

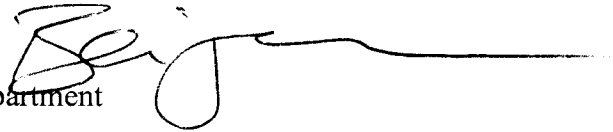
MEMORANDUM

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

DATE: October 20, 2005

TO: Board of Adjustment

FROM: Ben Lyman, Planner
Community Development Department



FILE NO.: VAR2005-00055

PROPOSAL: A Variance request to pave approximately 14' into the 50' habitat setback to Lemon Creek for a portion of the parking lot for the Lemon Creek Breeze-In building.

GENERAL INFORMATION

Applicant: Breeze In Corporation

Property Owner: Breeze In Corporation

Property Address: Concrete Way 0

Legal Description: JRM LT 11

Parcel Code Number: 5-B12-0-106-015-0

Site Size: 58,445 square feet (1.34 acres)

Zoning: (I)--Industrial

Utilities: Public Water and Sewer

Access: Concrete Way

Existing Land Use: Vacant, previously used for Juneau Ready Mix rock product manufacturing

Surrounding Land Use: North - Vacant Industrial
South - Vacant Industrial
East - Vacant Industrial
West - Lemon Creek, Mobile Home Park



ATTACHMENTS

Attachment A:	Site Plan
Attachment G:	Vicinity Map
Attachment H:	Project Narrative
Attachment I:	Draft Wetland Review Board Minutes, October 6, 2005 Meeting
Attachment J:	Landscape Alaska Planting Plan
Attachment L:	Office of Habitat Management and Permitting Memo
Attachment M:	Taku Conservation Society email

PROJECT DESCRIPTION

The Variance request considered herein accompanies a Conditional Use permit (USE2005-00045) for a new Lemon Creek area Breeze In convenience store and support facility to include 7,864 s.f. convenience store and 1,162 s.f. receiving area on the ground floor with a 2,492 s.f. bakery, 833 s.f. administrative offices, and 5,696 s.f. storage on the second floor.

Two Variance requests accompany the USE2005-00045. VAR2005-00054 is a Variance request to calculate the parking requirement for the convenience store portion of the proposed use at the convenience store rate specified at §49.65.530(g) with the bonus provision specified at §49.65.540(b) instead of at the retail rate specified at §49.40.210(a).

VAR2005-00055, the Variance considered herein, is a request to allow a portion of the 50' habitat setback required at §49.70.310(a) (4) to be paved and used for parking and circulation.

The project site plan is shown in Attachment A. The landscaping plan is shown in Attachment J.

The applicant has submitted a project narrative discussing within the Conditional Use permit and the Variance criteria for both requested Variances. The project narrative is included with this memorandum as Attachment H.

The project is further described in the memorandum and attachments for USE2005-00045.

BACKGROUND

Two sections of the Land Use Code require a 50' setback from the Ordinary High Water (OHW) mark of anadromous streams listed in Appendix B of the Juneau Comprehensive Plan. Lemon Creek, which flows over the subject parcel, is listed in Appendix B of the Comprehensive Plan and Appendix C of the Juneau Coastal Management Program; development within 50' of OHW of Lemon Creek is therefore subject to regulation under these sections.

§49.70.310(a) *Development in the following areas is prohibited:*

(4) *Within 50 feet of the banks of streams designated in Appendix B of the comprehensive plan of the City and Borough of Juneau, 1995 Update*

49.70.950(f) *All structures and foundations located adjacent to streams or lakes listed in Table VI-2 of Appendix C of the Juneau Coastal Management Plan, shall have a 50-foot setback from each side of the stream or lake measured from the ordinary high water mark, where feasible and prudent...The setback shall be vegetated or revegetated, where feasible and prudent, and such vegetation or revegetation shall be kept or arranged to maximize shade on the stream.*

The Vicinity Map included as Attachment G shows the subject parcel's boundaries in relation to Lemon Creek and the 50' setback from OHW of Lemon Creek. Approximately one-half of the parcel is taken up by the streambed of Lemon Creek or the habitat setback from OHW. The applicant proposes to pave a portion of the habitat setback for parking and circulation (see Attachment A), and to vegetate the remaining portion of the setback (see Attachments A and J).

The subject parcel was created under SUB2004-00036 (preliminary plat) and SUB2005-00017 (final plat). SUB2004-00036 included rehabilitation and stabilization of portions of the Lemon Creek stream bank as conditions of approval. The required rehabilitation activities are currently underway, but had not been completed at the time of the drafting of this memorandum.

SUB2004-00036 required that an erosion control berm be constructed at the 25' setback from Lemon Creek's OHW line, and that the area between OHW and the 25' setback be re-vegetated. The erosion control berm has been constructed, and some of the required plantings appear to have been made, but during the Wetland Review Board (WRB) site visit on October 5, 2005, Community Development Department (CDD) staff and WRB members observed a large erosion event taking place that had scoured a portion of the berm into Lemon Creek. The CBJ General Engineering Division and CDD are currently addressing this issue with the developer of the subdivision.

Currently, the project site is essentially level between Concrete Way and the 25' setback line from Lemon Creek. At the 25' setback line, an erosion control berm required under the approval of SUB2004-00036 has been constructed. Between the 25' setback line and Lemon Creek itself, the stream bank is being rehabilitated according to the requirements of SUB2004-00036. No vegetation exists in the 25' to 50' portion of the setback from Lemon Creek.

The applicant proposes to plant additional vegetation in the area between the proposed parking lot and the 25' setback line from Lemon Creek. Attachment J describes the proposed vegetation for this area, which is shown in Attachment A.

The Wetland Review Board (WRB) met on October 6, 2005 to discuss the Variance request considered herein, after meeting at the project site on October 5, 2005. The WRB recommended that the Variance request VAR2005-00055 be granted by the Board of Adjustment (BOA) with a

modification to eliminate the eight parking spaces within the habitat setback, and urged the BOA to consider granting companion Variance request VAR2005-00054 at a level higher than that requested by the applicant in order to reduce the amount of paving required within the streamside setback. The draft minutes of the October 6, 2005 meeting are included with this memorandum as Attachment I.

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 or a lesser relaxation specified by the Board of Adjustment would give substantial relief to the owner of the property involved, as approximately one-half of the property involved is either under Lemon Creek or subject to the 50' required habitat setback from the OHW line. The owner of the property involved has volunteered to re-vegetate the portion of the setback not utilized for parking or circulation. Although §49.70.950(f) calls for re-vegetating the entire 50' setback where vegetation is absent, the BOA has not consistently applied this requirement to other properties on which streamside setback Variances have been sought. As such, the voluntary revegetation of this portion of the setback by the applicant is above and beyond what would be required of other property owners. Recommended Condition 1, below, is intended to ensure that the vegetation is planted as proposed.

Yes. Staff finds that criterion 1 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.***

The requested relief is a partial exemption from requirements of the coastal management program (49.70.950(f)), and is therefore not in compliance with purpose (1) of this title. The applicant proposes, however, to construct a project with a site plan featuring functional, straightforward circulation patterns, as well as to plant native riparian vegetation in a currently bare portion of the

lot, maximizing beneficial impacts and minimizing negative impacts of growth, which is in compliance with purpose (3) of this title. Purposes (4), (5), and (6) will be met by the project as proposed.

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

Yes. Staff finds that criterion 2 is met.

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

There is no evidence in the record that the authorization of the Variance will injure nearby property.

Yes. Staff finds that criterion 3 is met.

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

The proposed uses are allowed with Conditional Use and Allowable Use permits in the district involved. USE2005-00045 is a Conditional Use permit for these uses. The Variance does not authorize uses not allowed in the district involved.

Yes. Staff finds that criterion 4 is met.

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

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

The property could be used for any number of permissible principal uses that would comply with the existing standards; however, the uses proposed for this property would require as many as 51 parking spaces under §49.40.210(a), which would require that the owner obtain neighboring properties to provide adequate parking. Instead, the applicant has requested a Variance to reduce the parking requirement, VAR2005-00054. The granting of VAR2005-00054 will allow the owner of the property to use the property for the requested permissible principal use while minimizing the amount of encroachment into the required habitat setback from Lemon Creek.

Yes. Staff finds that sub-criterion 5(A) 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 subject property is one of the largest lots in the subdivision, and although no structures have been permitted in this subdivision to date, those projects that have been discussed with CDD have not involved Variances to reduce the number of required parking spaces.

No. Staff finds that sub-criterion 5(B) is not met. Please see Attachment H for the applicant's recommended finding on this sub-criterion.

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

The subject property is in the unique position of having approximately half of its surface either under Lemon Creek or within the 50' setback from Lemon Creek, encumbering the property in such a way that compliance with the standards makes the developable portion of the property unreasonably expensive.

Yes. Staff finds that sub-criterion 5(C) 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.*

Preexisting nonconforming conditions do not exist on the subject parcel.

No. Staff finds that sub-criterion 5(D) is not met.

Yes. Staff finds that criterion 5 is met through sub-criteria 5(A) and 5(C).

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

A grant of the Variance would allow the project to be constructed as proposed, bringing development with a mixture of Commercial and Industrial uses to the lot. An added benefit would be the vegetation of the currently bare portion of the habitat setback proposed by the applicant. There is no evidence of detriments to the neighborhood that would result from a grant of the Variance, although paving within the habitat setback would reduce the utility of the habitat setback for habitat purposes. The WRB recommends that companion Variance VAR2005-00054 be modified to eliminate eight parking spaces within the habitat setback as they find that the grant of a larger Variance to parking standards results in fewer detriments to the neighborhood than does the proposed Variance to the habitat setback.

Yes. Staff finds that criterion 6 is met.

JUNEAU COASTAL MANAGEMENT PROGRAM

The requested Variance is a Variance to a requirement of the Juneau Coastal Management Program (JCMP), §49.70.950(f).

The WRB has reviewed the Variance request, and has recommended that the Variance request be granted. Draft minutes of the meeting at which this recommendation was made are included as Attachment I. The WRB's motion, which was unopposed, was that:

“the WRB supports VAR2005-0055 with modifications to eliminate eight parking spaces adjacent to Lemon Creek. The area of the eight parking spaces should be re-vegetated with approval of CDD staff. Further, the WRB encourages the Planning Commission to grant a parking Variance to allow for the restoration of this riparian area.”

The State of Alaska Department of Natural Resources Office of Habitat Management and Permitting (OHMP) has submitted comments on the Variance request included with this memorandum as Attachment L. OHMP supports the granting of the requested Variance for the following reasons:

- “The area that would be paved has been cleared of vegetation and presently does not provide significant filtration for runoff or habitat value.”
- “The landscaping will improve the habitat and water quality filtration functions within this zone.”

Recommended Condition 1, below, is intended to ensure that the landscaping is installed as proposed.

Comments on the Variance request considered herein were also received from the Taku Conservation Society (TCS), and are included with this memorandum as Attachment M. The TCS is opposed to granting the requested Variance, and states in their comments that “this 50' strip should be landscaped with natural vegetation and treated as a green zone to protect this anadromous fish stream.”

FINDINGS

1. Is the application for the requested Variance complete?

Yes. The application for the requested Variance is complete.

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

Yes. Based on the above analysis, the proposed development will comply with the JCMP if the requested Variance is granted.

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

Yes. The Variance as requested meets the criteria of Section 49.20.250, Grounds for Variances.

RECOMMENDATION

It is recommended that the Board of Adjustment adopt the Director's analysis and findings on the requested Variance, VAR2005-00055. The Variance would allow for development of a circulation aisle, parking spaces, and dumpster area within the 50' habitat setback from Lemon Creek as shown in Attachment A. The applicant proposes to vegetate the remainder of the 50' habitat setback as listed in Attachment J. Staff recommends that the requested Variance be granted with the following condition:

1. The applicant shall plant the vegetated areas shown in the project site plan, Attachment A, as described in Attachment J, or shall bond for such work, prior to the issuance of a temporary certificate of occupancy. A planting plan showing the location and species of specimens shall be reviewed as part of the building permit review for the structure related to this Variance. The vegetation shall have reached the level of growth specified below and in Attachment J within the time frames allotted or additional specimens shall be planted by the owner of the property so as to achieve the specified level of visual and ground cover.

Shrubs: Solid masses within three growing seasons
Grasses and Lupines: Complete soil cover within two growing seasons