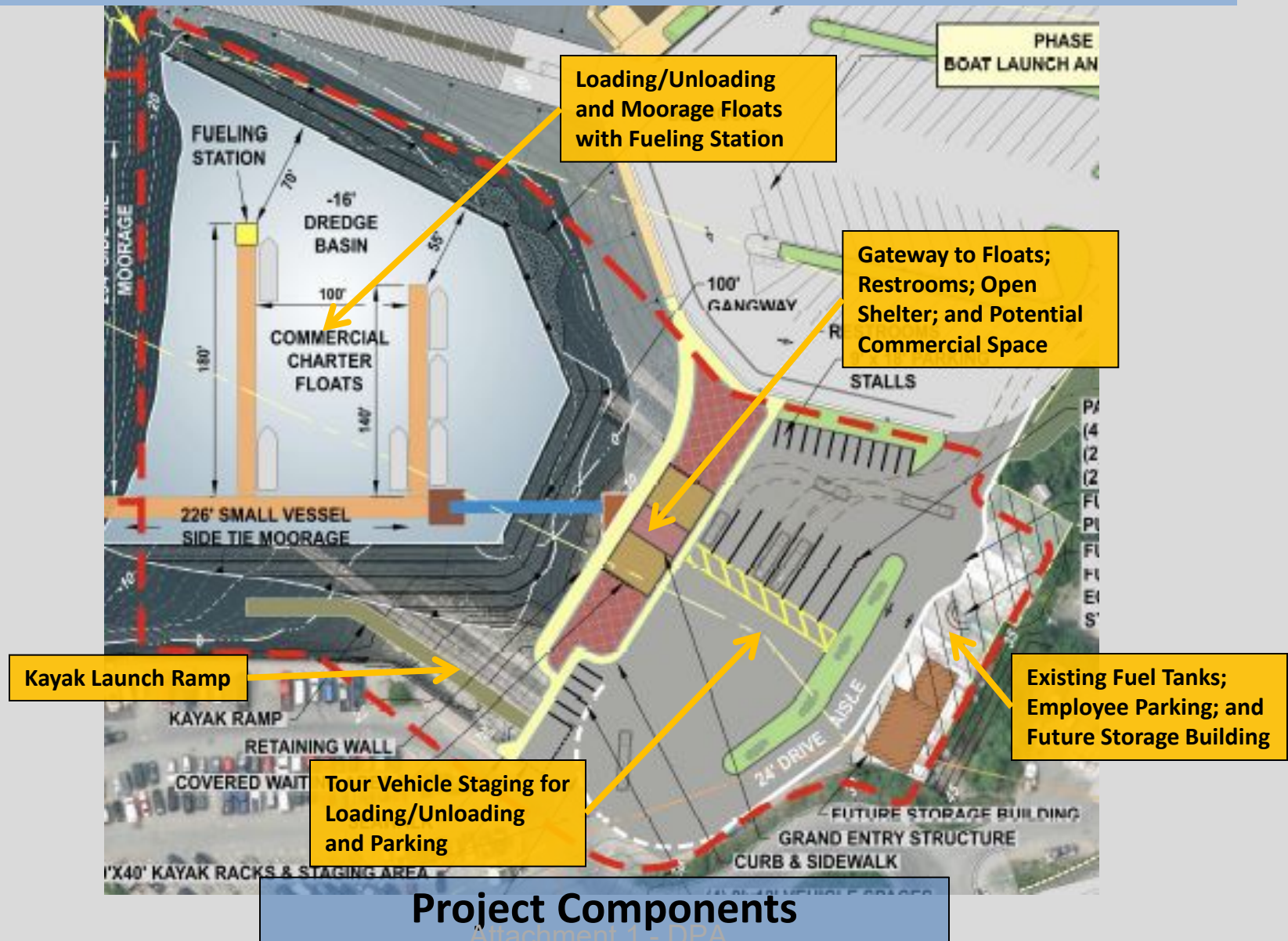


Development Phases

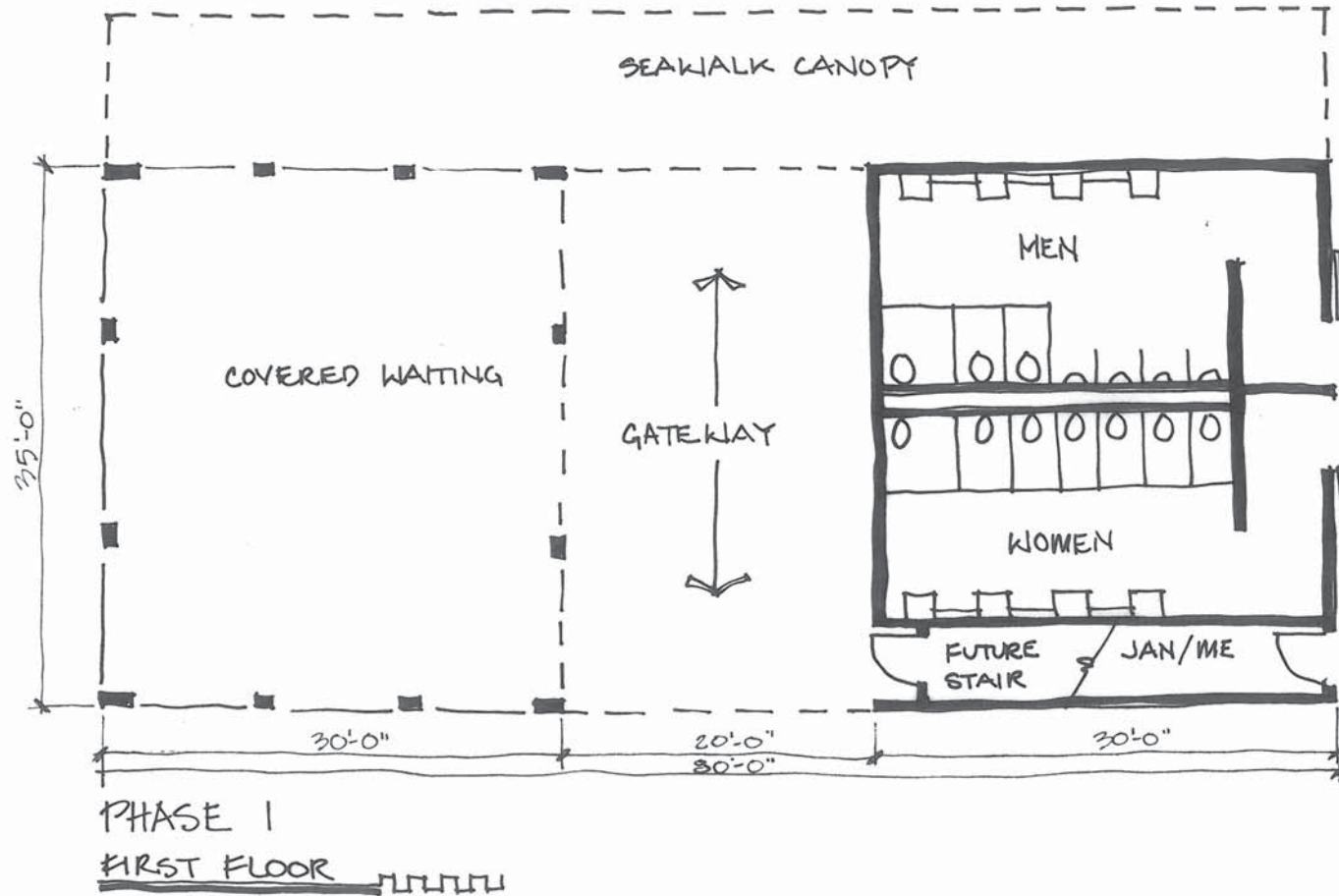
Attachment 1 - DPA

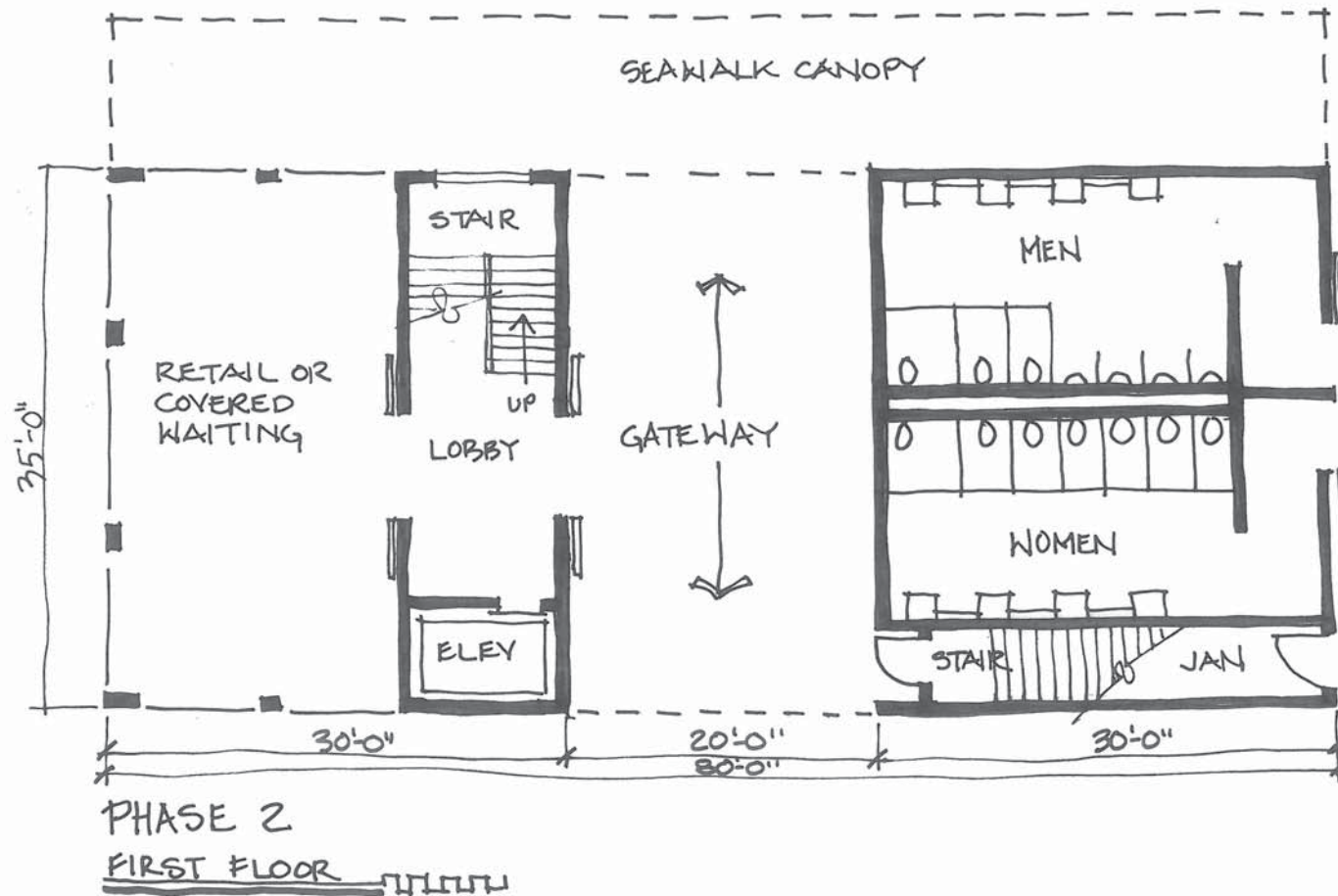
Attachment C - FZE2017-0001 Staff Report

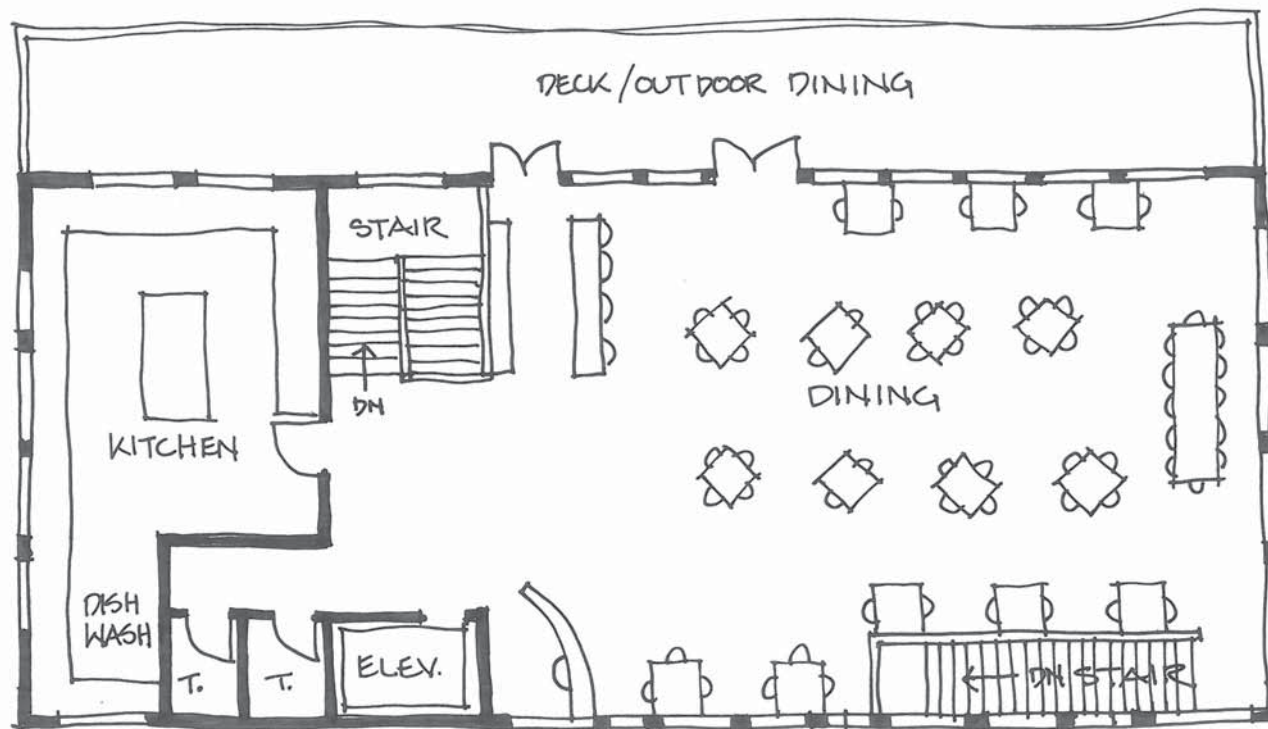
Statter Harbor Improvements – Phase III



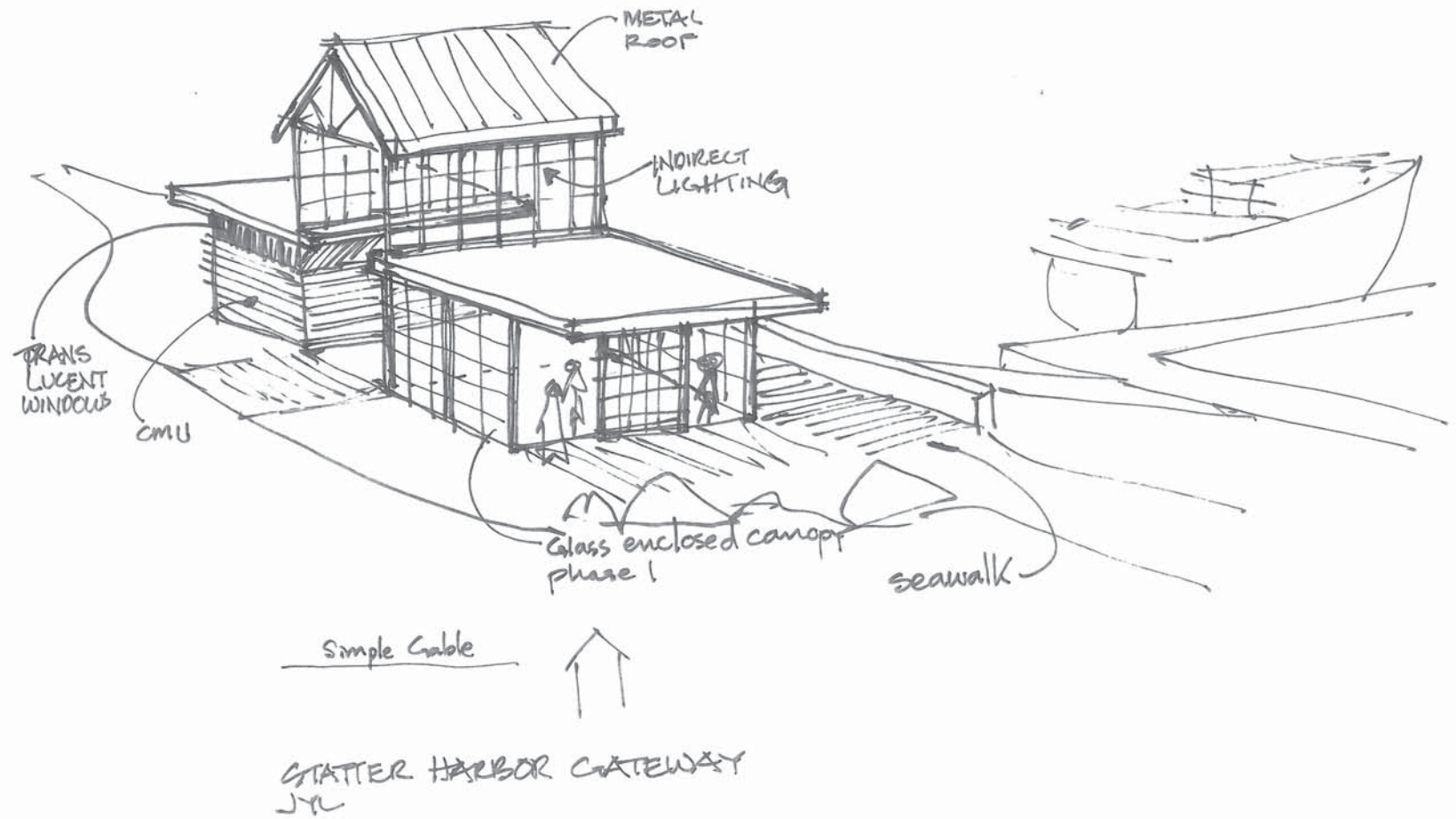
ATTACHMENT F







PHASE 2
FUTURE SECOND FLOOR



Public testimony – none.

MOTION: *by Mr. Levine, to approve AME2016 0018 accepting the staff's analysis and findings.*

Mr. Frisby seconded the motion.

The motion passed with no objection.

Mr. Haight recessed the body as a Planning Commission and took up business as the Board of Adjustment at 9:15 pm.

X. BOARD OF ADJUSTMENT

- A. FZE2016 0001:** A Flood Zone Exception to allow new restaurant buildings to be built on a dock seaward of the man high tide in a Velocity flood zone.

Applicant: James Bibb

Location: 406 South Franklin Street

Staff Recommendation

Staff recommends that the Board of Adjustment adopt the Director's analysis and findings and deny the requested Flood Zone Exception, FZE2016-0001.

If the Board of Adjustment makes findings to grant the applicant's project, staff recommends the following conditions:

1. Prior to issuance of a Building permit, the applicant shall submit plans showing how improvements to the deck will be made, consistent with the attached 2016 engineer's letter.
2. Prior to issuance of a building permit the applicant shall submit plans showing that the existing footings on the beach will be improved to withstand forces from a 100-year storm event.
3. Prior to issuance of a Certificate of Temporary Occupancy, the applicant shall make improvements consistent with Conditions 1 & 2.

Mr. Feldt explained that the proposal before the commission is similar to a variance but is not through the land use code. Rather it is a variance of the flood zone regulations.

The reason why the flood zone exception is brought to the commission at this time is that the structures of the previous restaurant on this deck were smaller and substantially different from the new proposed structures. This requires a new flood zone exception to be filed, reviewed and taken action upon.

The focal point of the review was that the proposed buildings are located on an area seaward of mean high tide and the property is in a velocity flood zone, which means that during a 100-year storm event the shoreline would experience either a combination of three-foot tall waves or higher or a wave of lesser height that, when it hits the shoreline, has a high wave run up. There are more stringent building

regulations in such an area to withstand the greater wave force as compared to a building located near a river.

Mr. Feldt presented a PowerPoint of the project and staff's findings. He noted that there were three findings in the flood zone exception of the land use code that were found to be unmet. One of these would be met automatically if the other two were found to be met. There are 11 items to consider under CBJ 49.70.410(b). Staff found items 4 and 5 unmet:

- (4) The importance of the services provided by the proposed facility to the community
- (5) The necessity to the facility of a waterfront location, where applicable

Because of these unmet conditions, staff recommends denial. But if the Board of Adjustment makes findings to grant the applicant's proposal, staff recommends three conditions. Staff reviewed these conditions with the applicant, who in turn had a conversation with their clients, and they found it would be viable to meet conditions 1 and 2.

Board of Adjustment questions and comments:

Mr. Voelckers remembers seeing this exemption a few years ago and recollects one of the reasons there was favorable sympathy to the applicant in granting this was because there had not been FEMA loading criteria established yet for how strong a dock had to be to survive a 100-year event. Has this been clarified any more, he asked?

Mr. Feldt said the FEMA regulations were in place in 2014 when the exception was heard. In order for the community to have flood insurance for business owners and property owners, the city has to adopt very specific flood regulations through FEMA to participate in the national flood insurance program. The program is the tool where flood insurance is enabled for the local community. When a mortgage is issued or when a property is involved with a lender, the lender is the mechanism that triggers flood insurance. FEMA regulations that are in CBJ's land use code were established well before 2014. There were different findings to get to the approval of the flood zone exception by the previous Board of Adjustment instead of being explained by FEMA regulations being flexible.

Mr. Voelckers asked if Mr. Feldt could describe how the features being added are treated as a building. Would they remain permanently on the dock? Mr. Feldt said the structures are enclosed areas, but he deferred the question to the applicant.

Mr. Voelckers said he does not understand the logic regarding Criteria 6, which the staff report said had been met in the review. There is a burden on proving that there is not an alternative location for the proposed use which is not subject to flooding or erosion damage. The conclusion in the report is that it is non-applicable because the restaurant is sitting on top of dock, above the high water mark. He said it seems like faulty logic because of the vulnerability of a dock to wave action below. Mr. Feldt said once the fact that the deck will be able to withstand a 100-year storm force, there will likely be some degree of erosion and damage, but structurally the deck will be intact because of the conditions on the permit, if the flood zone exception is approved.

Mr. Levine asked if the intent of the criterion is more narrowly focused. Mr. Feldt said staff's focus was on the improvement seaward of mean high tide. Once structural integrity is established, strong enough to withstand a 100-year storm force, anything on top would not be damaged. Furthermore, the decking and the lowest horizontal members of the deck itself are above the base foot elevation, meaning that if a 100-year storm event were to impact the property it would only surround the piers, the waves would not impact the deck itself.

Mr. Levine asked if the natural extension of this logic would be that they don't need the flood zone exception at all. Mr. Feldt said the origin of the requirement to not build seaward of mean high tide is along more open shore lines and where fill is brought in to raise the starting point of the foundation, which could erode away in a storm event. Juneau's South Franklin development does not have that amount of fill projecting out into the channel. There are piers instead. There are shoreline areas consisting of fill that is decades old and have withstood a lot of storm force.

Mr. Voelckers said there was some narrative about the new 16-B dock adding greater buffering. He wonders if this is considered; does FEMA make this sort of subjective determinations? Mr. Feldt said the second dock will create some buffering. The process to prove to FEMA to change the maps behind the loading dock will have to go through a map amendment. Staff can pursue this with FEMA and work with Docks & Harbors and their engineers, etc. Mr. Voelckers said he doesn't understand how FEMA could allow one to make subjective judgements about whether an area was more or less dangerous. He thought it was just a question of vertical height. Mr. Feldt said they do draw the line which they say that the community has some given flexibility through a flood zone exception, so long as all the findings are met. Certainly you have to build above the base foot elevation, but along a velocity flood zone, it also adds another limitation above and behind the mean high tide line.

Mr. Haight said it seems we have come to a technical review of what we think the velocity condition might present to the site in determining this exception. That is correct, said Mr. Feldt.

Mr. James Bibb of Northwind Architects, the applicant representing his client who is the restaurant owner, came forward to speak along with Kate Nichols of Numan Development, the design consultant on the project specifically the container portion of the project.

Mr. Bibb said that the engineer on the project was not present but can answer questions and follow up as necessary. Mr. Bibb said he wanted to follow up regarding the two unmet criteria on the exception and address these similarly to how they were addressed two years ago when Northwind Architects represented the previous client/restaurant owner and the board ruled in favor. The question is for the community, where does Juneau see the waterfront going? A goal for the city is to become more pedestrian-oriented along the waterfront, as evidenced by the development of the sea walk and the long-range waterfront plan. Therefore, development along that edge is critical to economic success and needs to be done in a manner according to the Comprehensive Plan, building codes, and so forth. This project is a verification of that.

Mr. Bibb shared a handout to commission members that included his bullet points. His points go to the question of why waterfront development is taking place and why that is critical in supporting Juneau's visitation industry. The growth of this industry puts some pressure on us to make sure that amenities along the sea walk, specifically along South Franklin Street, are encouraged.

The reason why this project is critical in this location is because that is the success or failure of businesses. A seafood restaurant marketing local product has to be near the waterfront, that makes sense and the market itself, the private sector, is making that determination. Location is critical for this, said Mr. Bibb.

Regarding number 5, Mr. Bibb said the reason why two years ago they proposed the dock had a lot to do with the operation of the restaurant. There are very few locations with dock waterfront south-facing venues and that character and atmosphere. Also, he said, one would not expect fresh, local seafood to be served internally; the success of that is the ability to go out on deck and have that connection to the waterfront. This is how you market the main asset.

Mr. Bibb pulled up the graphic he had handed out, which compared the previous restaurant layout to the proposed one. He noted that for the most part, they tried to pull the structures back from the flood zone line but their final plan reflects the best way that a restaurant operates. They also had a structural engineer do an assessment of the existing dock. Upgrades were done to the dock two years ago and so they leveraged the existing qualities of the dock itself, finding the best places that make the most structural sense. This gets to the idea that the dock is going to maintain a design that supports the resistance for the loading criteria based on a 100-year flood zone or seismic occurrence. This is similar to the criteria that they had to meet last time, and they were successful in arguing these points then.

Kate Nichols spoke and stated that she is an engineer by education and has been involved in all of the discussion with Bruce Berryhill regarding this project. She spoke to comments regarding the 100-year flood concern and the mean tide issue. It has been determined that the criteria can be met for the pier to withstand a 100-year storm which means that since the mean tide is beneath the pier that anything above the pier would be safe. She believes this is the key requirement being looked at for the FEMA requirement. Also if trying to elevate the waterfront to a world class status, she said she has yet to be in a place better suited for a marriage of this method of architecture and an environment. Structurally and operationally the modules that are beyond the mean high-tide line need to be there. The combination of the fact that the pier can withstand a 100-year storm event, that no one is being put in harm's way and that it is required for the project to proceed successfully and capitalize on the magnificent nature of Juneau's waterfront are key points.

Mr. Voelckers asked if the intent is that the structures would not move seasonally. Ms. Nichols said although they could be moved, the intent is not to move them seasonally. Are they heavier than what was there before, asked Mr. Voelckers? Yes, said Ms. Nichols, but those lateral loads and their effects come more into play in a seismic situation than in a storm situation. They will be adequately addressed in the building permit process. There should be no concern there.

Public testimony – none.

Commission Comments and Questions:

Mr. Voelckers said he had staff questions, perhaps best directed to law staff. He said he buys the focus on a vital waterfront but he was having trouble reconciling the criteria the board is supposed to review. He wondered who takes the liability from what might happen from this decision.

Mr. Palmer took the floor. He referred the board to CBJ 49.75.10(J). There is a wording and disclaimer of liability specifically in code, “This article shall not create liability on the part of the city and borough or in the office thereof or the Federal Insurance Administration.” Hopefully that resolves the question about liability. Liability, if it exists, is with the users and/or owners of the property. Mr. Voelckers asked if the lender is satisfied that the applicant has made appropriate corrections to take this design load then everybody is cool. On the private market side, yes, said Mr. Palmer. Mr. Voelckers asked if there was any cautionary in terms of precedent setting, similar to issues raised with variances about making sure all of the readings can be justified because of further legal consequences or the potential of something being overturned. There could be, said Mr. Palmer. The general guidance is what is specific about this application as evaluated by the criteria. He said that Mr. Feldt has provided one set of proposed analysis, but the board can make a change if they believe there is something else that is more unique or that needs to be emphasized.

Mr. Levine said he was also conflicted about this application. He wondered how previous findings of this body which granted the exemption two years ago might bind this board. And, if so, what were those conclusions? Mr. Palmer said they are not bound by the previous approval; however they can look to those conclusions for precedential value. One of the inherent reasons why this applicant came before the board is because staff determined that this application is significantly different from the prior application. If the board wants to address that finding tonight, and if the board articulates that this applicant is not so significantly different, then the board might determine that the presumption in the staff report that a prior land use permit goes with the land, not the applicant, does not apply here. The board might determine that this application is so similar to the past that there is no need for this application tonight.

Mr. Levine asked Mr. Feldt how this application is different. Mr. Feldt said the differences lie in the amount of enclosed versus un-enclosed structures and there are more enclosed structures seaward of mean high tide than other project. These are the two primary differences that led to staff’s conclusion. Mr. Levine asked if the board decides the projects are substantially similar, then would they eliminate the obligation to address the Conditional Use permit that is also before the other body of the Planning Commission.

Mr. Palmer said the answer is yes. The Community Development Department has focused on the use above the dock. The board might also consider whether the use below the dock has changed and whether or not that is the focal point for this application or if it may also be the focal point for the CUP.

Mr. Voelckers said it seems the fundamental difference is that the last project did not involve wholesale dock strengthening and additional lateral and seismic upgrades while this one does.

Mr. Feldt spoke to the Conditional Use permit. He said that regardless of the similarity to the previous restaurant, this is new development and new structures which trigger the need for obtaining a new CUP for development in a mapped landslide and avalanche hazard zone.

Mr. Levine said he just heard two different answers to the question. Ms. McKibben said that Mr. Feldt explained the rationale for the CUP application. You are not evaluating the use; you are evaluating the development within the hazard area, which is required. She said that what Mr. Palmer said, and which she agrees with, is if it is determined that the use is substantially similar and the flood exception evaluation is substantially the same, then the same would be true for the development within the hazard area.

MOTION: *Mr. Peters moved to adopt the Director's analysis and findings and deny the requested Flood Zone Exception, FZE2016-0001, recognizing that criteria B, 4 & 5 are not met. Looking at the plans before the board, the use has substantially changed in design and elements on the deck.*

Mr. Haight said that he felt the applicant has proposed modifications and upgrades to the dock to offset the increased loading to the dock in a manner that would bring it back into a compliance to meet that exception. In that manner, he opposed Mr. Peters' motion.

Mr. Levine said he remains conflicted. He said he thinks there ought to be a restaurant in this location but he finds himself beholden to the criteria and is still not fully confident that this satisfies the criteria. He also feels beholden to the previous grant of the exception. Therefore, he will vote reluctantly in favor of Mr. Peters' motion.

Mr. Dye asked to clarify that the two items not met are not regarding the structural aspects of the dock. Items 4 and 5 are about land use, correct? He asked Mr. Haight if he had any language for 4 and 5 to find in the affirmative. Mr. Haight said with regard to 4, the economics and use of the area would be broadened with more diversity of market that brings and holds visitors in that area. He said that if the city is reliant on singular types of stores then he thinks the people will move on through. In this respect it becomes an important service to that part of the community. The necessity of being on the waterfront falls into the same argument. We want to hold visitors to this area. The other part of it, as the applicant has brought forward, is that the project works well with the sea walk that the city is promoting. Mr. Haight said that from his perspective those two criterion are met.

Mr. Voelckers said that he is conflicted but will oppose the motion and agree with the chair. This is a good use with the city's new, revitalized sea walk and would add pedestrian usage to this area. He did not think item 6 and maybe item 10 are technically met, however he took satisfaction from Mr. Palmer's remarks that imply that this is not the same level of rigorous point-of-the-knife issue that the board might have in some other type of variance. There is a little bit of figuring out relative to FEMA

regulations which, he thinks, have been structured too oppressively. He is satisfied that the dock itself is going to be taken care of.

Mr. Bell stated he was also torn trying to justify supporting this application. He said he sees economic value in the rejuvenation of the area. The dock is a critical issue, he said. It is a substantial investment on the community's part. It has the opportunity to create a pleasant atmosphere for the area, yet all criteria are not met.

Mr. Steedle asked a technical question of Mr. Palmer. Are these to be treated as criteria all of which must be met or does the board simply have to consider each of them and if the general intent is met, would that be sufficient? Mr. Palmer read the introductory language and said ultimately it is a question for the board. "In passing upon such application, the Board of Adjustment shall consider all technical evaluations, all relevant factors, standards specified in other sections of this article and then it lists the eleven criteria and they are in the conjunctive with the 'and' between 10 and 11." Mr. Palmer said that if the board wants to say all must be met to pass, there is basis for that. If the board wants to go to a different conclusion, there may be a basis for that but the board would have to articulate it.

Mr. Levine said Mr. Steedle's question changes the way the board might think about this. He paraphrased what Mr. Palmer read and asked if his understanding was correct. He said that the way he read the staff report, it has been treated the way a variance criteria works, where the applicant has to meet all 5 of the things or a variance cannot be granted. He believes Mr. Palmer is suggesting that if the board wants to interpret the code, the board could interpret their obligation to consider the 10 or 11 factors and make their own determination based on a consideration of those factors. Mr. Palmer said that is a fair representation. He emphasized that there is an easier basis for him to say that the board has to bind all 11 to be found in the positive. If the board wants to articulate some reason that means there is an 'or', it is for this body to do so.

Mr. Frisby said he would disagree with the motion on the floor for the same reasons that Mr. Levine agreed. He wondered if the board could table this as he feels they are talking about issues that they don't really have answers to regarding load and structural integrity. He said he thinks the board needs more information. He said he feels they would be making a decision with insufficient information.

Mr. Peters made a point of order in terms of precedence. His question to staff was what is the past history in terms of looking at these 11 criteria? He said he believes in the past all 11 had to be met. He raised the issue that they will be setting precedent moving forward as to how the board considers these criteria.

Mr. Feldt explained that in the past they have treated it very similar to a variance and have put variance findings in addition to the flood zone exception findings in the same report. This is the first one that staff has not done this because of the different interpretation staff has made recently about the use of variances. Ultimately staff concluded to remove the variance findings and depart from past practices

and, now, only has the flood exception findings in this report. The two are very different even though they sound kind of similar.

Mr. Haight restated that there was a motion on the floor.

Mr. Bell asked if the board would consider tabling this for further evaluation. Mr. Haight said yes if the board is looking for additional information. If so, what is that information that we would hand to the staff to bring back to the board.

Mr. Voelckers said the board has had information from Mr. Palmer and staff that this is different from the normal variance that is explicit that the board has to find in the affirmative for all criteria. He said in the language that a couple of times it talks about 'upon consideration' which implies that this is different.

Ms. McKibben pointed out some other language that she felt might provide guidance. She directed the board's attention to 49.70.410(d): *Upon consideration of the factors of subsection (b) of this section and the purposes of this article, the board may deny or grant the application and may attach such conditions to the grant of an exception as it deems necessary to further the purposes of this article.*

She directed the board's attention to 49.70.400(a) *Purpose. The purpose of this article is to promote the public health, safety, and general welfare and to minimize public and private losses due to flood conditions in specific areas. Other purposes are to:*

- 2) Prevent the erection of structures in areas unfit for human usage by reason of danger from flooding, unsanitary conditions, or other hazards;*
- (3) Minimize danger to public health by protecting the water supply and promoting safe and sanitary drainage;*
- 4) Reduce the financial burdens imposed on the community, its governmental units, and its individuals by frequent and periodic floods and overflow of lands;*
- (6) Ensure that potential buyers are notified that property is in a special flood hazard area; and*
- (7) Ensure that those who occupy the special flood hazard area assume financial responsibility for their development.*

Ms. McKibben said this section is followed by a whole section on interpretation the board might want to read. She quoted from 49.70.400(b); 1) . . . *provisions shall be considered as the minimum requirements and shall be liberally construed in favor of the governing body.* She quoted other points in this section of the code regarding the purposed of the chapter.

Mr. Haight said that there was still have a motion on the floor. He asked for a roll call vote.

Yes Votes	No Votes
Mr. Dye	Mr. Levine
Mr. Peters	Mr. Frisby
	Mr. Voelckers
	Mr. Bell
	Mr. Haight

The motion failed.

MOTION: *Mr. Levine moved as follows: The Board of Adjustment has considered all relevant factors including those set forth in 49.70.410(b). Upon such consideration, the board grants FZE2016 0001 and includes staff's recommended conditions:*

- 1. Prior to issuance of a Building permit, the applicant shall submit plans showing how improvements to the deck will be made, consistent with the attached 2016 engineer's letter.*
- 2. Prior to issuance of a building permit the applicant shall submit plans showing that the existing footings on the beach will be improved to withstand forces from a 100-year storm event.*
- 3. Prior to issuance of a Certificate of Temporary Occupancy, the applicant shall make improvements consistent with Conditions 1 & 2.*

Mr. Levine said he now reads the provision of the language as allowing the board to award this exception upon fully considering all of those factors and, when alleviated of the responsibility of having to find that all of them were affirmatively met, he concurs that this project is one that ought to go forward. He said he is satisfied that it qualifies for the flood zone exception.

Mr. Dye asked for clarification that the board will not find different findings for 4 or 5 or try and fix 6 or 10. No, said Mr. Levine.

Mr. Frisby seconded the motion.

Mr. Voelckers spoke in favor of the motion. He said it was a well-phrased way to finesse the problem where it gets away from trying to look at the 11 issues individually but, on balance, the board believes public safety and welfare and the general good of community has been met.

Mr. Peters wanted to renew his concern and acknowledge that not 11 items under (b) have been met. He was concerned that the board would pass this, acknowledging that comments have been put in the record that 6 and 10 may or may not be met. He said he will oppose the motion.

Mr. Levine said that he agrees that not all criteria have been strictly met, but it is his reading that they do not need to be.

Mr. Dye asked if this decision will carry over to the board's on-going struggles with variances and their interpretation or are we leaving that well enough alone. Mr. Palmer responded that if this motion passes with the analysis that was done in this case, it could be used for persuasive authority in similar cases in the future.

Mr. Voelckers asked Mr. Palmer if he was talking about a FEMA determination, not broadly in other land use categories. Mr. Palmer said specific to the analysis and requirements of 49.70.410.

Mr. Haight called the motion with a roll call vote.

Yes Votes	No Votes
Mr. Levine	Mr. Peters
Mr. Frisby	
Mr. Voelckers	
Mr. Bell	
Mr. Haight	
Mr. Dye	

The motion passed.

Mr. Haight adjourned the Board of Adjustment at 10:24 pm and reconvened the body as the Planning Commission.

- A. USE2016 0029:** A Conditional Use Permit request for a new outdoor seasonal restaurant in a landslide and avalanche zone
Applicant: James Bibb
Location: 406 South Franklin Street

Staff Recommendation

It is recommended that the Planning Commission adopt the Director's analysis and findings and grant the requested Conditional Use permit. The permit would allow the development of outdoor restaurant uses within a mapped landslide hazard zone.

Mr. Feldt said he did not prepare a presentation but was happy to go over the findings. He asked if the commission wished for staff to provide a presentation but the commissioners did not want this.

Mr. Haight asked for questions from commissioners for staff or for the applicant. There were none.

Public comments – none.

MOTION: *by Mr. Voelckers to approve USE2016 0029 accepting the staff's analysis and findings and asked for unanimous consent.*

The motion passed with no objection.

XI. OTHER BUSINESS

Mr. Voelckers said that they are on track with the CIP Ad Hoc Committee meeting at 5:30 on December 1 in Assembly Chambers. Mr. Steedle said that Mr. Healy and Mr. Watt will be present at that meeting. If that meeting is brief, Mr. Steedle said there will be time to make it to the Lemon Creek Steering Committee meeting at 6:00 at Gruening Park Community Hall.

From: Gary Gillette
Sent: Tuesday, June 13, 2017 9:30 AM
To: Teri Camery
Cc: Erich Schaal
Subject: Re: question on FZE staff report

Teri
I confirmed with Dick Somerville this morning that the final elevation of the new uplands of Statter III will be at 25 foot elevation. This will match the existing elevation at the Harbor Building and gangway to moorage as well as the elevation at the new launch ramp just completed.

The 23 foot elevation is the existing Statter III site thus will be brought up 2 feet to 25. This means we are asking for the exception to be 2 feet below the flood elevation of 27 feet. Sorry for the confusion - it appears I was confused as well.

From: Teri Camery
Sent: Tuesday, June 13, 2017 9:00 AM
To: Gary Gillette
Cc: Erich Schaal
Subject: RE: question on FZE staff report

Hi Gary,

I need a response on this, please. I have to wrap up all final details on the staff report this morning. I'll cc Erich in case you're out.

Thanks,
Teri

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

From: Teri Camery
Sent: Monday, June 12, 2017 11:41 AM
To: Gary Gillette
Subject: question on FZE staff report

Hi Gary,

In your comments you asked me to correct this statement, "The proposed restroom structure is located at 23 feet MLLW, four feet below the Base Flood Elevation" to say 25 feet MLLW, two feet below Base Flood Elevation.

However the 23 feet, four feet below MLLW, was taken directly from your narrative. Two feet versus four feet below base flood elevation is an important difference. Could you please clarify? I will add language in that criteria about the likely inaccuracy of the survey data, but I can't change the numbers, unless there's a typo or I am missing something somewhere.

Also, you had noted that the boat launch ramp was completed in September 2016. I just wanted to double-check on that, because I thought you told me on the phone that it was only just completed in May 2017. I may have heard you wrong. I have that incorrect in all three staff reports, uggh, so please clarify and I'm glad you caught it.

Thanks!

Teri

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



Community Development

(907) 586-0715

PC_Comments@juneau.org

www.juneau.org/plancomm

155 S. Seward Street • Juneau, AK 99801

BOARD OF ADJUSTMENT NOTICE OF DECISION

Date: June 27, 2017

File No.: FZE2017 0001

CBJ Docks and Harbors
ATTN: Gary Gillette
155 S. Seward Street
Juneau, AK 99801

Proposal:	A request for a Flood Zone Exception to allow construction of a public restroom below the Base Flood Elevation at Statter Harbor
Property Address:	11520 Auke Bay Harbor Road
Legal Description:	Lot 3C, USS 2664 & ATS 16
Parcel Code No.:	4B2801010032
Hearing Date:	June 27, 2017

The Board of Adjustment, at its regular public meeting, adopted the analysis and findings listed in the attached memorandum dated June 16, 2017 and approved the Flood Zone Exception to allow construction of a public restroom below the Base Flood Elevation at Statter Harbor to be conducted as described in the project description and project drawings submitted with the application and with the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a letter from a licensed professional engineer indicating that the fill will be designed to withstand the 100-year storm force which is described in the City & Borough's currently adopted Flood Insurance Study.
2. Prior to issuance of a building permit, the applicant shall provide additional backflow prevention within the plumbing disposal system to prevent floodwaters from infiltrating the CBJ wastewater system, to be approved by the CBJ Engineering Department.

Attachment: June 16, 2017 memorandum from Teri Camery, Community Development, to the CBJ Board of Adjustment regarding FZE2017 0001.

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

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

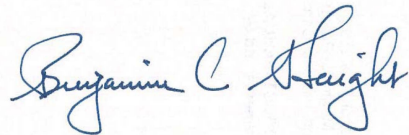
Effective Date: The permit is effective upon approval by the Board, June 27, 2017

Expiration Date: The permit will expire 18 months after the effective date, or December 27, 2018, if no Building Permit has been issued and substantial construction progress has not been made in accordance with the plans for which the development permit was authorized. Application for permit extension must be submitted thirty days prior to the expiration date.

Project Planner:



Teri Camery, Senior Planner
Community Development Department



Benjamin Haight, Chair
Planning Commission



Filed With City Clerk

July 5, 2017

Date

cc: Plan Review

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

Agenda
Planning Commission
Regular Meeting
CITY AND BOROUGH OF JUNEAU
Ben Haight, Chairman
June 27, 2017

I. ROLL CALL

Ben Haight, Chairman, called the Regular Meeting of the City and Borough of Juneau (CBJ) Planning Commission (PC), held in the Assembly Chambers of the Municipal Building, to order at 7:05 p.m.

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

Commissioners absent: Michael LeVine, Kirsten Shelton-Walker

Staff present: Rob Steedle, CDD Director; Beth McKibben, Planning Manager; Laura Boyce, Senior Planner; Teri Camery, Senior Planner; Gary Gillette, Port Engineer for Docks and Harbors; Robert Palmer, Assistant Municipal Attorney

Assembly members: Debbie White

II. APPROVAL OF MINUTES

May 23, 2017, Draft Minutes - Regular Planning Commission Meeting

MOTION: *by Mr. Miller, that the May 23, 2017, regular Planning Commission meeting minutes be approved with any minor corrections by staff or Commission member.*

The motion passed with no objection.

III. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS

Greg Chaney, Lands Manager for the CBJ, who lives in the Starr Hill area, spoke as a private citizen on the overlay district, of which his neighborhood is a part. The overlay district was approved by the Assembly last night. Mr. Chaney said he is in favor of the overlay district. Showing pictures of his neighborhood displaying his house to the Commission, Mr. Chaney noted that the majority of his house does not conform to the rear setback. Showing a map of the area, Mr. Chaney commented that within the entire neighborhood, there is not one home in this district which conforms with the D-5 zoning conventional standards.

D-5 zoning for the neighborhood was enacted around 1986, said Mr. Chaney. The problem is that of the existing homes in the neighborhood, many of them over 100 years old, do not comply with this zoning, said Mr. Chaney. As a result, he said, if anyone wants to do any reconstruction, issues arise, he said. Typically this would require a variance, he said. To help resolve this problem, the overlay district can be a potentially great solution, he said. If setbacks are averaged per the overlay district, said Mr. Chaney, it comes out to about nine feet for the rear yard setback, he noted. They would like to build a deck and they cannot build the deck they would like to build because of this, he said.

The only people that could take advantage of the average would be those who are far away from the average, said Mr. Chaney. That means that half of the people in the neighborhood are not going to be able to take advantage of the average setback, he said. Therefore, he said, the only property owners within this area that would be helped by this are three homes within the entire neighborhood of twenty homes.

Mr. Chaney said he had interpreted the overlay district verbiage to mean that the footprint of the existing residential building could be used as the basis for reconstruction through a Conditional Use Permit. Mr. Chaney said he understands this option has always been available under the reconstruction section of the code. He said when he brought this up to the Assembly at its meeting last night, some Assembly members were confused.

IV. PLANNING COMMISSION LIAISON REPORT

Assembly Liaison to the Planning Commission Debbie White reported that the overlay district was approved by the Assembly despite some confusion on the part of some Assembly. Jill Maclean did a phenomenal job explaining this item to the Assembly, said Ms. White.

V. RECONSIDERATION OF THE FOLLOWING ITEMS - None

VI. CONSENT AGENDA

Consent agenda items USE2017 0008 and CSP2017 0006 were pulled from the Consent Agenda at the request of Dennis Watson and placed on the Regular Agenda.

CSP2017 0002: A City State Project for the acquisition of tidelands from the State of Alaska by the City and Borough of Juneau Docks and Harbors Department for the Statter Harbor Launch Ramp project.

Applicant: City and Borough of Juneau

Location: 11801 Glacier Highway

Staff Recommendation

Staff recommends that the Planning Commission recommend to the Assembly that CSP2017 0002, City Project Review for acquisition of submerged lands, is consistent with the 2013 Comprehensive Plan, Auke Bay Area Plan, Title 49 and other associated plans mentioned herein and forward to the Assembly a recommendation for approval.

MOTION: *by Mr. Dye, to approve CSP2017 0002 with staff's findings, analysis and recommendations.*

The motion was approved with no objection.

VI. CONSIDERATION OF ORDINANCES AND RESOLUTIONS - None

VII. UNFINISHED BUSINESS - None

VIII. REGULAR AGENDA

Chairman Haight and Commissioner Hickok withdrew from all Statter Harbor items on the agenda due to conflicts.

USE2017 0008: A Conditional Use Permit for Statter Harbor Development

Applicant: City and Borough of Juneau

Location: 11520 Auke Bay Harbor Road

Staff Recommendation

Staff recommends that the Planning Commission adopt the Director's analysis and findings and grant the requested Conditional Use for construction of new mooring and loading floats, uplands development, kayak launch ramp, restrooms and covered shelter with potential second floor commercial space, and removal and replacement of a section of the moorage facility, subject to the following conditions:

Prior to issuance of a building permit, the applicant shall submit a lighting plan illustrating the location and type of exterior lighting proposed for the development. Exterior lighting shall be designed and located to minimize offsite glare. All exterior lighting fixtures shall be of a "full cutoff" design.

There are a total of five phases to the Statter Harbor project, said Ms. Camery. Phase Two was completed in 2016, she noted. That phase consisted of the large parking area and the boat launch ramp, she said.

This item involves Phases III, IV, and the future phase, said Ms. Camery. This involves a series of improvements including new loading floats for the charter fleet that serves cruise ship passengers on whale watching and fishing tours; an upland staging area for charter bus loading

and unloading; and an upland building with an open shelter, restrooms, and a potential second floor commercial space. Phase IV includes the charter fleet facility with approximately 866 lineal feet of side tie moorage as well as a new field dispensary. A separate kayak ramp would also be constructed to reduce conflicts with boaters, said Ms. Camery. Also the development provides a new Bay Walk, a continuation of the sea walk that was developed in the previous phase, along the perimeter of the parking area. The future phase moorage replacement would remove and replace the oldest section of Statter Harbor moorage floats, known as the horseshoe area. This section of the harbor is near the end of its useful life.

The major goal of all of these developments within the Statter Harbor Master Plan has been to separate user groups, and to improve vehicle, vessel and pedestrian circulation, said Ms. Camery.

The application is complete and the use is appropriate according to the Table of Permissible Uses, said Ms. Camery. It complies with the public notice requirements, and there is no evidence that the development endangers public health or safety, she said. There is no evidence that the development decreases the value of or is out of harmony with property in the neighboring area, she said. The project is in conformity with the Auke Bay Area Plan, the Juneau Comprehensive Plan, and the Juneau Economic Development Plan, said Ms. Camery. It is also in compliance with the Juneau Coastal Management Plan, she noted. The project meets all of the necessary conditions for approval of this project, said Ms. Camery.

The staff recommends that prior to issuance of a building permit, the applicant shall submit a lighting plan illustrating the location and type of exterior lighting proposed for the development. Exterior lighting shall be designed and located to minimize offsite glare. All exterior lighting fixtures shall be a "full cutoff design", read Ms. Camery.

Commission Comments and Questions

Mr. Voelckers summarized that these phases are essentially comported with material that has already been presented to the Commission at previous meetings. He said this is the execution of the project but that there are not any significant changes to what the Commission has been exposed to previously.

Ms. Camery agreed, stating that this was an excellent summary by Mr. Voelckers. This plan has gone through an extensive public process as well as extensive federal resource agency review, said Ms. Camery.

Mr. Miller noted that in the staff report it is stated that there is a 14,400 square foot restroom and shelter with potential second floor commercial space. He said he thought perhaps this was a typo, as this is a very large size.

Ms. Camery noted that elsewhere it is stated that the building is 12,500 square feet.

To clarify this question, Mr. Gillette said that the restroom is about 1,100 square feet, and that the building is about 1,400 square feet per floor. The flood zone issue only applies to the first floor restroom, said Mr. Gillette. This is because FEMA (Federal Emergency Management Agency) considers this a habitable space, he added. The City building code does not consider the restroom a habitable space, he added, but they must conform to federal standards.

Applicant (CBJ)

Representing the CBJ, Mr. Gillette said that there was an existing boat yard at Statter Harbor and that the 2008 plan retained the boat yard. The Docks and Harbors Board determined the best way to meet their goals for the entire Statter Harbor area was to move the boat yard up, he said. That reduced the required amount of fill lessening impact on the area dramatically, he said.

Public Comment

Former Commission member and Juneau resident Dennis Watson told the Commission that he has some concerns with the Statter Harbor items on the agenda before the Commission. With the new float formation, said Mr. Watson, new larger sizes of boats will be coming into the Harbor further than they ever have before. He said he felt this design will bring safety issues between kayakers and larger boats going in and out of adjacent areas. Because of this, Mr. Watson said he did not feel that the congestion issue has been adequately addressed. He said he felt the kayak ramp should have been located elsewhere.

Noting that he has attended almost all of the Harbor Board meetings on this issue since 2005, Mr. Watson said there has never been a discussion on whale watching vessels. There are other types of charter boats in addition to the commercial fishing fleet, said Mr. Watson. The commercial fishing fleet is not allowed to fuel at these docks, he said. This resulted in the City creating a special use dock, he said, with the use of public funds. Mr. Watson said in his opinion Docks and Harbors should never be allowed to use public funds to create an exclusive facility for a special part of the fishing and tourism fleet.

It is not in the best interests of the community to have a self-service fuel dock in that area, said Mr. Watson. He said in his opinion this is in effect giving them “the keys to the castle”. He said this is not noted anywhere in the application. It also does not show in the application where the fuel tanks will be located, said Mr. Watson. It appears from the application that they would be using existing fuel tanks, said Mr. Watson. But if the existing fuel provider does not win the bid, then those fuel tanks would not be used, he said.

Commission Comments and Questions

Mr. Voelckers confirmed with Mr. Watson that Mr. Watson has raised these issues with the Harbor Board.

Mr. Voelckers said this may be pressing the boundary of issues which the Planning Commission should be evaluating relative to what the Harbor Board handles.

Juneau resident Jim Ayres said he was in agreement with many of the items raised by Mr. Watson. He said he felt the Commission was moving very fast on this development. Like Mr. Watson, Mr. Ayres said he did not feel it is right for the municipality to accommodate a specific industry and a specific group without recognizing what the overall consequences to the community may be.

Mr. Ayers said he felt the Planning Commission was the “compass” for the community and that regarding Statter Harbor it has gotten a bit “off course”. Mr. Ayers said over his extensive career there are two important lessons that he has learned:

1. All plans need a feedback loop and course corrections because otherwise it can be a plan to drive one off the “cliff”
2. There are three ways we can destroy our ecosystems and our community;
 - i. “We love it to death by smothering it with a thick, wet blanket of humanity”
 - ii. We pollute it with trash, toxins and noise
 - iii. We over exploit it because we can’t stop ourselves

Changes in the climate must be adapted to, said Mr. Ayres, saying he was glad the Assembly had adopted its support of the Paris Treaty. There are far more people on the planet which would like to have a chunk of Juneau which we cannot accommodate, he said. Just because more growth can be accommodated, said Mr. Ayres, it does not necessarily mean that it is a good thing. The resilience of our community, economy, environment, climate and culture must be accommodated to support a sustainable way of living.

The CBJ Comprehensive Plan states that economic development should be balanced by nature and quality of life, said Mr. Ayres. The Comprehensive Plan encourages and fosters sustainable, value-added, nonpolluting economic development which sustains or increases neighborhood living, natural settings, and other opportunities, read Mr. Ayres. The development in Auke Bay is inconsistent with what is stated in the Comprehensive Plan, said Mr. Ayres. At some point there needs to be a pause, a review, and a feedback loop, said Mr. Ayres.

Auke Bay resident Mark Allen said he did not understand why the Docks and Harbors Department was taking a role in the development of potential retail space in Auke Bay. He said he was not in favor of the second floor being a retail space. CBJ should not be in the business of competing with private business in Auke Bay, said Mr. Allen. He said there has been a dislike of Docks and Harbors generated by the landscaping in front of the parking lot involving the planting of trees which commercial business owners in the area feel will block the view of the harbor eventually.

He read part of the Auke Bay Area Plan which stipulates that the plan should preserve unique views that make Auke Bay area a truly special place. Mr. Allen said he did not feel planting trees which will grow and block views from commercial businesses and the highway preserves Auke Bay views. He presented a petition signed by around 100 Auke Bay residents requesting that the CBJ not construct retail space within the Statter Boat Harbor parking and launch area.

Juneau resident Erin Howell also expressed her objection to the CBJ proposal to construct retail space on the second floor of the restroom structure. She said she felt that CBJ was trying to act as a “business owner”. She said she felt this put the CBJ in direct competition with Juneau businesses. She said there are 12 boats at the Allen Marine docks and that there are about 45 vehicles in the parking lot on any given day. She said that is roughly four cars per boat.

Lena resident Mitch Falk said that he and his wife own property in Auke Bay adjacent to the Harbor office. He said he did not feel the City should be getting into the commercial, retail, and rental business. He said he had a problem paying taxes to an entity that would go into competition with him. Mr. Falk said he felt the plan was incomplete. He said he counted 82 parking places and six handicapped parking spaces in the Statter parking lot, and that according to the original plan there was supposed to be 100 parking spaces. Now there is talk of providing designated parking spaces for the charter boats, said Mr. Falk. He said he felt this plan was given initial approval and that subsequent actions have been taken as construction moved along. Mr. Falk said he was not in favor of a second commercial story being placed upon the restroom in the harbor area. He asked where customers for the second commercial story would park.

Mr. Voelckers asked Mr. Steedle if he could address how he felt the role of the Planning Commission overlaps with the role of the Docks and Harbors Board. He said he felt it may help the Commission clarify its role in the process.

Mr. Steedle said this is a very good question, and one that is difficult to unravel. The role of the Planning Commission is to ensure that proposals meet the requirements of the Land Use Code. The other part of the role is to ensure that City projects are consistent with the City’s adopted plans, said Mr. Steedle. It is on the CSP question on which the Commission should focus its energy, said Mr. Steedle.

Mr. Miller said the USE application is a Conditional Use Permit. There are exact findings which the Commission has to make to which the staff has proposed answers. Those are the seven different criteria which must be considered and met, said Mr. Miller.

Mr. Voelckers asked the applicant if they could answer the items addressed by the public.

Applicant

Mr. Gillette said the Docks and Harbors Board has held a number of public meetings including

two special public meetings in January, 2016. They received a number of comments in July, 2016. He said they addressed those comments. They also presented the plan as it was developing four times at public Docks and Harbors meetings.

Pointing to a map of Statter Harbor, Mr. Gillette said one of the issues is that they were creating a choke point for traffic going in and out of the parking lot. He said they realize there are potential conflicts with the design and that they have moved the ramp up to create more space. They are very comfortable the area has been adequately designed to accommodate the traffic, said Mr. Gillette.

There is currently a lot of congestion at the fuel dock constructed by Petro Marine, said Mr. Gillette. Since the charter fleet is concentrated in this area, said Mr. Gillette, to relieve congestion in the area they plan to have a fuel dispensary. They have issued a request for Letters of Interest for that fuel dispensary, he said. They have heard from three primary fuel providers in Juneau, including Petro Marine, said Mr. Gillette. There is enough room to accommodate additional tanks, noted Mr. Gillette.

Mr. Gillette noted that there have been comments against spending City tax dollars on something that is for a special use group. This facility will be funded 85 percent by passenger fees, said Mr. Gillette. This is because the primary purpose will be to accommodate whale watch passengers derived from the cruise ship industry, he said. Fifteen percent of the funding will be generated from Docks and Harbors funds, he said. That is the percentage of independent travelers using the tour ships and dock, he said. Those funds are collected from moorage fees and charter fees charged to the tour boat operators for the staging of their buses, he said. The funding is not derived from sales tax or property tax, said Mr. Gillette.

In response to remarks stating that they were proceeding too fast on this project, they have been working on this project since its origin in 2002, said Mr. Gillette.

The plan for a commercial space above the restroom facility has not changed since May, said Mr. Gillette. An abutter's notice was sent out by the department, he said. That notice did not mention the fuel dock or the proposed commercial space, he said. He said he did bring this up with the Community Development Department and was told to send out a second abutter's notice mentioning those two items, which they did, said Mr. Gillette. It was not the plan that changed, it was the public notice which was changed, clarified Mr. Gillette.

In terms of sustainability, said Mr. Gillette, there is a growing interest in electrifying charter boats, he said. The dock will also have electric pedestals for electric vessels and water, said Mr. Gillette.

The plan for the commercial space above the public restroom was approved by the Assembly and at numerous public meetings, said Mr. Gillette. This is not a new plan, he said. This is a

promotion of the development of Auke Bay as a town center, said Mr. Gillette. This space would be used by private businesses, he said, not by the City in competition with private business.

Mr. Dye asked how important the retail space was to the overall design of the structure.

Mr. Gillette said Docks and Harbors is an enterprise fund. They received no funding from the general fund, he explained. Docks and Harbors is to be self-sufficient and pay for its own operation, he said, through fees, grants, and some sale tax money approved by voters. One way to be self-sufficient is to create leased properties, he said. If the community decided that is not what they want to see in Statter Harbor, said Mr. Gillette, then he did not feel that Docks and Harbors would implement it.

Mr. Greene asked Mr. Gillette to speak about the trees which some residents are concerned will block the view from Auke Bay commercial property and from the highway.

These trees have already been approved by the Planning Commission, said Mr. Gillette. The primary purpose of the trees is to create a green buffer between residential condominiums and the parking lot, he said. They do not grow nearly as tall in Juneau as they do in more southern climes, said Mr. Gillette. Also, he said, they are planted in only two feet of dirt, which will inhibit growth. They do not think the trees will block views, he said. They did remove six trees which they felt could potentially inhibit views, said Mr. Gillette.

Mr. Frisby asked if Petro Marine has a long term contract for its fuel dock.

Mr. Gillette said that Petro Marine has about 33 more years left on its 35 year lease. They invested close to \$1 million to build the float, he said.

Mr. Frisby clarified that Petro Marine serves all types of vessels.

Mr. Gillette said the intent for the new fuel facility is to provide fuel for the charter boats since that is where they will be departing from and returning to.

Mr. Frisby asked what the ultimate capacity of the Statter Harbor will be to accommodate future development within the marine tour industry.

They will manage it as they do the downtown docks, said Mr. Gillette. The buses are given a very limited time to load and unload their passengers, and they adhere to their schedules.

Mr. Frisby said in general it is a beautiful plan, but that it appears that the local boats and fishing boats are being pushed further and further away from the core areas, and that the

tourism industry is overtaking all of the community resources in this area. He asked how this growth will be regulated in the future.

Mr. Gillette said they are already looking 10 to 15 years into the future for future expansion.

Mr. Miller summarized that the new Statter Harbor facility will alleviate congestion for all participants in the older harbor. He verified with Mr. Gillette that the charter boats would actually moor in the new facility overnight. Mr. Miller verified that the retail space proposed to be constructed above the restroom would be an opportunity for a private Juneau business, not CBJ. Mr. Miller said he did not recall that the Commission knew that trees were being planted at Statter harbor to block the view.

MOTION: *by Mr. Miller, to approve USE2017 0008 and accept the staff's findings, analysis and recommendations.*

Speaking in favor of his motion, Mr. Miller said this is a Conditional Use Permit to which very specific criteria must be applied. This request meets all of the necessary criteria, said Mr. Miller.

Roll Call Vote:

Yeas: Dye, Greene, Miller, Frisby, Voelckers,

Nays:

The motion passed by unanimous vote.

CSP2017 0006: A City Project Review for Statter Harbor improvements

Applicant: City and Borough of Juneau

Location: 11520 Auke Bay Harbor Road

Staff Recommendation

Staff recommends that the Planning Commission find that the proposed City project for construction of new mooring and loading floats, uplands development, kayak launch ramp, restrooms and covered shelter with potential second floor commercial space, and removal and replacement of a section of the moorage facility, is consistent with adopted plans of the CBJ, and to endorse the city project as required by CBJ Code 49.15.540 and AS 35.30.010, with the following conditions:

1. Prior to issuance of a building permit, the applicant shall submit a lighting plan illustrating the location and type of exterior lighting proposed for the development.

Exterior lighting shall be designed and located to minimize offsite glare. All exterior lighting fixtures shall be of a “full cutoff” design.

MOTION: *by Mr. Miller, to approve CSP2017 0006 and accept staff’s findings, analysis and recommendations.*

Mr. Dye asked to make a friendly amendment to the main motion that it be clarified that the CSP would not cover actual construction of the second floor commercial space using public funds.

Mr. Miller accepted the friendly amendment.

The motion passed with no objection.

AME2017 0002: A rezone request for 1.23 acres from D18 (Multi-Family Residential District, 18 units per acre) to MU (Mixed-Use).
Applicant: Corporation of the Catholic Bishop of Juneau
Location: 416 Fifth Street

Mr. Voelckers and Chairman Haight recused themselves from this item due to conflicts.

Staff Recommendation

Staff recommends that the Planning Commission concur with the Director’s analysis and findings and recommend approval to the Assembly for a rezone of the 0.8988 acres for the entirety of Block 25 from D-18 to MU (Mixed Use).

Ms. Boyce said that this is a request to rezone just under an acre from D-18 to Mixed Use. The public notification, signs and mailings incorrectly specified 1.23 acres, but the actual site is just under an acre.

This property is located between Gold and Harris Streets, and Fifth and Sixth Streets, downtown. It is zoned D-18 which is a multi-family zone district allowing up to 18 dwellings units per acre. It is adjacent to the Mixed Use zone district. This is a request by the property owner to rezone the entire block to Mixed Use, she said.

Ms. Boyce explained that the Catholic Corporation of the Bishop of Juneau owns the entire block. The Comprehensive Plan land use designation is TTC, Traditional Town Center. *[Ms. Boyce misspoke here; the land use designation for this property is actually MDR, Medium Density Residential, which is reflected in the staff report and presentation slides – Editor.]* It is served by city water and sewer. There is access with driveways along Fifth, Gold and Harris

Streets. The majority of the land uses are religious facilities, and they lease out some business offices.

Ms. Boyce presented a map (via a PowerPoint presentation) showing the area in question if the rezone request is approved to Mixed-Use. She indicated that the boundary along Fifth Street between D-18 and Mixed-Use cuts in and out and is not a clear line.

She said this map shows the Comprehensive Plan land use designations as well as the zoning districts. Rezones need to be in substantial compliance with the Comprehensive Plan land use designations. The subject D-18 parcels are in an area designated Medium Density Residential. Portions marked RS are neighborhood parks. The majority of Mixed Use zone districts are in traditional town center, but Mixed Use zone districts can be found in other land use designations as well, said Ms. Boyce.

Ms. Boyce said that the Comprehensive Plan describes Medium Density Residential as characterized by urban residential lands for multi-family dwelling units at densities ranging from 5 to 20 units per acre. Commercial development should be of a scale consistent with residential neighborhoods. Traditional Town Center is a new designation defined in the 2013 update to the Comprehensive Plan; prior to that it had been Mixed Use. These lands are characterized by high density residential and non-residential land uses in downtown areas and around shopping centers. Residential and non-residential uses can be combined within a single structure including off-street parking.

Ms. Boyce said for a rezoning request the properties at issue should be 2 acres or more or an expansion of an existing zone district. This request is to expand the adjacent Mixed Use zone district. A rezoning shall only be approved upon a finding that the proposed zone district and the uses allowed therein are in substantial conformance with the land use maps of the Comprehensive Plan.

Ms. Boyce gave some background information about the property. The original structure on the property was the church and rectory building. The records are not clear but development may have occurred as early as 1890 through 1912 during Juneau's initial development period. Other buildings were constructed in 1933 and 1954, said Ms. Boyce. Those buildings predate zoning, she said. Zoning came to Juneau in 1956 which is when the city started applying setbacks, use restrictions, etc. Therefore, much of the development on this block is nonconforming, she said. Development that occurred prior to 1987 – the previous zoning, once it was applied to the property, called for a 15-foot front yard setback which is less restrictive than what there is now which is 20 feet. Development also received variances to 7 feet along Sixth Street and 4 feet along Gold Street. The point is that most of the development on the block in question is nonconforming to current standards. In 1987 when the CBJ-wide rezoning occurred, D-18 was applied to this property which requires a 20 foot front yard setback. None of the development on the site conforms to that.

Ms. Boyce explained that the land use code describes the D-18 residential district as intending to accommodate primarily multi-family development at a density of 18 dwelling units per acre. It is a high density, multi-family zoning district, said Ms. Boyce. The Mixed-Use district is defined in code as a district to accommodate a mix of appropriate commercial and residential land uses. It reflects the existing downtown development pattern and is intended to maintain the stability of the downtown area. Multi-family uses are allowed and encouraged.

Ms. Boyce said staff did analysis and looked at all of the zone districts that fall within the Medium Density Residential land use designation. There is a wide range of zone districts that are found in that designation. There are properties from D-3 to D-18; Light Commercial, allowing for densities of up to 30 dwelling units; General Commercial, allowing residential units at 50 dwelling units per acre; Mixed Use, which has no limit on density; and Waterfront Commercial, which allows for 30 units per acre as well *[editor notes that later Ms. Boyce stated the correct density for waterfront commercial is 18 units per acres]*. So there is a wide variety of zone districts and there is already mixed-use within the Medium Density Residential land use designation.

Doing this analysis, staff determined that the request for a rezone to Mixed Use is not out of compliance with the land use maps, said Ms. Boyce. In the applicant's project narrative, they mentioned that an amendment to the Comprehensive Plan maps would be needed to TTC so that the Mixed-Use would be in conformance with that. However, based on the analysis, staff does not believe a Comprehensive Plan amendment is needed because there already exists a Mixed Use zone downtown with a MDR designation.

Mixed Use zoning allows for a combination of residential and commercial uses to be potentially on the same piece of property, said Ms. Boyce. The same types of uses in D-18 zoning can be found in Mixed Use zones, said Ms. Boyce. The uses not allowed in D18 require a conditional use permit in the MU. There is still a public process for applicants to consider other uses within Mixed Use zones, said Ms. Boyce. At the neighborhood meeting held in March, said Ms. Boyce, a few neighbors mentioned concerns about marijuana uses potentially being allowed on the property if it was zoned Mixed Use, since it is allowed in Mixed Use zones and not in D-18 zones. Because there is a requirement for marijuana businesses to be 500 feet from certain other uses, said Ms. Boyce, marijuana uses could not be used on that property regardless of the zoning.

A 20 foot setback requirement is required in D-18 zoning with no front setback required for Mixed Use zones, said Ms. Boyce. Up to 50 percent of the lot can be covered in D-18 zones with 100 percent of the lot allowed to be covered in Mixed Use zones, she said. The maximum height in the D-18 zones is 35 feet, with no height restrictions in the Mixed Use zones. Ms. Boyce also said she believes one of the buildings on site exceeds the current height limit. There is no limit for density in a Mixed Use zone with the limit of 18 dwellings allowed per acre

in a D-18 zone, said Ms. Boyce. The D-18 zone has a 30% vegetative cover requirement. This site previously received a variance to the vegetative cover requirement. Any future development will have to meet the current parking requirements. The property is not in any of the parking districts that allow reductions. This limits development potential on the property.

The Commission can deny the rezone request, it can recommend approval of the request to the Assembly or it can also recommend an alternate request, said Ms. Boyce. The comprehensive plan policies and guidance say that when considering a rezone we should aim to promote the highest best use of the land. The staff has found that the rezone request is in substantial conformance to the land use maps of the Comprehensive Plan, and the findings are that it meets the submittal requirements and the other requirements of the land use code and is an expansion of an existing district. The analysis we did shows there is a broad range of zone districts in the MDR designation and we recommend you concur and recommend approval to the assembly said Ms. Boyce.

Applicant

Corey Wall, of MRV Architects, said the main point they would like to make is that nothing on the site currently complies with the code, specifically the setbacks. Any modifications they may wish to make to the church property would require substantial and numerous variances, said Mr. Wall. According to Mr. Wall, the CDD staff is moving away from the variance route, and instead moving towards the use of zoning to match existing development on the site. Behind their rezone request is their desire to have the zoning of the property actually match what exists on the site, he said. Any modification to the front of the cathedral, for example, would require a variance, said Mr. Wall. If the property was rezoned to Multi-Use then all of the existing buildings would be in compliance, said Mr. Wall.

Project manager Brian Goettler told the Commission the cathedral building is in need of repair. They would like to do a modest renovation of the cathedral, add an elevator, and add access from the sidewalk for handicapped accessibility, explained Mr. Goettler. To complete this project they would require several variances, which he said he understood are going away. Subsequently, they are requesting a rezone for the property so they can make the upgrades that are necessary, he said.

Public Comment

Juneau resident Karen Allen told the Commission she lives directly across the street from the uphill side of this project. Ms. Allen said the Diocese is a great neighbor, and that she thought rezoning the block would probably be a good idea. Ms. Allen said her only concern is that she felt there was a discrepancy with the Comprehensive Plan. Ms. Allen said she would like to see the proper process followed; revise the Comprehensive Plan so that it is in accordance with Multi-Use zoning. She said she would like to see a good precedent set for this so that in the future it could be applied to other applicants.

Juneau resident Kim Metcalfe said she was born in Saint Anne's Hospital and went for eight years to Saint Anne's School. Ms. Metcalfe expressed concern that changing the zoning of the property to Mixed-Use would mean there was no limit to the number of units or height of structure within that zone. She stated she realizes there are currently no plans for change in density or height of the property, and that she was concerned about possible future uses of the property. Residents in the area are concerned about "Mixed-Use creep", said Ms. Metcalfe.

Area resident Paul Korchin said that he lives up the hill from the proposed rezone. He said the CBJ Comprehensive Plan designates this property as "MDR" (Medium Density Residential), and not TTC (Traditional Town Center). He said these designations align with the zoning of the properties. To rezone the property as Mixed-Use would functionally if not formally make the property a TTC designation, said Mr. Korchin. This is not in line with the Comprehensive Plan, he said. He stated that he did not think that the proposed Mixed-Use zoning was in substantial conformance with the Comprehensive Plan.

Juneau resident Yvette Sortiere told the Commission that the Diocese is a good neighbor, but that rezoning is not the answer. The church is already nonconforming, said Ms. Sortiere, and it has been allowed to continue to grow and remodel. While she felt the church should be allowed to implement its remodel, she said she did not feel that rezoning was the correct route to achieve these ends. She said that while the staff appears to think that the proposed rezone would substantially conform to the land use maps, they were not told why this would be in conformance. The proposed rezone would cut a slice of D-18 zoning out of the area, she said. She said she is concerned that this rezoning would have the effect of moving with the property in perpetuity. Ms. Sortiere said she would like the Commission to grant variances to the church so that it can complete the remodel that it would like to accomplish.

Applicant

Mr. Wall said it appears that potential future development is a concern of the neighbors. He said that is a difficult concern to address. It is certainly not the intent of this project, he said. He wanted to emphasize that in his opinion the legal Department of the City and Borough of Juneau is really starting to inhibit the granting of variances. He said it was their understanding that it is not simply possible anymore to obtain variances to accomplish renovation projects because there have been legal consequences from the granting of past variances. By not changing the Comprehensive Plan and by retaining the designation as Medium Density Residential, then any commercial development should be consistent with the residential neighborhood, said Mr. Wall, thus dealing with many of the concerns expressed by the residents. Any future projects would require going through the public process, said Mr. Wall.

Commission Comments and Questions

Mr. Hickok asked how many variances the project would require.

Mr. Wall said the project would probably require a variance for a front yard setback, a variance for a side yard setback, and a variance for vegetative cover.

Mr. Hickok asked the staff if variances could be combined in one project or if it was an individual process for each variance request.

Mr. Steedle said that each variance would have to be considered separately.

Mr. Frisby said he did not feel comfortable with the limited number of Commission members present at this meeting making this decision. He asked if this item could be postponed to the next meeting when hopefully more Commission members would be present.

Mr. Dye asked what the vote requirements were with limited number of Commission members present.

Mr. Steedle said that an issue would need four votes to pass.

Ms. Boyce said there is a possibility that ADA improvements could be made even though they may not align with the City code, since federal law supersedes municipal regulations. Rezoning requests need to be in conformance with the Land Use Maps; the Comprehensive Plan overall is not specifically mentioned, said Ms. Boyce. We have the residential density component we look at but isn't as clear for commercial component. For this case we looked at density and mixed use has no limit and D18 has a limit of 18 units per acre which can be increased with bonuses. We looked at the micro-level, the density on this site could potentially go up. Overall for all MDR density at the macro-level MDR density won't go beyond 14 units per acre. The mixed use district allows for both commercial and residential uses on the same lot, as does D18. Comprehensive plan policies in the plan also support this request.

Mr. Miller said that he argued about "substantial" conformance. The Commission never took enough time to look at where those borders needed to be and that he felt that "fuzzy lines" on the Land Use Maps are important; that they should not be too strict. He added that he is very concerned that the first few things that the applicant had to say were that the variance process has been discontinued or is now impossible, when in fact it is not supposed to be. While a rezone would fix the predicament of the applicants, said Mr. Miller, it would leave ambiguity with the neighbors. He stated the overlay district might help with this. Ms. Boyce pointed out the overlay district only applies to residential development.

MOTION: *by Mr. Miller, to approve AME2017 0002 with staff's findings, analysis and recommendations.*

Speaking against his motion, Mr. Miller said that right now he feels the process is broken. Variances are tools that the development community uses for these exact situations, said Mr. Miller. To say that variances are locked down or that variances cannot be used anymore is

absolutely false, said Mr. Miller, because it is something that can be done. Mr. Miller said that he did not think in this situation that a rezone made any sense.

Roll Call Vote:

Yeas: Hickok, Greene, Dye

Nays: Miller, Frisby

The motion failed. Needs 5 votes for approval.

MOTION: *by Mr. Hickok, that AME2017 0002 be reconsidered at the next regular Commission meeting when a larger quorum is expected.*

Roll Call Vote:

Yeas: Frisby, Miller, Greene, Hickok, Dye

Nays:

The motion passed by unanimous vote.

Vice Chair Voelckers convened the body as the Board of Adjustment.

BOARD OF ADJUSTMENT

FZE2017 0001: A Flood Zone Exception for Statter Harbor Development

Applicant: City & Borough of Juneau

Location: 11520 Auke Bay Harbor Road

Staff Recommendation

Staff recommends that the Board of Adjustment adopt the Director's analysis and findings and grant the requested Flood Zone Exception, FZE2017 0001. The Flood Zone Exception would allow construction of a public restroom in a Velocity Flood Zone, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a letter from a licensed professional engineer indicating that the fill will be designed to withstand the 100-year storm force which is described in the City & Borough's currently adopted Flood Insurance Study.

2. Prior to issuance of a building permit, the applicant shall provide additional backflow prevention within the plumbing disposal system to prevent floodwaters from infiltrating the CBJ wastewater system, to be approved by the CBJ Engineering Department.

Ms. Camery said there are so many criteria involved with the flood zone exception that they wanted to inform the Commission. This flood zone exception would allow the construction of a restroom at an elevation of 25 feet which is two feet below the base flood zone elevation, said Ms. Camery. It is only the restroom which is subject to the flood zone exception, said Ms. Camery. This does not include the shelter or the second-floor retail space, she noted. While the restroom is not considered a habitable structure under the CBJ building code, it is considered a habitable structure by the Federal Emergency Management Agency (FEMA), said Ms. Camery.

Ms. Camery provided an overview via a PowerPoint presentation of key criteria that were reviewed in the staff report and led to the staff recommendation.

Commission Comments and Questions

Mr. Miller noted that the restroom structure is located way inside of the bay behind several breakwaters and docks. He asked if this building could not have the requirements waived due to its location behind all of the wave-breaking structures.

Ms. Camery said this was discussed in the staff report and that it is certainly a major argument of the applicant, but that it is within the 100 year flood plain and must go by the federal regulations for that reason.

There are 11 criteria to be considered, all of which the staff has deemed as met, said Ms. Camery. She said the staff concludes that section 49.70.410 (b), (c), (d), (e), (f), (g) and (h) Exception criteria have all been met.

Applicant

Mr. Gillette said he would like to mention that one would think the breakwater and the other infrastructure preceding the location of the restroom would serve as protection for the structure should there be a flood. The City can request that FEMA evaluate the location again, said Mr. Gillette. He said to his knowledge that request has never been made to FEMA by the CDD. Also they were told it would be a long process, said Mr. Gillette.

Mr. Voelckers noted that it does not appear the City is having to spend a lot of money to address these FEMA requirements.

Mr. Hickok asked if the fact the structure is in the hundred year floodplain creates more insurance costs.

Mr. Gillette said it is his understanding that FEMA will not insure the structure. The structure will be covered by City insurance, he added. In answer to a question by Mr. Hickok, Mr. Gillette said the second story of the structure is not within the floodplain.

Mr. Miller said if there was a private developer who wanted to build on the second-floor that the banks would probably require flood insurance, since it would technically be in a flood zone. He said obtaining an exception for the structure may be a good idea because it would reduce the flood insurance for the second-floor retail space.

MOTION: *by Mr. Miller, to approve FZE2017 0001 with staff's findings, analysis and recommendations.*

The motion passed with no objection.

The Board of Adjustment was adjourned and reconvened as the Planning Commission.

IX. OTHER BUSINESS

X. DIRECTOR'S REPORT

Review of Title 49's Nonconforming Development Policies

Ms. McKibben has written a brief memo on the nonconformance issues, said Mr. Steedle. They consider this to be a significant problem facing the community, said Mr. Steedle. Since the practice of the lending community has changed, noted Mr. Steedle, they feel that they need to react appropriately, he said. Ms. McKibben will be undertaking this project, said Mr. Steedle. They feel that this issue needs to be addressed now, he said.

Mr. Voelckers said he was surprised that this was viewed as a difficult undertaking by the CDD.

It would be relatively easy to clean up the existing language, said Mr. Steedle. The difficult aspect is that there is a nonconforming code for a reason, he said. It appears, however, that they are going to need to build some sort of escape hatch, said Mr. Steedle.

Ms. McKibben said she thinks a lot of their challenges will be solved by clarifying the language, breaking it up and addressing nonconforming structures, uses and lots separately. With each one of those items are policy questions which need to be addressed, she said. The problem experienced by homeowners in the finance world is that they cannot rebuild their homes to a density which is supported by current zoning, said Ms. McKibben.

Mr. Miller said in his building profession he has closed a lot of loans, and it is unbelievable how quickly those regulations are transitioning. He said he felt it was very important to understand just what the banks need before this process was initiated.

Ms. McKibben asked the Commission how they would like to work with this: through the Title 49 Committee, through a Committee of the Whole, or would they like to appoint a special committee.

Mr. Dye asked Ms. McKibben in her opinion what would be the most expedient route to take to deal with the nonconforming issue.

Chairman Haight said he felt the Title 49 committee would be the best vehicle, and that he would advise that the Title 49 Committee bring this before the Committee of the Whole as soon as possible.

XI. REPORT OF REGULAR AND SPECIAL COMMITTEES

Mr. Voelckers reported that the Lemon Creek Plan is almost complete. They will be meeting on June 28, (2017) . That draft plan should be before the Commission in late July or early August, said Mr. Voelckers.

XII. PLANNING COMMISSION COMMENTS AND QUESTIONS

XIII. ADJOURNMENT

The meeting was adjourned at 10:38 p.m.



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

DATE: January 10, 2019

TO: Board of Adjustment

FROM: Teri Camery, Senior Planner
Community Development Department

A handwritten signature in black ink, appearing to be 'Teri Camery', is written over the 'TO' and 'FROM' lines.

FILE NO.: FZE2018 0002

PROPOSAL: An extension of FZE2017 0001 for Statter Harbor development including construction of a public restroom below the Base Flood Elevation

GENERAL INFORMATION

Applicant: City & Borough of Juneau, Docks and Harbors

Property Owner: City & Borough of Juneau

Property Address: 11520 Auke Bay Harbor Road

Legal Description: USS 2664 and ATS 16, Lot 3C

Parcel Code Number: 4B2801010032

Site Size: 60,874 square feet

Comprehensive Plan Future
Land Use Designation: Marine Mixed Use

Zoning: Waterfront Commercial (WC)

Utilities: CBJ Water and Sewer

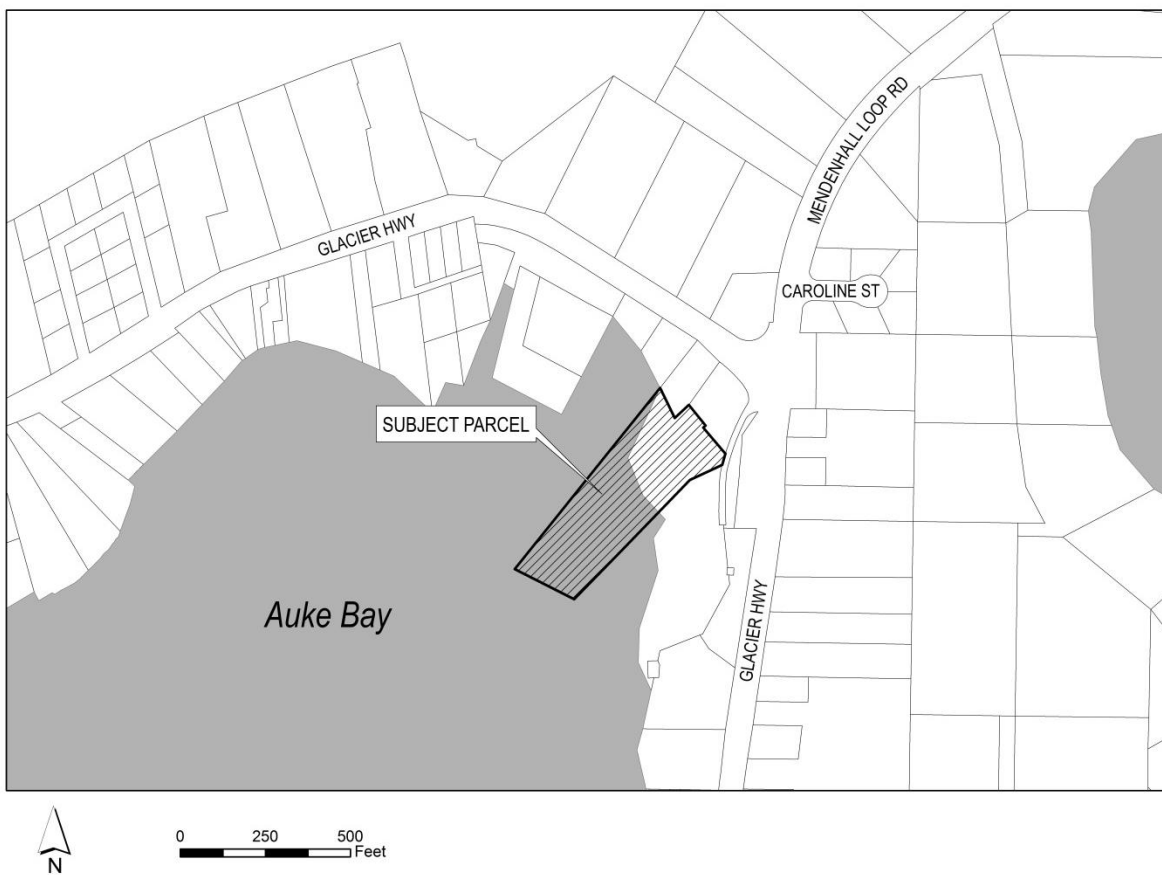
Access: Glacier Highway

Existing Land Use: Statter Harbor

Surrounding Land Use:

North -	Glacier Highway; General Commercial
South -	Auke Bay
East -	Statter Harbor Upland Facility; Waterfront Commercial
West -	Bay Creek; Auke Bay Towers Condominiums; Waterfront Commercial

VICINITY MAP



ATTACHMENTS

Attachment A – Application
Attachment B – FZE2017 0001 Staff Report
Attachment C – FZE2017 0001 Notice of Decision

PROJECT DESCRIPTION

Due to delays in obtaining state and federal permits, the applicant, CBJ Docks and Harbors, requests an extension to the Flood Zone Exception to allow construction of a public restroom below the Base Flood Elevation at Statter Harbor (FZE2017 0001). The applicant is not seeking any modifications to the Flood Zone Exception.

BACKGROUND

The Planning Commission approved a Flood Zone Exception (FZE2017 0001) effective June 27, 2017, to allow construction of a public restroom below the Base Flood Elevation at Statter Harbor with the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a letter from a licensed professional engineer indicating that the fill will be designed to withstand the 100-year storm force which is described in the City & Borough's currently adopted Flood Insurance Study.
2. Prior to issuance of a building permit, the applicant shall provide additional backflow prevention within the plumbing disposal system to prevent floodwaters from infiltrating the CBJ wastewater system, to be approved by the CBJ Engineering Department.

In association with FZE2017 0001, the Planning Commission approved USE2017 0008, effective June 27, 2017, to allow construction of new mooring and loading floats, uplands development, a kayak launch ramp, restrooms and a covered shelter with potential second floor retail space and removal and replacement of a section of the moorage facility with the following condition:

1. Prior to issuance of a building permit, the applicant shall submit a lighting plan illustrating the location and type of exterior lighting proposed for the development. Exterior lighting shall be designed and located to minimize offsite glare. All exterior lighting fixtures shall be of a "full cutoff" design.

The applicant has also submitted a request for an extension to USE2017 0008, under concurrent review.

ANALYSIS

CBJ 49.14.240 establishes the requirements for Development Permit Extensions, which are:

- An application to extend a development permit must be submitted at least 30 days before the expiration of an existing major development permit.

The application for extension of FZE2017-01 was received on November 9, 2018, more than 30 days prior to the December 27, 2018, expiration date.

- The burden of proof of the justification for a permit extension rests with the applicant.

The applicant has stated that the need for an extension is because of delays in obtaining required state and federal permits, as explained in the Project Narrative, Attachment A.

- A maximum of two 18 month extensions are allowed.

This is the first extension request for this permit. If this extension is granted, the applicant is eligible for one more 18 month extension request.

- At least ten days prior to the hearing, notice of the extension request must be mailed to adjacent property owners. At least two days prior to the hearing, a general notice shall be printed in the newspaper of general circulation in the municipality.

Public notice of this project was provided in the January 11, 2019, and January 21, 2019, issues of the Juneau Empire's "Your Municipality" section, and a Notice of Public Hearing was mailed to all property owners within 500 feet of the subject parcel on December 21, 2018.

- Conditions contained in the permit cannot be changed.

No requests to modify the project have been made. The applicant understands that the project must comply with the conditions of approval. If the project does not comply with the conditions of approval, a new permit will be required.

PUBLIC COMMENTS

No comments have been received to date.

FINDINGS

Per CBJ 49.15.250, Development Permit Extension, the director makes the following findings on the criteria for granting the requested conditional use permit extension:

1. Was the application for the requested development permit extension complete and received on time?

Yes. The application contains the information necessary to complete a full review of the proposed permit extension. Further, the appropriate fees were submitted with the application. The requested Flood Zone Exception extension was received more than 30 days prior to the initial permit's expiration date.

2. Has the applicant submitted justification for the permit extension?

Yes. The applicant has explained in the application that the need for an extension is due to delays in obtaining required state and federal permits.

3. Is the extension within the allowable number of permit extensions?

Yes. CBJ 49.15.250 allows no more than two 18 month extensions. This is the first permit extension application for FZE2017 0001.

4. Have notices of the extension request been mailed to adjacent property owners at least ten days prior to the hearing and has a general notice been printed in a newspaper of general circulation at least two days prior to the hearing?

Yes. Public notice of this project was provided in the January 11, 2019, and January 21, 2019, issues of the Juneau Empire's "Your Municipality" section, and a Notice of Public Hearing was mailed to all property owners within 500 feet of the subject parcel on December 21, 2018.

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

Not applicable. Juneau Coastal Management Program policies do not apply to the proposed development.

6. Have conditions on the permit been changed?

No. The applicant has not requested any amendments.

RECOMMENDATION

It is recommended that the Planning Commission adopt the Director's analysis and findings and grant the requested Flood Zone Exception extension. The exception would allow construction of a public restroom below the Base Flood Elevation at Statter Harbor. The approval is subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a letter from a licensed professional engineer indicating that the fill will be designed to withstand the 100-year storm force which is described in the City & Borough's currently adopted Flood Insurance Study.
2. Prior to issuance of a building permit, the applicant shall provide additional backflow prevention within the plumbing disposal system to prevent floodwaters from infiltrating the CBJ wastewater system, to be approved by the CBJ Engineering Department.



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

**BOARD OF ADJUSTMENT
NOTICE OF DECISION**

Date: January 24, 2019
File No.: FZE2018 0002

CBJ Docks and Harbors
155 S. Seward Street
Juneau, AK 99801

Proposal: An extension of FZE2017 0001 for Statter Harbor development including construction of a public restroom below the Base Flood Elevation

Property Address: 11520 Auke Bay Harbor Road

Legal Description: USS 2664 & ATS 16 Lot 3C

Parcel Code No.: 4B2801010032

Hearing Date: January 22, 2019

The Board of Adjustment, at its regular public meeting, adopted the analysis and findings listed in the attached memorandum dated January 10, 2019, and approved an extension of FZE2017 0001 for Statter Harbor development including construction of a public restroom below the Base Flood Elevation to be conducted as described in the project description and project drawings submitted with the application in accordance with previously approved FZE2017 0001 conditions.

Attachment: January 10, 2019, memorandum from Teri Camery, Community Development, to the CBJ Board of Adjustment regarding FZE2018 0002.

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

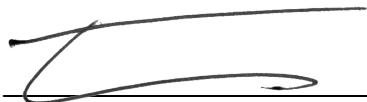
This Notice of Decision constitutes a final decision of the CBJ Board of Adjustment. Appeals must be brought to the CBJ Assembly in accordance with CBJ 01.50.030. Appeals must be filed by 4:30 P.M. on the day twenty days from the date the decision is filed with the City Clerk, pursuant to CBJ

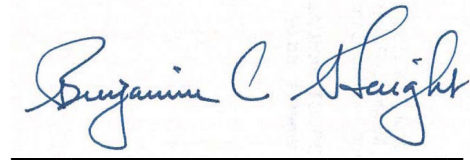
01.50.030 (c). Any action by the applicant in reliance on the decision of the Board of Adjustment shall be at the risk that the decision may be reversed on appeal (CBJ 49.20.120).

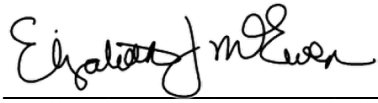
Effective Date: The permit is effective upon approval by the Board, January 22, 2019.

Expiration Date: The permit will expire 18 months after the effective date, or July 22, 2020, if no Building Permit has been issued and substantial construction progress has not been made in accordance with the plans for which the development permit was authorized. Application for permit extension must be submitted thirty days prior to the expiration date.

Project Planner:


Teri Camery, Senior Planner
Community Development Department


Benjamin Haight, Chair
Planning Commission


Filed With Municipal Clerk

1/29/2019
Date

cc: Plan Review

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

Agenda
Planning Commission
Regular Meeting
CITY AND BOROUGH OF JUNEAU
Ben Haight, Chairman
January 22, 2019

I. ROLL CALL

Ben Haight, Chairman, called the Regular Meeting of the City and Borough of Juneau (CBJ) Planning Commission (PC), held in the Assembly Chambers of the Municipal Building, to order at 7:01 p.m.

Commissioners present: Ben Haight, Chairman; Paul Voelckers, Michael LeVine, Nathaniel Dye, Ken Alper, Shannon Crossley, Dan Hickok

Commissioners absent: Andrew Campbell, Travis Arndt (appointed but not yet sworn in)

Staff present: Jill Maclean, CDD Director, Beth McKibben, Senior Planner; Terri Camery, Senior Planner, Allison Eddins, Planner II; Jane Mores, Assistant Municipal Attorney; Daniel Bleidorn, Deputy Lands Manager; Gary Gillette, Port Engineer

Assembly members: Beth Weldon, CBJ Mayor; Wade Bryson, Assembly Liaison to Planning Commission; Loren Jones

II. REQUEST FOR AGENDA CHANGES AND APPROVAL OF AGENDA

The Commission approved moving the Assembly Liaison Report to Item V on the agenda.

The Commission approved placing the Board of Adjustment Consent Agenda ahead of the Regular Agenda.

III. APPROVAL OF MINUTES - None

IV. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS – None

V. LIAISON REPORT

Mr. Bryson reported that on January 9, (2019) they were given a report by Carl Uchytel, Port Director, on the Archipelago project. JEDC passed a motion in support of the project. It will submit a letter of support for the project.

On January 10, the Human Resource Committee appointed Alicia Hughes Skandijs to the Assembly to replace Jessie Kiehl.

The Lands Committee approved four lots in the Lena Eagle Subdivision through sealed bid. They were also given a presentation by Lands Director Greg Chaney on quarry and gravel pits.

The Assembly Committee of the Whole met on January 14, with presentations from Blueprint Downtown. January 24 will be the last public meeting at Centennial Hall for Blueprint Downtown. The Archipelago project at that meeting was approved for passage to the Assembly.

Parks and Recreation held a retreat attended by Mr. Bryson. Parks and Recreation has land which they would like to dispose of. It would have to be decided where those funds would go, he said.

VI. ITEMS FOR RECONSIDERATION - None

VII. CONSENT AGENDA

Consent Agenda item CSP2018 0014 was pulled by Mr. Voelckers for discussion, and USE2018 0022 was pulled by Mr. Hickok for discussion.

MOTION: *by Mr. LeVine, to approve items CSP2018 0016 and CSP2018 0017 on the Consent Agenda.*

The motion passed with no objection.

CSP2018 0016: A City/State Project for CBJ lease and sale of easements to the Department of Transportation & Public Facilities for culvert rehabilitation located on Glacier Highway

Applicant: City & Borough of Juneau

Location: Glacier Highway

Staff Recommendation

Staff recommends that the Planning Commission forward the proposal to the Assembly with a recommendation of approval to lease access easements TAE-5 and TAE-2, lease construction easement TCE-12, dispose easements E-5, E5-A, E5-D, and E5-E to DOT&PF, all at market value.

CSP2018 0017: A City Project for CBJ land disposal to private purchase
Applicant: City & Borough of Juneau
Location: 9223 North Douglas Highway

Staff Recommendation

Staff recommends that the Planning Commission find CSP2018 0017 to be consistent with adopted local plans and policies, and forward to the Assembly a recommendation for approval to allow for the sale of 530 square feet of USS 3559, Lot 1 to the owners of USS 3544, Lot 182.

CSP2018 0014: A city project to lease land for a composting facility
Applicant: City & Borough of Juneau
Location: CBJ land adjacent to the South Lemon Creek Material Source (gravel pit)

Staff Recommendation

Staff recommends that the Planning Commission forward the proposal to the Assembly with a recommendation of approval with the following conditions:

1. The composting facility will be fenced. Fencing will include electric fencing that will be installed along the perimeter of the composting facility in accordance with the recommendations of the Alaska Department of Fish and Game.
2. Best management practices will be used to minimize runoff from the site.

Mr. Voelckers said he is highly supportive of this proposal and that he would like to hear of the negotiation process that is occurring with the applicant. He said he would also like to discuss some additional conditions. He said he would like to discuss a few additional positive conditions to make sure that if it is successful, that they do not run out of land, and that renewal provisions would be considered.

Mr. Bleidorn told the Commission that there would definitely be the renewal option to the agreement. That is pretty standard for city leases. They generally do a five-year term, with up to 35 years total of lease renewals. Regarding future expansion, Mr. Bleidorn said this is currently a preliminary lease agreement to make sure that it works with the site. They are also working with the Department of Engineering and Public Works and the recycling management because they are also looking at the wide composting options, and considering future expansion, said Mr. Bleidorn. This is currently a good site with options to expand on the site in the future.

Commission Comments and Questions

Mr. Dye asked why this site was compared to light manufacturing. He asked if composting definitions could be added to the Table of Permissible Uses (TPU).

Ms. McKibben said this could be considered. For now, they do not have a definition for

composting so it was placed under Light Manufacturing. If this site were to be an acre or larger it would require a Conditional Use Permit for any future growth on this lease and would need to come back before the Commission.

Mr. Bleidorn said this property is located just north of Costco in Lemon Creek.

Mr. Alper asked if the site would be located within the large rectangle of land marked on the map.

Mr. Bleidorn said this is correct. They want to make sure the exact location fits well with existing uses. The total area is about an acre and a half, he said.

MOTION: *by Mr. Voelckers, to approve CSP2018 0014 with the addition of two conditions: (3) Lease negotiations will include discussion of future lease renewal provisions, and (4) Site planning consider substantial growth potential.*

The motion passed with no objection.

USE2018 0022: An extension of USE2017 0008 for Statter Harbor development including a public restroom and shelter facilities, new moorage and loading floats, a kayak ramp, an additional fuel dispensary, and potential retail space

Applicant: City & Borough of Juneau Docks & Harbors

Location: 11520 Auke Bay Harbor Road

Chairman Haight recused himself because he is involved with this project.

Staff Recommendation

It is recommended that the Planning Commission adopt the Director's analysis and findings and grant the requested Conditional Use Permit extension. The permit would allow the development of new moorage and loading floats, uplands development, a kayak launch ramp, a restroom and covered shelter area with potential second floor commercial space, and removal and replacement of a section of the moorage facility. The approval is subject to the following condition:

1. Prior to issuance of a building permit, the applicant shall submit a lighting plan illustrating the location and type of exterior lighting proposed for the development. Exterior lighting shall be designed and located to minimize offsite glare. All exterior lighting fixtures shall be of a "full cutoff" design.

Mr. Hickok said he is a neighboring property owner, and that he would like to hear more about the work done within the Auke Bay Area Plan.

Ms. Camery said she has combined this item and the item before the Board of Adjustment as they are the same development with the same criteria. The extension criteria are not revisiting the project or the details of the project. It is just the extension criteria that are considered, she said. The requirements for extensions are very limited, said Ms. Camery. The application to extend must be submitted 30 days before expiration, and the burden of proof for the justification is with the applicant. On the application the applicant stated there were delays in obtaining the required state and federal permits, said Ms. Camery. A maximum of two, eighteen-month extensions are allowed, and this is the first extension request, said Ms. Camery. Notice of extension was mailed to adjacent property owners as required, she added, and notice was posted in the newspaper. Conditions in the permit cannot be changed, said Ms. Camery.

It was clarified in answer to a question of Mr. Hickok that no conditions in the permit can be changed; that this is just pertaining to a time extension.

Mr. LeVine said since this is strictly a renewal of the extension that he would move to strike everything after that since it would be redundant to repeat existing conditions, which would remain in place.

Mr. Dye said he thought there was a condition that had some aspect of public use for a second floor retail shop. He said he did not see that in the material before him.

Ms. Camery said she did not pull the minutes from the meeting when this was discussed.

Mr. Voelckers clarified that the issue before the Commission was simply a time extension on this permit request, and that any other conditions remain unchanged.

Ms. Mores repeated for the Commission that this is strictly a renewal of an existing permit with the identical conditions that were approved originally, and that they could not be changed or altered in any way. The condition in the staff report that does not pertain to a time extension should be stricken, she said, since this item before the Commission just pertains to the extension.

Mr. LeVine said it is his understanding that the only grounds under which they could deny this extension is if the applicant had failed in some procedural mechanism. Otherwise, the Commission could not deny or otherwise alter this permit.

Port Engineer Gary Gillette clarified that the "condition" that Mr. Dye brought up was attached to the CSP (City State Project) review and that it was a recommendation to the Assembly. It was not attached to the Conditional Use Permit, he said.

MOTION: *by Mr. Hickok that they approve USE2018 0022 and accept staff's findings, analysis and recommendations.*

Mr. LeVine offered an amendment to the main motion, that the conditions extraneous to this item be deleted from the report.

The Commission approved the amendment.

FINAL MOTION: *by Mr. Alper, with the amendment by Mr. LeVine, that they approve USE2018 0022 with extraneous conditions deleted from the report, and otherwise accept staff's findings, analysis and recommendations.*

The motion passed with no objection.

VIII. UNFINISHED BUSINESS – None

IX. BOARD OF ADJUSTMENT - CONSENT

FZE2018 0002: An extension of FZE2017 0001 for Statter Harbor development including construction of a public restroom below the Base Flood Elevation

Applicant: City & Borough of Juneau Docks & Harbors

Location: 11520 Auke Bay Harbor Road

Staff Recommendation

It is recommended that the Planning Commission adopt the Director's analysis and findings and grant the requested Flood Zone Exception extension. The exception would allow construction of a public restroom below the Base Flood Elevation at Statter Harbor. The approval is subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a letter from a licensed professional engineer indicating that the fill will be designed to withstand the 100-year storm force which is described in the City & Borough's currently adopted Flood Insurance Study.
2. Prior to issuance of a building permit, the applicant shall provide additional backflow prevention within the plumbing disposal system to prevent floodwaters from infiltrating the CBJ wastewater system, to be approved by the CBJ Engineering Department.

There were no comments from the public or the applicant on this item.

MOTION: *by Mr. LeVine, that they approve the Board of Adjustment Consent Agenda, and approve FZE2018 0002 accepting staff's findings, analysis and recommendations with the amendment that everything after "this approval is subject to the following conditions" is stricken.*

In support of his motion, Mr. LeVine said that the intention here is simply to extend the flood zone exception subject to the original conditions, with the recognition they are not permitted to condition the renewal or extension of any other part of the permit.

The motion passed with no objections.

X. REGULAR AGENDA

USE2018 0011: A Conditional Use Permit for the use of a single-family residence as a boarding house

Applicant: Kelli Grummett

Location: 9119 Wolfram Way

Mr. Dye said that he lived in this neighborhood many years ago, and that his parents sold a home from this area. He said he did not feel that he had a conflict, since he has no financial or personal ties to this neighborhood, but that he wanted to make this connection public.

The Commission and public voiced no objections.

Staff Recommendation

It is recommended that the Planning Commission adopt the Director's analysis and findings and **APPROVE** the requested Conditional Use Permit. The permit would allow the development of boarding house in a D5 zoning district.

The approval is subject to the following conditions:

1. As a condition of approval, the applicant should be required to schedule a final inspection for BLD2005-00765 within 10 business days of the date of the Notice of Decision for this Conditional Use Permit, regardless of whether the permit is approved or denied.
2. The boarding house's occupancy is limited to seven tenants, including the property manager.
3. A property manager or the property owner shall live on-site. The Community Development Department will be provided with accurate and up-to-date contact information for the property manager and property owner.
4. The boarding house shall not display signs or any advertisements of a boarding house visible from the right of way.
5. The applicant must submit a revised parking plan within 10 business days of this permit being approved that addresses guest parking.

6. Residents and guests shall park in the on-site parking spaces.

7. The applicant must provide one on-site guest parking space.

8. The boarding house must comply with *CBJ 42.20.095 – Disturbing the peace*. A copy of CBJ 42.20.095 shall be posted in the common area of the boarding house. A copy of the “House Rules” shall also be posted in the common area.

9. *House Rule II. Garbage* shall be revised to state that it is the responsibility of the property manager to take the garbage to the street on the appropriate pick-up morning and remove it that same evening. If any trash is in the yard, it is the responsibility of the property manager to remove it.

Advisory Condition:

10. The property manager should be responsible for maintaining safe access along the walkway from the front door to the driveway. *House Rule III. Safe Access* should be revised to say “The property manager is responsible for adding gravel or salt or any additional service to ensure the access is safe.”

Staff Report

Ms. Eddins told the Commission that this is a Conditional Use Permit (CUP) request for a boarding house in a single-family home within the D5 zoning district. CBJ Code 49.80 defines a boarding house as “a dwelling in which more than two bedrooms are used for commercial lodging provided by the owner or operator who lives on site.” It is permissible in a D5 zone with a Conditional Use Permit.

The lot size is over 11,000 square feet, said Ms. Eddins. The existing use is unpermitted as a boarding house, she said. The property, located in the Montana Creek area, is also adjacent or near D1 and D3 residential zones. In the Comprehensive Plan, the future land use designation is for Urban, Low Density Residential (ULDR).

The home is about 2,400 feet, with four bedrooms and an office, which qualifies as a bedroom, said Ms. Eddins. However, one bedroom that was added later still has an open building permit, and will need to have a final inspection scheduled within ten days whether the CUP permit is approved or denied, said Ms. Eddins. One bedroom is currently rented out on Airbnb, three bedrooms rented on a longer-term basis, and one bedroom is for the manager, said Ms. Eddins. There is a limit of seven residents including the property manager, she said. The kitchen and living room are the common areas for the residents, said Ms. Eddins.

In January, 2018, an enforcement case was opened when the applicant began posting rooms for rent on Facebook. An enforcement case was opened because this was being operated as a boarding house without a CUP. After a meeting with CDD staff, the applicant applied for a CUP

in August, 2018.

Ms. Eddins said the CDD held a neighborhood meeting at Mendenhall River Community School on October 11, 2018, with over 40 area residents in attendance. Residents expressed their frustrations with the applicant's property management, and they cited numerous calls to the Juneau Police Department for drug activity, loud parties and trespassing, she said. At the time the staff report was written the staff had received 26 emails from neighborhood residents, with 25 of those emails opposed to this application, said Ms. Eddins.

There are neighborhood covenants which restrict the use in the area to single family use with a mother-in-law apartment, but this is not CBJ code, said Ms. Eddins.

No back out parking from the residence is allowed. The parking area meets dimensional standards for five spaces, and another space must be provided for guest parking, said Ms. Eddins.

Neighbors complained about litter and on street parking, said Ms. Eddins. The Juneau Police Department has paid ten calls to the property; eight initiated by neighboring residences and two were follow-up calls, said Ms. Eddins. Wolfram Way is not currently marked against on street parking, but could be marked as such in the future if it was interfering with snow removal for example, said Ms. Eddins.

Capital City Fire and Rescue said the property meets its requirements for a smoke detector and an egress window, said Ms. Eddins. The Chief Housing Officer for the CBJ said this property meets a need in the CBJ for affordable housing, said Ms. Eddins. The community does have a need for short-term rental regulations, she added. There are currently no regulations for short term rentals, she said.

The Assessor's Office did cite some concerns with a boarding house in this location, said Ms. Eddins. The Assessor said they are usually located in denser populated areas with transit lines. This type of housing would not increase property values, said the Assessor.

The applicant must submit and maintain house rules for public safety in the neighboring area, said Ms. Eddins. This is the first application on record for a boarding house in a single-family residential area, said Ms. Eddins.

Commission Comments and Questions

Mr. Dye asked about the nature of the parking spaces.

Ms. Eddins said a 6.5 foot by 22-foot space is a parallel parking space. The staff is not satisfied with that parking plan, she said. They would like to see a parking plan from the applicant which shows structures that are on the lot. That is why the applicant is to submit a revised parking plan, she said.

Mr. Alper asked if there was anything in the approval which would commit the applicant to the rental plan, or if the applicant could rent three bedrooms on Airbnb, for example, instead of one.

Ms. Eddins said if the applicant decided to rent more rooms on Airbnb, that this would still meet the definition of a boarding house.

Mr. Alper asked if the applicant is paying sales tax on the money earned from the rented rooms in the home.

Ms. Eddins said the applicant can answer that question.

Ms. Crossley asked what constitutes on-site manager.

Ms. Eddins said that Title 49 does not define the role of a property manager. This property manager lives on site and is able to take care of frozen pipes or other house repairs, she said. He will also serve as a point of contact for the neighbors should have any concerns about the home which they need addressed, said Ms. Eddins.

Ms. Crossley said if the owner or property manager were not on site that their use permit would be revoked. She asked how many incidences would need to occur before the use permit was revoked.

Ms. Maclean said if it were proved that the owner or manager were not living on site, it would be an automatic revocation of the permit.

Ms. Crossley said the nature of the house rules makes it difficult for her to understand why anyone would want to live there, and that this situation seems like a predatory situation towards the people who are trying to find affordable housing.

Mr. LeVine asked how the staff has any confidence that there would be no further incidences stemming from this home, given the background.

Ms. Eddins said as the CDD staff she had to look at the land use code and at the use that is being requested. She said that Title 49 does not allow her to make recommendations based upon a particular behavior of an applicant.

Mr. Voelckers asked what the consequences would be if the permit was removed, and how the determination to remove the permit would be made.

Enforcement of this nature which would require the eviction of the tenants would need to be made upon a case-by-case basis, said Ms. Eddins. It would depend upon the nature of the violation, she said, to determine the consequences.

Ms. Maclean said if it were found that the owner or property manager were not living within the residence full-time, it would be an egregious violation which would be enforced immediately. If it was a smaller issue such as trash being a bear attractant, it would be up to the code officer to visit the site and either issue a violation or give them a certain amount of time to rectify the situation, said Ms. Maclean.

Mr. Voelckers asked what would be involved if there were evictions of tenants from the home.

If the use reverted to a single-family residence, the definition of a family would be difficult to ascertain, said Ms. Maclean.

Ms. Crossley asked for the history of the property manager either residing or not residing on site over the past five years the property has been run as a boarding house.

Ms. Eddins said the property had been rented by a family which in turn rented out a few rooms. A property meets the definition of a boarding house when two or more rooms are rented under individual lease.

Mr. LeVine asked if the property was rented to one person under one lease and it was sublet for four additional rooms to four different people, if this would provide no opportunity for oversight by the CBJ. He asked if the necessity of the CUP could be totally avoided by the applicants just by semantics. He asked if the only way the CBJ could have control over activities in the home would be through the issuance of a CUP.

Ms. Maclean said without a CUP there is no way to actually track whether the home is rented by an individual family or not.

Applicant (Kelli Grummett, listed as Kelli Dindinger on the application)

The applicant said she is excited to be running a boarding house. She said a single family had been renting her home, but due to circumstances, could no longer afford the rent. She said she suggested to her tenant that they rent out a few rooms to make the rent feasible. The renter then moved out, leaving the other tenants in the home.

Ms. Grummett said she was contacted by the CBJ and told that her property was a boarding house for which she had no permit. Now everyone who has lived in the home since August abides by clear house rules, said Ms. Grummett. They must sign and acknowledge the rules before they move in, she said, with the understanding that if in violation of the rules they will be fined. She added there was an open building permit by the prior owner which she has since completed.

The ten police calls sound worse than they actually were, said Ms. Grummett. There were no calls in 2016, but in 2017 and 2018 a few of the police calls were from a tenant she was trying to evict which was a civil matter having nothing to do with the neighbors, and that three calls had to do with an incident with bears and the garbage.

Ms. Grummett said she felt a boarding house was a far better way to manage the home and to have it fit into the neighborhood, as she has more control over the situation, as opposed to renting the home to one family. She said whether the home was rented out as a boarding house or to one family, that the revenue for her would be the same.

Commission Comments and Questions

Ms. Crossley commented that by looking at the rules it appeared that tenants were not very welcome in the common spaces, and she asked Ms. Grummett to elaborate on the rental costs per room.

In answer to a question by Ms. Crossley, Ms. Grummett said a property manager has been on site since January, 2018.

Mr. Voelckers asked about the role of the manager.

His role is to inform the owner if there are any problems, said Ms. Grummett.

Mr. Voelckers asked if the situation has been better since the manager has been in the home.

Ms. Grummett said there has not been one complaint since this manager took over in August.

Mr. LeVine asked what the terms of the leases are for the three rooms that are not rented as a B and B.

Ms. Grummett said the tenants can sign a year lease or rent from month to month.

Mr. Dye asked how the eviction of a tenant differed with a short-term lease compared to a long-term lease.

Ms. Grummett said the notice period is different depending on the length of a lease.

Mr. Alper asked what types of individuals would rent a room in the home as a B and B, since it was not in a neighborhood typically sought out by vacationers.

Ms. Grummett first answered the earlier question posed by Mr. Alper, by saying that yes, she does pay sales tax. As far as her B and B clients went, they rented a room for various reasons. Vacation rentals for the property started in early September. She said she had two people from out of town for a few days. Another individual was visiting a friend who lived in the general area. Some people rented a car, others used Uber, said Ms. Grummett.

Public Testimony

Twenty individuals spoke to the Commission during the public testimony portion of the meeting. All comments were against the granting of a Conditional Use Permit for the applicant. Comments that predominated had to do with safety for residents of the neighborhood and

their children, and lack of neighborhood harmony

Area resident Fred Parady told the Commission that this property has been leased and operated inappropriately. He said it made no sense to therefore lease the property, ignore the concerns of the neighborhood, and grant a permit to the applicant. The house has been in violation for fourteen years with an outstanding building occupancy inspection, he said. The Commission should not approve a CUP before there were regulations for boarding houses. The regulations should first be established, he said. He added that the home did not have a good appearance, especially if viewed from the side.

Commission Comments and Questions

Mr. LeVine asked for Mr. Parady's opinion on if this house was permitted that it would be under the purview of the CBJ, with a set of rules, which could be implemented. If the house were rented to one family, with seven other individuals residing there, there would be no regulation from the City, said Mr. LeVine.

Mr. Parady said he found the rules to be largely unenforceable. The testimony of the applicant was that the alternative was to rent the house to a single family. He said he would take a single family over a boarding house any day.

Ms. Crossley asked if the situation has gotten any better with the property being used as a boarding house than when it was rented as a single-family home.

Mr. Parady said he thinks it is the same. He added that he just tried to call the house manager while in this meeting and that there was no answer and no message was given on the machine.

Mr. Dye asked if Mr. Parady has noticed any changes for the better since the new property manager took over in August.

Mr. Parady said two of the complaints to the police have been made after the manager took over in August.

Mr. Alper asked Mr. Parady what he meant when saying the house did not look good in appearance.

Mr. Parady said he had noted when walking up to the house that there was garbage and cigarette butts at the side of the home. He added that the neighborhood's civil covenants should not be overlooked by the City, just because those covenants were not covered by City rules.

Casey Parady told the Commission that she did not feel safe in the neighborhood because the home brought a lot of people she did not know to the neighborhood.

Lisa Parady told the Commission that the neighborhood residents would gladly welcome a

single family in the home as opposed to a boarding house. She said the regulations for boarding houses should be in place before the City started granting permits for boarding houses. She said there have been multiple violations since this home has operated as a boarding house, and that granting a permit for the boarding house would be establishing a bad policy with a bad precedent. She told the Commission that even the City's own Assessor acknowledged in the staff report that home values could be decreased by the boarding house operation.

Ms. Crossley asked why the Commission was considering this permit when it was not allowed in the subdivision by neighborhood covenant.

Ms. Eddins said as a civil matter the Montana Creek Subdivision has a neighborhood covenant, but that it is not enforceable unless the rules have been adopted by the Assembly.

Ms. Mores said the covenants or restrictions the property owners have may be considered as a private contract. It is not the same as law, she said. There could be a private, civil suit by neighbors for violations of those covenants, but they are not enforceable by the City, she added.

Mr. Voelckers said it appeared that most of the alarming police reports seem to have occurred when the home was leased to the family group, when there was no control exerted by the owner.

Ms. Parady said that is not her understanding. She added she feels that common sense dictates that a single-family dwelling would fit better in the neighborhood than a boarding house. She said there have been two managers since January 2018, both unable to keep the police calls down.

Area resident Charla Brown told the Commission that when the home can have up to seven residents, and they all travel during the day, that it substantially increases the amount of traffic in the neighborhood. She said she was followed closely by a car one night when walking her dog, and became scared, and that the car eventually went to the home in question. She said she does not think this boarding house is a solution to affordable housing, and that a boarding house with a B and B is out of harmony for the balance of the neighborhood.

Neighborhood resident Jim Parise said the children run around the neighborhood and play with each other like the 1950's. He said they don't want the neighborhood to feel unsafe and have to arrange formal play dates for their children. There are ways around the rules, he said. Residents of the home don't park on Wolfram but go around the block and park on Ninnis instead.

Mr. Voelckers asked Mr. Parise how he feels the situation with the boarding house is now compared to a year ago.

Mr. Parise said he has talked to neighbors who have noted it is not any better.

Neighborhood resident Ricardo Worl said at the neighborhood meeting conducted by the CDD staff, that the applicant had every opportunity to address the concerns of the neighborhood to ensure the disruptions they discussed at the meeting did not occur in the future, and that he has not noticed any improvements. If the permit for this boarding house is granted, said Mr. Worl, it would have a negative effect on other neighborhoods facing the same disruption. He said it is unreasonable and unrealistic to expect boarding house tenants to care as much about the property they reside in as home owners.

Arthur Edwards said his property shares a back fence with the applicant's property. He said he has met with Ms. Grummet personally, and that he did not have a positive experience from their interaction. He said there are many occurrences that are not on the record. The applicant housed Alaska Travel Adventure employees, which resulted in loud noises late at night, fire pits and alcohol. He said it has been quieter in the past few months. He added that lack of compliance should not be rewarded by the issuance of a permit.

Mr. Voelckers asked Mr. Edwards if he would prefer the boarding house situation or the lease to a single family.

Mr. Edwards said he would much prefer a single family renting the house. He said if the CBJ provided adequate oversight and the rules were enforced, perhaps it could work. He added that the applicant is moving her business into their neighborhood, and that it is not welcome.

Mr. Dye asked Mr. Edwards if there were any other conditions that would make the residence more consistent with the neighborhood.

Mr. Edwards said he wished the applicant had numbers on her house so that Air B and B people did not have to drive around the neighborhood, searching for the residence.

Mr. Alper said it seemed odd to him that signs on the house were forbidden. He said how an Air B and B customer would identify the home. He asked how Air B and B customers locate the properties they would be using.

Ms. Eddins said the customer is given the address and the personal email of the property owner. They will either provide directions, or most people just type the address into their phone for the directions.

The harmony and value of the neighborhood do matter, said Mr. Edwards. Even the Assessor said it could negatively affect property values, said Mr. Edwards.

Area resident Jacleen Kookesh told the Commission that she values her neighborhood. There is only one entrance to the neighborhood, and it is a place where her three children can safely play, she said. A rental situation is much different than a boarding house, she said. She said she also disagrees that there are no public safety issues. She said the findings in the staff report are not enough. The facts and the history of the house need to be considered, she said. Ms.

Kookesh said that she is an attorney and that there would be a civil case on this, should the permit be granted.

Ms. Crossley asked what the ballpark value of the homes in the neighborhood is.

Ms. Kookesh said that her home is valued at over \$675,000, and that other homes in the neighborhood are all valued at \$400,000 and above.

Mr. LeVine asked Ms. Kookesh how she felt the neighborhood covenant would apply to the Commission's consideration of what the harmony with property in the neighboring area is.

Ms. Kookesh said while the CBJ may not have enforcement authority regarding the neighborhood covenant, that should be something that the Commission takes into consideration. The people in this room bought their homes based upon those covenants, said Ms. Kookesh.

Neighborhood resident Chad Brown told the Commission that he works in human resources, and what they have learned is that the best predictor of future behavior is to look at past behavior of applicants. The past behavior of this property owner has not been in harmony with this neighborhood, said Mr. Brown.

Mr. Alper asked if Mr. Brown had concerns about the boarding house in general, or if it was with this specific instance.

Mr. Brown said if the boarding house had a good track record, there would be a lot less people to give testimony against it before the Commission. He added he is also not in favor of any boarding house being in their neighborhood.

Area resident Ethan Billings said he has been a Juneau resident for 44 years. He said he is opposed to the CUP. He asked the Planning Commission if they would want to live next to a home with four different tenants, each with their own pet and vehicle. He asked what specific oversight the City would have over this boarding house. This property has had more police calls than any other home in the neighborhood, he said. Mr. Billings said that he is a realtor, and that there is over \$50 million worth of property values in that neighborhood. The boarding house would severely interfere with neighborhood harmony, said Mr. Billings.

Mr. Dye asked for Mr. Billings' opinion as a realtor, how the boarding house would negatively impact the property values of the neighborhood.

He said home owners would have to fully disclose the history of that house which could put people off from buying in the neighborhood.

Dave Conway, neighborhood resident, said that the boarding house designation would always be there, since that designation would follow the home, not the home owner. He added that he

is in 100 percent agreement with all of the previous testimony given on this issue.

Mr. Dye asked if they could limit the ability of the CUP to transfer with the land, if that would alleviate his concerns over the project.

That would not alleviate his concerns about this project, said Mr. Conway.

Mr. Voelckers asked what the covenant stated explicitly.

He was told it requires that the neighborhood be composed of single-family homes, with the ability to have a mother-in-law apartment.

Resident Chad Mountcastle said he bought a home in this neighborhood just so that this type of situation would not take place. He asked how a home manager with a full-time job could adequately monitor the tenants.

Neighborhood resident Lisa Arehart said that Title 49 states that residential districts are to be healthy, safe and pleasant environments protected from incompatible activities. This is why they purchased their homes in this neighborhood, she said. They do not feel that neighborhood harmony has been addressed at all by the CBJ.

Evelyn Maloney said she is the next-door neighbor of the boarding house, and that she has called the police several times. She said there are over 40 residents at this meeting, and that there would be a lot more neighbors there if announcements had been mailed to more residents in the area. Ms. Maloney said the primary concern for her is safety. Their truck had been badly scratched by a bear who was attracted to the garbage at the boarding house. She added that home owners take better care of their property than boarders or renters.

Resident Jon Torrella asked that the Conditional Uses Permit be denied. He said that the CBJ has not formulated or adopted proper regulations, and that it is not compatible with the neighborhood. He said the tenants have disrupted the harmony of the neighborhood, and that ongoing complaints have not been resolved, and that the neighborhood covenant is not being adhered to.

Resident John Schauwecker told the Commission that he did not think it was possible to put a boarding house in their neighborhood, and that he was surprised they had to be before the Commission for this reason. He read a letter against the boarding house permit from neighbor Frances Jones.

Resident Mark Smith said the neighborhood covenant was one of the main reasons he decided to buy a home in this neighborhood. He added that when you put a big parking lot in front of your house the appearance noticeably changes. The safety of the neighborhood is of great importance, said Mr. Smith. He said there are some families who rent in the neighborhood, and that they are good neighbors.

Neighborhood resident Erin Lupro said she has three children, and that her children had to be subjected to a man and woman fighting in front of the boarding house. She said this occurred after August, after the arrival of the new house manager. She said there are people going in and out of the house at all times during the day.

A resident read a letter from Robin Long, the owner of a real estate company and a resident of the area. The letter cited the cleanliness, the low crime and the safety of children to play in the neighborhood and the absence of multi-family dwellings as reasons people purchase homes in this neighborhood. The applicant has proven that they are unable to successfully manage the boarding house situation, stated the letter.

Applicant

Ms. Grummett said it was the prior owners of the home who had the outstanding building permit, and that she had not been aware of it. She said she has since dealt with that. Ms. Grummett said her impression is that the Assessor stated the boarding house would not negatively affect home values in the area. She said when Haven House was established, that it did not negatively affect property values. She said what sounds like a lot of police calls were primarily a few garbage incidents with bears which she has dealt with, one drug call and a follow-up to that, and two calls from a tenant complaining about their eviction notice. The drug-related call was made when the house was rented to tenants, she said.

As a boarding house she will have direct control over what occurs at the house, she said, unlike if she was renting the home to a family. Ms. Grummett said she has two tenants with a year-long lease, and that the main reason she wants to obtain the permit allowing her to have a boarding house is so she can address neighborhood concerns. She added that it is difficult to grow a population when there is no affordable housing available.

The Commission approved continuing the meeting until 11:00 p.m.

Commission Comments and Questions

Mr. Dye said it appears this has been an experiment running for over a year and it still is not successful. He said how long the neighborhood should wait until it is shown that it does not work. He asked Ms. Grummett how she plans to get this operation to a point where it is not a problem.

Ms. Grummett said there have been two incidents when the bear got into the garbage can. Ms. Grummett said she thinks the home situation has improved substantially. She said one neighbor actually admitted that there has been substantial improvement. If someone has a new concern, they can revise the rules to address that concern, she said. The quiet enjoyment of the neighborhood should be protected, she said. And if there is a concern, she will fix it, she added.

Mr. Dye asked how long this situation should be tried, before it is ascertained that it doesn't work.

Ms. Grummet said nothing has been happening but improvement. The situation has gotten better, not worse, she said.

Ms. Crossley asked the applicant if she was aware of the Montana Creek Subdivision covenant, and why it took getting cited by the City before she applied for the CUP.

Ms. Grummett said that Nate Watts had suggested that she apply for the Conditional Use Permit for a boarding house.

Chairman Haight asked how she proposed to address the neighborhood covenant.

Ms. Grummett said she did not have a plan for that at this time.

Commission Discussion

Mr. LeVine asked if the only concerns in criterion three were about notice, as it mentioned, or if there are other requirements which they should be considering.

Ms. Maclean said it is her understanding that when they look at this finding that it addresses notification specifically.

Mr. Dye asked if “neighboring” is the same as “neighborhood” in terms of how Title 49 defines the term.

Ms. Mores said she thought the two terms to be synonymous.

Mr. LeVine asked if they were to grant this permit that the applicant, who has a five-bedroom house, would have one bedroom for the property manager, and four bedrooms, which could be rented out on a nightly basis.

Ms. Eddins said that was true.

Mr. LeVine asked if the Commission could condition the room rentals, requiring longer necessary periods of a rental.

Ms. Eddins said she did not think there was anything in Title 49 which would preclude the Commission from doing that.

Ms. Mores said if the Commission tied it to conditions that it may do so, so that it is not an arbitrary action.

Ms. Crossley said there must be numerous boarding house situations in Juneau. She asked the staff if the City has received other complaints of this nature.

They have not permitted a boarding house previously, said Ms. Maclean, but that is not to say they do not exist. They also do not regulate Air B and B’s she said.

Mr. LeVine said they definitely need to formulate rules about Air B and B's and boarding houses. This is an area of the code that needs addressing, he said.

Mr. Voelckers asked if there are any other boarding houses in a D5 zone.

Ms. Eddins said she has not been able to find any over the past 20 years.

Mr. Alper said this is his second Planning Commission meeting. He said he felt personally that diversity adds value to a neighborhood. He said if this permit were to be approved, that he hoped the applicant would take to heart the conditions in the permit, and that the City staff would be active in its enforcement of the rules if necessary. He said that he believes in the need for all types of housing in the community, but that he would vote in support of the permit.

Mr. Hickok said he knows this developer, and that it was not developed to be affordable housing. He wanted single family homes in neighborhoods, and that is why he and his father wrote the covenant.

Ms. Crossley said she is very much in favor of affordable housing. She said she does not think this is the neighborhood to do this experiment in.

MOTION: *by Mr. Alper, to approve USE2018 0011 with the amended eighth condition that conditions 8, 9 and 10 be removed.*

Mr. Voelckers said he must reluctantly speak in opposition to the motion. He said he does agree with the sentiment voiced by Mr. Alper about the benefits of a diverse neighborhood, but that this is a striking example of how a proposal really is not in harmony with the neighborhood. There are no historic examples of this use, and it has been ongoing for a few years and still causes anxiety for the neighbors.

Mr. Dye also spoke against the motion. He said the boarding house has changed the patterns of the neighborhood, and is out of harmony with the neighborhood.

Mr. LeVine said he is in agreement with Mr. Alper, about the benefits of a diverse neighborhood. Neighborhoods should evolve over time, said Mr. LeVine. Mr. LeVine said he is swayed by the neighborhood covenant, which defines what neighborhood harmony is for this neighborhood. This is the first CUP he has seen in five years in which the City Assessor did have some concerns. He said he will reluctantly vote against the motion.

Ms. Crossley said she is in favor of diversity, but that accessory apartments are written into the covenant. She said she will be voting against the motion.

Chairman Haight said this has been a very difficult topic for the Commission. They do not like to decline Conditional Use Permits, and they do like to foster the growth of affordable housing in the community. He said he does agree with Mr. Alper and Mr. LeVine about the diversity of

neighborhoods, but that he also recognizes that harmony is a key element in their decisions. The covenant defines what the neighborhood is supposed to be, said Commissioner Haight. He said he would also vote against the permit.

Roll Call Vote:

Yeas: Alper

Nays: Crossley, Dye, Haight, Hickok, LeVine, Voelckers

The motion failed.

The Commission approved the extension of the meeting to 11:10 p.m.

~~**CSP2018 0015:** A review of the Juneau Airport Terminal Reconstruction Project,
Phase 2~~

~~**Applicant:** City & Borough of Juneau~~

~~**Location:** 1873 Shell Simmons Drive~~

****CSP2018 0015 postponed to February 19, 2019****

XI. REGULAR BOARD OF ADJUSTMENT - None

XII. OTHER BUSINESS - None

XIII. STAFF REPORTS

Ms. Maclean said the downtown zoning for the overlay districts has public meetings coming up on January 30, February 5, and February 7, at 5 p.m.

Blueprint Downtown will hold the last big public meeting for the visioning process on January 24, at 6:30 p.m.

Stub streets will be before the Assembly on January 28.

XIV. COMMITTEE REPORTS

A. Presiding Officer Report, APL2018 0004 Motion to Dismiss

Mr. Dye reported this was McFarland vs. CDD over a decision of a bungalow lot variance. The appellant missed the filing deadline, and CDD filed a motion to dismiss, and the next day the appellant filed a notice to drop the appeal.

MOTION: by Mr. LeVine, to dismiss APL2018 0004.

The motion passed with no objection.

Mr. LeVine said the Commission will meet in executive session on Monday to discuss an appeal.

Committee Assignments

Committee members will be assigned to the Comprehensive Plan Committee when the committee is formed

Commissioner	Rules	Auke Bay	Title 49	SRC	JCOS	Lands	Blue Print Downtown	Public Works	Wetlands
Voelckers	X	X Chair				X			
LeVine	X			X	X				
Dye	X	X	X Chair				X		
Hickok		X		X Chair					X
Crossley		X	X						
Campbell			X	X				X	
Alper	X		X						X
Arndt				X					

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

XVI. PLANNING COMMISSION COMMENTS AND QUESTIONS - None

XVII. EXECUTIVE SESSION - None

XVIII. ADJOURNMENT

The meeting was adjourned at 11:01 p.m.