DATE: July 30, 2009

TO: Board of Adjustment

FROM: Eric Feldt, Planner
Community Development Department

FILE NO.: VAR2009-00024

PROPOSAL: A Variance request to renovate half of Douglas Boat Harbor within the 330-foot Habitat Setback of an eagle’s nest located on Mayflower Island.

GENERAL INFORMATION

Applicant: Gary Gillette, CBJ Docks & Harbors Department

Property Owner: City & Borough of Juneau

Property Address: 120 Savikko Rd

Legal Description: ATS 14 FR

Parcel Code Number: 2-D04-0-T32-005-0

Site Size: Approx. 10 acres

Zoning: Waterfront Industrial

Utilities: CBJ Water & Sewer

Access: Savikko Road

Existing Land Use: Douglas Boat Harbor

Surrounding Land Use: North - (Waterfront Commercial) Mayflower Island
South - (D - 18) Robert Savikko Recreation Park/ Treadwell Arena
East - Gastineau Channel
West - (D - 18) Robert Savikko Recreation Park/ Treadwell Arena
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**ATTACHMENTS**

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**PROJECT DESCRIPTION**

The City & Borough of Juneau (CBJ) Docks & Harbors Department is planning the renovation of Douglas Boat Harbor within 330 feet of an Eagle’s nest that is located on Mayflower Island (Attachment C). According to CBJ § 49.70.310 (a)(2), development is prohibited within 330 feet of an Eagle’s nest on public land, therefore a variance to allow such development must be granted by the CBJ Board of Adjustment in order for the project to continue.

A variance to the 330-foot development setback was previously approved but the variance expired because the project was delayed due to the discovery of trace amounts of mercury in the harbor which has prolonged the renovation that was earlier permitted on May 8th, 2007. Details of this finding are stated in the project letter (Attachment A). At that time, a similar variance request was filed and approved under variance permit number VAR2007-00012 (Attachment D), to allow construction within the habitat setback of the eagle’s nest. Therefore, construction was permitted within the setback of the eagle’s nest, but the recent discovery of mercury postponed commencement of construction beyond the deadline to file for a permit extension.

**BACKGROUND**

As stated earlier, a variance permit was granted on May 8, 2007 permitting the construction of the Douglas Boat Harbor renovation to occur within the 330-foot Habitat Setback of an Eagle’s nest located on Mayflower Island (Attachment D). However, with the recent discovery of mercury in the harbor, CBJ Docks & Harbors has neither filed for a building permit to initiate construction within the established deadline of the variance permit, nor met the deadline for extending the permit. Therefore, a new variance application is required.

**ANALYSIS**

Attachment ‘C’ depicts existing and proposed moorage features of the Douglas Boat Harbor. The eagle’s nest, shown in attachment ‘B’, is perched on a tree upon Mayflower Island and has existed in that location for many years and is frequently used. This nest is not hidden from the view of the public, and is within audible distance to boat traffic within the harbor and the Gastineau Channel. Further, there is a driveway connecting the harbor to the US Department of Interior, Bureau of Mine, office building located on the island. Therefore, the eagle’s nest has been used despite constant
human activity and is anticipated to be used in future years.

Renovation of the harbor will exude increased levels of noise in the area, especially during the installation of the pylons. Unlike traditional pile drivers that use repetitive impact force to drive a pylon, a vibratory pile driver will be used that combines horizontal-vertical vibration methods to drive the pylon and a suppressor mechanism that will minimize noise levels during operation. This driver will also help control the driving force onto its target. To better understand the mechanics of this driver, feel free to search http://www.iceuse.com/howworks.htm “International Construction Equipment” titled “How a vibratory pile drive/extractor works. If harden earthen material is found, however, an impact hammer may be used more often.

Regardless of the type of pile driver used, noise levels in the harbor will be increased. To minimize undesired levels of noise, the following code shall be adhered:

_CBJ § 42.20.095(b) Construction of buildings and projects. It is unlawful to operate any pile driver, power shovel, pneumatic hammer, derrick, power hoist, or similar heavy construction equipment, before 7:00 a.m. or after 10:00 p.m., Monday through Friday, or before 9:00 a.m. or after 10:00 p.m., Saturday and Sunday, unless a permit shall first be obtained from the City and Borough building official. Such permit shall be issued by the building official only upon a determination that such operation during hours not otherwise permitted under this section is necessary and will not result in unreasonable disturbance to surrounding residents._

Since these limitations of hours of operation are already codified, staff recommends these construction hours be listed as an advisory condition of approval.

The US Fish & Wildlife Service (USF&WS) reviewed the project in terms of disturbances to eagles and eaglets using the nest and advises that construction shall not occur between the hours of 7pm - 7am. This will respect the eaglet/parent feeding times during the early morning and late evening hours of the day. Staff recommends these hours of non-operation be a condition of approval. Also, the USF&WS recommends pile driving shall not take place prior to August 31, which marks the ending of the eaglet incubation period. Due to the fewer hours of sunlight and changing of the weather, waiting to install pylons until September may be unreasonable. Instead, staff recommends the use of a qualified spotter to ensure disturbance to the eagles/eaglets is minimized for at least the first week of pile driving.

The Alaska Department of Fish and Game (ADF&G) also commented on this project and recommends a prohibition of ‘in-water’ construction from March 15 through June 15 to minimize adverse effects to the out-migratory salmon and herring spawning period within the Gastineau Channel. This condition shall be recommended.
Variance Requirements

Under CBJ §49.20.250 where hardship and practical difficulties result from an extraordinary situation or unique physical feature affecting only a specific parcel of property or structures lawfully existing thereon and render it difficult to carry out the provisions of Title 49, the Board of Adjustment may grant a Variance in harmony with the general purpose and intent of Title 49. A Variance may vary any requirement or regulation of Title 49 concerning dimensional and other design standards, but not those concerning the use of land or structures, housing density, lot coverage, or those establishing construction standards. A Variance may be granted after the prescribed hearing and after the Board of Adjustment has determined:

1. That the relaxation applied for or a lesser relaxation specified by the Board of Adjustment would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.

If the recommended methods and times of construction as stated earlier are adopted, the encroachment of 250’ into the 330’ habitat setback shall not discourage the continued use of the eagle’s nest. There are also property owners and existing buildings upon Mayflower Island, located much closer to the eagle’s nest than the Harbor floats that haven’t disturbed the eagles.

Therefore this criterion is met.

2. That relief can be granted in such a fashion that the intent of this title will be observed and the public safety and welfare be preserved.

With the recommended conditions, the eagles will still be able to successfully utilize the nest.

Therefore this criterion is met.

3. That the authorization of the variance will not injure nearby property.

The construction within the 330’ habitat setback does not negatively affect any nearby properties.

Therefore this criterion is met.

4. That the variance does not authorize uses not allowed in the district involved.

The continuation and renovation of the floats and shorelines within the Douglas Harbor is allowed within the Waterfront Industrial District as listed in Section 10.510 under CBJ§ 49.25.300 Table of Permissible Uses with a building permit.
Therefore this criterion is met.

5. *That compliance with the existing standards would:*

   *(A) Unreasonably prevent the owner from using the property for a permissible principal use;*

   Strict adherence to the 330’ development restriction would prevent a significant portion of the Harbor renovation to occur, which is a permissible use as stated above. With the recommended conditions, the renovation will not harm the eagles.

Therefore this sub-criterion is met.

   *(B) Unreasonably prevent the owner from using the property in a manner which is consistent as to scale, amenities, appearance or features, with existing development in the neighborhood of the subject property;*

   The renovation of Douglas Harbor will expand the size of the floats, but not increase the number of the floats nor be any closer to the eagle’s nest. The design of renovated floats, fingers, and pylons will be consistent to those already existing upon the northern floats. Therefore, the development restriction unreasonably prevents the owner from renovating the portion of the Harbor. And with the recommended conditions, the renovation will not harm the eagles.

Therefore this sub-criterion is met.

   *(C) Be unnecessarily burdensome because unique physical features of the property render compliance with the standards unreasonably expensive;*

   The site does not contain any unique physical features that would render compliance with the standards unreasonably expensive.

Therefore this sub-criterion is not met.

   *(D) Because of preexisting nonconforming conditions on the subject parcel the grant of the variance would not result in a net decrease in overall compliance with the Land Use Code, CBJ Title 49, or the building code, CBJ Title 19, or both.*

*Not Applicable.* No non-conformities exist at the construction site.

Since sub-criterion A & B are met, this criterion is met.
6. That a grant of the variance would result in more benefits than detriments to the neighborhood.

The renovation of the three floats and fingers, southern headwalk, pylons, gangway, and shoreline preservation are needed not only to accommodate larger moorings, but also to ensure public safety due to the aging of the original floats. With the recommended conditions, the use of the eagle’s nest will not be seriously impacted.

Therefore this sub-criterion is met.

JUNEAU COASTAL MANAGEMENT PROGRAM

Juneau Coastal Management Program (JCMP), Section 11. Habitat B. Findings (5) and (8) identify bald eagles as an important species. JCMP Section 11. Habitat C. Administrative Policies (4) states that it is the policy to protect areas surrounding identified eagle nests from conflicting land uses. This policy has been implemented in the Land Use Code under CBJ § 49.70.310 (2), which prohibits development within 330 feet of an eagle nest on public land.

The USFW&S has recommended conditions that will minimize impacts to the eagle’s nest. With the overall recommended conditions, construction will not negatively affect the eagles nest.

Therefore, the development can proceed as proposed and the goals of the Juneau Coastal Management Plan will be met.

FINDINGS

1. Is the application for the requested variance complete?

Yes. We find the application contains the information necessary to conduct full review of the proposed renovation. The application submittal by the applicant, including the appropriate fees, substantially conforms to the requirements of CBJ Chapter 49.20

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

Yes. With the recommended conditions, the proposal will fully comply with the JCMP. Based upon the conditions of the USFWS, such a development will not negatively affect the eagles, and therefore meets the intent of CBJ §49.70.310 (2).
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3. **Does the variance as requested, meet the criteria of Section 49.20.250, Grounds for Variances?**

**Yes.** Based on the analysis above, staff finds that the Variance meets the criteria of CBJ §49.20.250, *Grounds for Variances.*

**RECOMMENDATION**

It is recommended that the Board of Adjustment adopt the Director’s analysis and findings and grant the requested Variance, VAR2009-00024. The Variance permit would allow for the renovation of Douglas Harbor to occur with the following conditions:

1. Construction shall not occur from the hours of 7pm through 7am.
2. Noise levels shall not exceed 65 decibels at the property line during the day or 55 decibels at night.
3. In-water construction shall be prohibited from March 15 through June 15.
4. The use of a qualified spotter to ensure disturbance to the eagles/eaglets is minimized for at least the first week of pile driving shall be required.

**Advisory Condition**

1. Hours of operation shall comply with CBJ § 42.20.095(b) *Construction of buildings and projects.*
DEVELOPMENT PERMIT APPLICATION

(APPLICANT - PLEASE FILL IN THE PROJECT/APPLICANT INFORMATION)

Project Number: PD07-71

City and BOROUGH of JUNEAU

Date Received: 9-10-09

Project Name: Douglas Harbor Renovation

Project Description: Renovation of Douglas Boat Harbor

PROPERTY LOCATION

Street Address: 120 Savicko Rd

City / Zip: Douglas 99824

Subdivision (if known): ATS 14 FR

Assessor's Parcel Number (if known): 2-Dog-0-T-32-005-0

LANDOWNER/LESSEE

Property Owner's Name: City & Borough of Juneau

Contact Person: Gary Gilleece

Work Phone No.: 586-0398

Mailing Address: 155 S. Seward St. Juneau 99801

Home Phone No.: FAX No.

LANDOWNER/LESSEE CONSENT

(Required for Planning permits not needed on Building/Engineer permits)

INITIAL ALL THAT MAY APPLY

APPLICATION TYPE

OWNER'S INITIALS

ALLOWABLE USE

CONDITIONAL USE

VARIANCE

DESIGN REVIEW

SUBDIVISION

OTHER:

APPLICANT

(name same as OWNER, write "SAME" and sign and date at X below)

Contact Person: Gary Gilleece

Work Phone No.: 586-0398

Mailing Address: 155 S. Seward St. Juneau AK 99801

Home Phone No.: FAX No.

X Date of Application

STAFF APPROVALS

PERMIT TYPE

DATE RECEIVED

APPLICATION NO.

PERMIT TYPE

DATE RECEIVED

APPLICATION NO.

ALLOWABLE USE APPROVAL

CONDITIONAL USE APPROVAL

VARIANCE

DESIGN REVIEW APPROVAL

SUBDIVISION APPROVAL

STREET VACATION

SIGN APPROVAL

BUILDING PERMIT

Permit Intake Initials

ZONE

Total Lot Area

Required Setbacks

Front

Back

Side

Other

NOTE: DEVELOPMENT PERMIT APPLICATION FORM MUST ACCOMPANY ALL OTHER COMMUNITY DEVELOPMENT DEPARTMENT APPLICATIONS
**VARIANCE APPLICATION**

<table>
<thead>
<tr>
<th>Project Number</th>
<th>Project Name</th>
<th>Case Number</th>
<th>Hearing Date</th>
<th>Date Received</th>
</tr>
</thead>
<tbody>
<tr>
<td>22007-71</td>
<td>Douglas Harbor Ramaham</td>
<td>VAR09-24</td>
<td>7-16-09</td>
<td></td>
</tr>
</tbody>
</table>

**VARIANCE TYPE:**
- [ ] Setback
- [ ] Height
- [X] Bulk
- [ ] Other (Describe): Eagle Trees

**DESCRIPTION OF ACTIVITY WHICH REQUIRES A VARIANCE:**

Extend VAR 2007 - 00012

**PREVIOUS VARIANCE APPLICATIONS:**
- [ ] Yes
- [ ] No

**Date of Filing:**

**Variance from which standards:**
- [ ] Setback
- [ ] Height
- [ ] Bulk
- [ ] Other (Describe)

**Was variance granted?**
- [ ] Yes
- [ ] No

**EXISTING USE OF LAND OR BUILDING(S):**

| utilities available | Water: [ ] Public [ ] On Site | Sewer: [ ] Public [ ] On Site |

| PROPOSED SETBACKS (if variance changes setbacks): |
| Front _____ ft. Rear _____ ft. Side _____ ft. Other _____ ft. |

**UNIQUE CHARACTERISTICS OF LAND OR BUILDING**
(Difference from other properties in the area):

**WHY WOULD A VARIANCE BE NEEDED FOR THIS PROPERTY REGARDLESS OF THE OWNER?**

**WHAT HARDSHIP WOULD RESULT IF THE VARIANCE WERE NOT GRANTED?**

**REVIEW APPROVALS**

<table>
<thead>
<tr>
<th>Buildings</th>
<th>Engineering</th>
<th>Planning</th>
</tr>
</thead>
</table>

| VARIANCE FEES          | 1.00 - 200 |
| Application Fees       | 0.00 - 000 |
| Adjustment             | 0.00 - 000 |
| Total Fee              | 0.00 - 000 |

**NOTE:** MUST BE ACCOMPANIED BY DEVELOPMENT PERMIT APPLICATION FORM
NOTICE OF PUBLIC HEARING

GASTINEAU CHANNEL

PROPOSAL: A Variance request to reconstruct Douglas Boat Harbor within the Habitat Setback of an eagle's nest.

FILE NO: VAR2009-00024 TO: Adjacent Property Owners

APPLICANT: CITY & BOROUGH OF JUNEAU

PROPERTY OWNER: CITY & BOROUGH OF JUNEAU

PROPERTY ADDRESS: 120 SAVIKKO RD

PARCEL CODE NUMBER: 2-D04-0-T32-005-0

PLACE: ASSEMBLY CHAMBERS

Municipal Bldg.
155 South Seward St.,
Juneau, Alaska 99801

SITE SIZE: 0

ZONING: WI

ACCESS: SAVIKKO RD

PROPERTY OWNERS PLEASE NOTE:

You are invited to attend this Public Hearing and present oral testimony. The Planning Commission will also consider written testimony. You are encouraged to submit written material to the Community Development Department no later than 8:30 A.M. on the Wednesday preceding the Public Hearing. Materials received by this deadline are included in the information packet given to the Planning Commission a few days before the Public Hearing. Written material received after the deadline will be provided to the Planning Commission at the Public Hearing.

If you have questions, please contact Eric Feldt at 586-0764 or email: eric_feldt@ci.juneau.ak.us

Planning Commission Agendas, Staff Reports and Meeting Results can be viewed at www.juneau.org/plancomm.

Date notice was printed: July 28, 2009
July 16, 2009

Eric Feldt, Planner
Community Development Department
City and Borough of Juneau
155 South Seward Street
Juneau, Alaska 99801

Re: Douglas Boat Harbor Renovation

Dear Mr. Feldt;

The CBJ Docks and Harbors Department has been in the process of planning and permitting the renovation of the Douglas Harbor over the past few years. In May 2007 the Planning Commission approved a city project review (CSP2007-00005) and a variance (VAR2007-00012) for the removal and replacement of the moorage float system in the old section of the harbor.

In June 2007, during the Corps of Engineers permitting process, trace amounts of mercury were identified in the sediments of the harbor which measured slightly above screening levels for west coast development. This triggered a comprehensive testing regime to determine toxicity of the spoils and analysis of impacts for the disposal proposal.

The effort to sample, test, and analyze the full impacts of the mercury issue, consultation with numerous state and federal agencies, has taken a significant amount of time. The work was recently completed and submitted to the Corps of Engineers for completion of the permitting process. It is anticipated that a determination will be rendered this summer.

Due to the time it has taken to address this unforeseen issue the project has not moved forward on the original schedule and the past Planning Commission approvals have expired. The project scope remains the same and the funding is in place such that we anticipate construction to begin this fall.

Due to the unforeseen impacts of a prolonged permitting review by the Corps of Engineers we request that the city project review and variance be extended.

Thanks for your consideration. If you have questions or need further information please contact me at your convenience.

Sincerely;

[Signature]

Gary Gillette, AIA
Port Engineer

ATTACHMENT A
PND Engineers, Inc.
Attn: Dick Somerville
9360 Glacier Highway, Ste. 100
Juneau, AK 99801

Application For: A Variance request to reduce minimum required setback from an eagle's nest.

Legal Description: ATS 14 FR
Parcel Code No.: 2-D04-0-T32-005-0

Hearing Date: May 8, 2007

The Board of Adjustment, at its regular public meeting, adopted the analysis and findings listed in the attached memorandum dated May 2, 2007 and approve the Variance to be conducted as described in the project description and project drawing submitted with the application and with the following conditions:

1. There shall be no construction between the hours of 7pm – 7am.
2. Noise levels shall not exceed 65 decibels at the property line during the day or 55 decibels at night.
3. In-water construction shall be prohibited between March 15 through June 15, due to the spawning of salmon and herring in Anadromous streams.

Attachment: May 2, 2007 memorandum from Eric S. Feldt, Community Development to the CBJ Board of Adjustment regarding VAR2007-00012.

This Notice of Decision does not authorize construction activity. Prior to starting any development project, it is the applicant’s responsibility to obtain a building permit for any and all improvements requiring such.

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 Sec. 49.20.120).

Effective Date: The permit is effective upon approval by the Board, May 8, 2007.

Expiration Date: The permit will expire 18 months after the effective date or November 8, 2008, 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 permit expires.
PND Engineers, Inc.
File No.: VAR2007-00012
May 9, 2007
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Project Planner:  
Eric S. Feldt, Planner  
Community Development Department

Daniel Bruce, Chairman  
Planning Commission

Filed With City Clerk  5/10/07  
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 - 1-800-949-4232, or fax 360-438-3208.