

MEMORANDUM

CITY/BOROUGH OF JUNEAU
155 South Seward Street, Juneau, Alaska 99801

DATE: August 3, 2005

TO: Board of Adjustment

FROM: Teri Camery, Planner
Community Development Department

FILE NO.: VAR2005-00049

PROPOSAL: A Variance to allow removal of three trees within the 50' setback to Duck Creek.

GENERAL INFORMATION

Applicant: Federal Aviation Administration

Property Owner: CBJ

Property Address: Airport Duck Creek

Legal Description: USS 1742

Parcel Code Number: 3-B16-0-100-001-1

Site Size: 1.89 acres

Zoning: Industrial

Utilities: none

Access: Cessna Drive

Existing Land Use: Duck Creek Greenbelt; microwave radio site

Surrounding Land Use: North - Glacier Highway, hotels
South - Juneau International Airport and related facilities
East - FAA Automated Flight Service Station
West - Airport related facilities, vacant

PROJECT DESCRIPTION

The Federal Aviation Administration (FAA) Automated Flight Service Station uses microwave radio to communicate with aircraft in the Juneau vicinity. Three trees between the service station and Duck Creek, all within the 50-foot habitat setback of the creek, have the potential to interrupt this communication, which is critical to airport operations. The FAA requests a streamside setback variance authorization to cut these three trees. Though this is a federal project, CBJ authorization is required because the land is not under federal ownership; it is owned by CBJ and under management by the Juneau International Airport.

BACKGROUND

A previous variance, VAR2004-00046, was granted on October 13, 2004. This variance allowed maintenance trimming of trees within a 20 foot corridor within the 50 foot setback of Duck Creek to improve radio communication. After the fact permission to remove 8 trees within the setback was also granted. The variance was approved with the following conditions:

- (1) The applicant shall contact the Community Development Department and obtain permission to limb trees within the 20-foot corridor through the 50-foot habitat setback (§49.70.310(a)(4)) prior to undertaking any limbing activity. Trees shall not be limbed above an elevation of 20 feet above grade.
- (2) The applicant shall provide mitigation for the impacts to the project site by revegetating an area on the opposite bank of Duck Creek, directly to the North of the microwave radio corridor. The area to be revegetated is an area approximately 34 feet long (parallel to the edge of Duck Creek) by 16 to 18 feet deep (perpendicular to Duck Creek) (see Attachment G of the staff report). This area is currently occupied largely by invasive grasses, and will require installation of a temporary or biodegradable weed barrier prior to revegetation.

After installation of the weed barrier, the area shall be planted, at a minimum, with willow cuttings at least 1" in diameter and two feet in length, spaced on a 2 by 2-foot grid. It is strongly suggested that several Sitka alder and/or redosier dogwood also be planted in the area to be revegetated in order to increase diversity and lessen overall susceptibility to insect and disease pests. Plantings shall be monitored for no less than two years, and any losses in excess of 80% shall be replaced.

- (3) The applicant shall install bollards, boulders, concrete forms, or other traffic control devices approved by Juneau International Airport Field Maintenance along the North side of Cessna Drive in such a way as to prevent vehicular access to the project site.

The VAR2004-00046 approval allows the FAA to conduct maintenance limbing within the setback with departmental approval. The applicant has not met conditions 2 and 3. This issue will be discussed in the JCMP section of this staff report.

Staff has consulted Wetland Review Board Chair and fisheries biologist K Koski on the current proposed project. With Dr. Koski's consent, this project was not taken to the full WRB for review.

ANALYSIS

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.***

The relaxation applied for would provide substantial relief to the applicant by allowing cutting of three trees within the streamside setback of Jordan Creek to improve microwave radio communications. A lesser relaxation would result in continuing communication problems, thus the full variance request is necessary for substantial relief.

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.***

A grant of the variance will result in improved airport communication and preserve and enhance public safety and welfare.

This criterion is met.

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

No evidence indicates that the variance will injure nearby property.

This criterion is met.

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

The use that will be facilitated by granting this variance is an airport-related use, which is allowed in the Industrial zoning district.

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;***

Compliance with the existing standards would significantly interfere with the operations of the FAA Automated Flight Service Station, an airport-related facility that is a permissible principal use in the Industrial Zone.

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;***

Compliance with the standard could potentially interfere with communications between the Automated Flight Service Station and aircraft, as an integral part of the safe operation of the Juneau International Airport.

This sub-criterion is met.

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

Approximately one-third of the property is affected by the habitat setback from Duck Creek. Relocating either the FAA Flight Service Station or the microwave radio dishes would be unreasonably expensive.

This sub-criterion is met.

or

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

There are no pre-existing nonconforming conditions on the parcel.

This sub-criterion is not met.

- 6. *That a grant of the variance would result in more benefits than detriments to the neighborhood.***

A grant of the variance will improve airport safety communication as a major benefit to the community. Potential detriments to Duck Creek are best addressed through implementation or enforcement of the JCMP conditions of the first variance, as discussed in the JCMP section below.

This criterion is met.

JUNEAU COASTAL MANAGEMENT PROGRAM

Variances to the streamside setback ordinance typically require some form of mitigation to address the functional losses to the setback which protect the salmon stream. This is to provide maximum conformance with the Habitat Standard, 49.70.950(c)(7) which states, “ *Rivers, streams and lakes shall be managed to protect natural vegetation, water quality, important fish or wildlife habitat and natural waterflow.* ”

The trees that are proposed for cutting are not on the edge of the streambank and do not provide direct shade to Duck Creek. However any cutting of vegetation within the 50 foot streamside setback reduces the protective buffer to the creek and increases the potential for negative impacts to the creek.

On this particular section of Duck Creek, staff have not been able to develop appropriate mitigation to compensate for cutting these three trees. Several ideas have been discussed with the applicant and Wetland Review Board chair Dr. K Koski. This section of Duck Creek accumulates a significant amount of trash, which harms fish in the stream. This is the reason for the bollard condition in the first variance, to eliminate vehicular access to the site and reduce “partying” in the area. As such, staff and chair Koski suggested monthly trash removal as a project condition. We recognized that this option did not have a direct correlation with project impacts and thus could not be implemented through the strict force of law; it would only work with the applicant’s consent. However FAA would not consent to this option because of the difficulties of arranging trash removal from a distance. Therefore, this mitigation option is not possible for the variance.

Another option that we considered was placement of the fallen trees across Duck Creek to provide additional shade and woody debris for the stream, as recommended by Dr. Koski. However this option will not work without the accompanying condition of trash removal because the trees would act as a dam and capture the trash. This mitigation option is not possible either.

As a last option, staff sought to require a bond to ensure that the conditions of the first variance are met. These two previous conditions for revegetation and installation of bollards are most critical for the creek.. With a requirement of 80 percent survival, planting can occur only in the spring or in September or October, according to Landscape Alaska. The Spring 2005 season has obviously passed, therefore it is important to ensure that the condition is promptly met in the fall season, otherwise enforcement action will be necessary. The goal of a bond is to provide CBJ with the funds to do the work if the applicant should default. However the applicant informed staff that bonds are not possible for the federal government. Thus this option is not possible either. The applicant has assured staff that funds are available and that FAA is committed to fulfilling the conditions. Because other mitigation options are not viable, staff has no additional JCMP conditions to recommend. The conditions of the earlier variance must be either implemented by the applicant or enforced by CBJ.

FINDINGS

1. *Is the application for the requested variance complete?*

Yes. Staff finds the application is complete.

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

Yes. The proposed development complies with the Juneau Coastal Management Program with completion of the conditions of the first variance. No additional conditions are recommended for this variance.

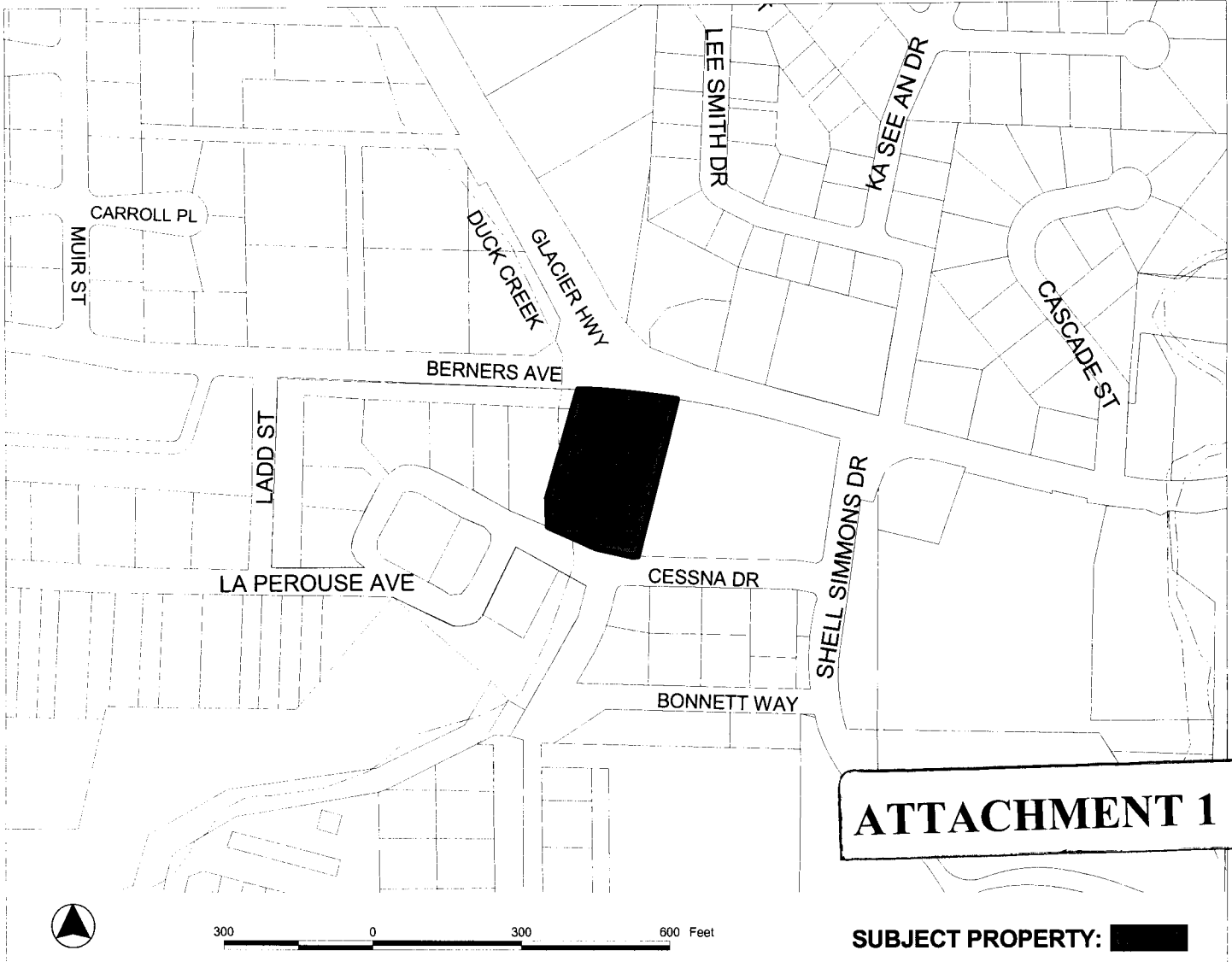
3. *Does the variance as requested, meet the criteria of Section 49.20.250, Grounds for Variances?*

Yes. The variance meets criteria 1, 2, 3, 4, 5A, 5B, 5C, and 6.

RECOMMENDATION

Staff recommends that the Board of Adjustment adopt the Director’s analysis and findings and grant the requested Variance, VAR2005-00049, which allows for cutting three trees as marked within the 50 foot habitat setback of Duck Creek.

NOTICE OF PUBLIC HEARING



ATTACHMENT 1

SUBJECT PROPERTY: [black box]

PROPOSAL: A Variance request to allow the removal of three trees within the 50-foot habitat setback to Duck Creek.

FILE NO:	VAR2005-00049	APPLICANT:	FEDERAL AVIATION ADMINISTRATION
TO:	Adjacent Property Owners	PROPERTY OWNER:	CITY & BOROUGH OF JUNEAU / P&OS
HEARING DATE:	August 9, 2005	PROPERTY ADDRESS:	DUCK CREEK GREENBELT
HEARING TIME:	7:00 P.M.	PARCEL CODE NUMBER:	3-B16-0-100-001-1
PLACE:	ASSEMBLY CHAMBERS Municipal Bldg. 155 South Seward St., Juneau, Alaska 99801	SITE SIZE:	117,935
		ZONING:	Industrial
		ACCESS:	DUCK CREEK GREENBELT

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 Teri Camery at 586-0755, or e-mail: Teri_Camery@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 27, 2005

DEVELOPMENT PERMIT APPLICATION

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

Project Number	CITY and BOROUGH of JUNEAU	Date Received: 7/8/05
Project Name (City Staff to assign name)	Airport Tree Removal	

PROJECT / APPLICANT INFORMATION

Project Description Removal of trees within the 50ft setback of Duck Creek

ATTACHMENT 2

PROPERTY LOCATION

Street Address _____ City/Zip Juneau

Subdivision (if known) Airport Duck Creek Survey (if known) 1742 Block/Tract (if known) _____ Lot (if known) _____

Assessor's Parcel Number (if known) 3B1601000011

LANDOWNER / LESSEE

Property Owner's Name CBJ Contact by E-Mail: _____ Contact Person _____ Work Phone No. _____

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)

I am (we are) the owner(s) or Lessee 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 Alice Salzman _____ Date _____
Landowner/Lessee Signature _____ Date _____

NOTICE: The City and Borough of Juneau staff may need access to the subject property during regular business hours and will attempt to contact the landowner in addition to the formal consent given above. Further, members of the Planning Commission and/or the Design Review Board may visit the property and may do so during the weekend before the scheduled public hearing date.

INITIAL ALL THAT MAY APPLY

APPLICATION TYPE	OWNER'S INITIALS
ALLOWABLE USE	
CONDITIONAL USE	
VARIANCE	
DESIGN REVIEW	
SUBDIVISION	
OTHER _____	

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

Applicant's Name Federal Aviation Administration Contact by E-Mail: alice.salzman@faa.gov Contact Person Alice Salzman Work Phone No. (907) 271-5876

Mailing Address 222 W. 7th Ave. #14, Anchorage, 99513 Home Phone No. _____ FAX No. (907) 271-2674

X Alice Salzman _____ X 6/28/05 _____
Applicant's Signature _____ Date of Application _____

(OFFICE USE ONLY BELOW THIS LINE)

C K	PERMIT TYPE	DATE RECEIVED	APPLICATION NO.	C K	PERMIT TYPE	DATE RECEIVED	APPLICATION NO.
	CONDITIONAL USE APPROVAL				SEWER PERMIT		
X	VARIANCE	<u>7/12/05</u>	<u>VAR 0005-49</u>		GRADING PERMIT		
	DESIGN REVIEW APPROVAL				DRIVEWAY PERMIT		
	SUBDIVISION				RIGHT-OF-WAY PERMIT		
	STREET VACATION				PUB. FAC. TRANSMISS. & EXCAV. PERMIT		
	SIGN APPROVAL BUILDING PERMIT				OTHER - (Describe)		
						Permit Intake Initials	<u>jsm</u>
Zone _____		Total Lot Area _____		Required Setbacks		Front _____ Back _____ Side _____ Other _____	
COMMENTS:							

VARIANCE APPLICATION

(APPLICANT PLEASE FILL IN SHADED AREAS AS A MINIMUM)

Project Number	Project Name Airport Tree Removal	Case Number VAR 2005-00049	Hearing Date	Date Received 7/17/05
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VARIANCE TYPE: Setback Height Bulk Other (Describe) _____

DESCRIPTION OF ACTIVITY WHICH REQUIRES A VARIANCE:

Removal of trees within 50 ft setback of Duck Creek

ATTACHMENT 3

PREVIOUS VARIANCE APPLICATIONS:

Date of Filing: _____ File No. VAR2004-00046, Attached

Variance from which standards: Setback Height Bulk Other (Describe) _____

Was variance granted? Yes No

EXISTING USE OF LAND OR BUILDING(S):

Natural habitat-50 ft setback near Duck Creek

PROPOSED USE OF LAND OR BUILDING(S):

Request the removal of (3) three trees that are directly in line of a microwave radio system which serves communication, surveillance and control of aircraft at the Juneau Airport.

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):

A narrow strip of trees separate FAA property from Duck Creek. This area is in natural state with trees and brush lining the creek. The FAA would remove three of the trees to provide a clear line of sight path for the radio link.

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

These trees are creating radio interference with the FAA radio system affecting aviation communications with FAA air traffic control. This situation is creating disruption of service to numerous FAA facilities and can be mitigated with the removal of three (3) trees.

WHAT HARDSHIP WOULD RESULT IF THE VARIANCE WERE NOT GRANTED?

Compromised safety to aviation in the Juneau area and disruption of air traffic services to commercial and private aviation. This is resulting in aviation delays and possible compromising safety in the Juneau area.

REVIEW APPROVALS

	ADMIN	APPROV
Buildings	_____	_____
Engineering	_____	_____
Planning	_____	_____

VARIANCE FEES

	LEES	WHELAN	DEWITT	MOSE
Application Fees	\$ _____	_____	_____	_____
Adjustment	\$ _____	_____	_____	_____
Total Fee	\$ _____	_____	_____	_____

No fees - Federal Project