

MEMORANDUM

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

DATE: February 5, 2007

TO: Board of Adjustment

FROM: Matthew Halitsky, Planner *M. Halitsky*
Community Development Department

FILE NO.: VAR2007-00001

PROPOSAL: A variance request to build a house within 330 ft of an active eagle nest.

GENERAL INFORMATION

Applicant: Tim Buchanan

Property Owner: Eileen O'Day

Property Address: 17715 Pt. Stephens Spur Road

Legal Description: USS 3059 LT 26

Parcel Code Number: 8-B35-0-103-002-0

Site Size: 21,344 Square Feet (0.49 acres)

Zoning: D-1, Single-family Residential

Utilities: CBJ Water, On-site Septic

Access: Point Stephens Spur Road

Existing Land Use: Existing Cabin

Surrounding Land Use: North - Zoned WC, Waterfront Commercial
South - Zoned D-1, Single-family Residential
East - Zoned D-1, Single-family Residential
West - Favorite Channel



PROJECT DESCRIPTION & BACKGROUND

The applicant is seeking a variance to construct a new single-family dwelling on Point Stephens Spur Road, located approximately 100-feet from an active bald eagle nest located on an adjacent parcel (Attachment A). Per CBJ §49.70.310(a)(3), development is prohibited within 50-feet of an eagle nest on private land, and within 330-feet of an active nest between March 1 and August 31. A cabin currently exists on-site, and construction is planned to commence this upcoming Spring.

The applicant has been working with Mike Jacobson of the U.S. Fish and Wildlife Service to mitigate potential impacts to the adjacent bald eagle nest. In a letter to the Community Development Department dated December 19, 2006, Mr. Jacobson indicates that the eagles in the immediate area of the subject parcel are accustomed to human activity, and construction activity could take place subsequent to the period of nest establishment, approximately around or after May 31, without detriment to the eagles (Attachment B). In consideration of the Fish and Wildlife Service's comments, the applicant is requesting a variance from CBJ §49.70.310(a)(3) from June 1 to August 31st.

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 requested variance would give substantial relief to the applicant in that the builder could take advantage of the preferred construction season, prior to inclement fall weather.

It is widely accepted that bald eagles in Juneau oftentimes become acclimated to human activity, and three similar variances were approved by the Board of Adjustment just last year. A variance to allow construction, with limitations, would be consistent with justice to other property owners in that the eagles will be protected during the most critical nesting period, while allowing the property to be improved during the primary construction period.

Staff recommends the condition that this variance apply to the period of June 1 through August 31, to protect eagles during the critical period of courtship and nest establishment in early Spring.

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.***

Among the several purposes of the CBJ's Land Use Code is to "implement the policies of the Juneau Coastal Management Program; to ensure that future growth and development in the City and Borough of Juneau is in accord with the values of its residents; to identify and secure, for present and future residents, the beneficial impacts of growth while minimizing negative impacts".

A grant of the requested variance to allow construction within 100-feet of a bald eagle nest during a portion of the active nesting period would allow development to continue, while at the same time protecting the nesting eagles and their young. As stated above, according to Mike Jacobson, of the U.S. Fish and Wildlife Service, these eagles are well accustomed to human activity, and so long as they are protected during the most important part of the nesting period, should not be jeopardized by the proposed construction.

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

Per the attached letter by Mike Jacobson, the nesting eagles should not be harmed if construction activity were allowed after May 31st. In light of Mr. Jacobson's professional opinion, there is no evidence to suggest that a grant of this variance would injure nearby property.

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

Single-family dwellings are allowed in the D-1 zoning district as of right. A grant of this variance would not authorize uses not allowed in this residential zoning district.

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

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

It would be possible for the applicant to delay construction until September when the eagle nesting period is over; however, the inclement fall weather makes starting construction earlier more desirable. Thus, this sub-criterion is not 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;***

As mentioned above, wildlife biologists at the USFWS do not feel that construction activity commenced after May 31 would negatively impact the nesting eagles. These eagles have chosen to nest in an established residential area, and as a result exhibit a fair amount of tolerance to surrounding human activities. Thus, it would be unreasonable to prevent the owner from using the property in a manner that is consistent with existing development in the area. This sub-criterion is met.

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

There is no evidence of a unique physical feature on the property, which would render compliance unreasonably expensive. Thus, this sub-criterion is not 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.*

This sub-criterion does not apply as there are no pre-existing nonconforming conditions present on the subject parcel.

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

Allowing construction to begin while still within the normal building season will aid in quick completion of the structure due to amenable climate conditions, while construction in the late summer-early fall may incur more difficult weather, possibly resulting in prolonged construction time. By expediting construction, the neighborhood will receive the benefit of reducing the period when there will be construction-related disturbances. Since no detriments have been identified, the grant of this variance would result in more benefits than detriments to the neighborhood.

JUNEAU COASTAL MANAGEMENT PROGRAM

There are no enforceable policies of the Juneau Coastal Management Program (JCMP) which apply to this variance request. Instead, the JCMP notes that areas surrounding identified eagle nests are protected from conflicting land uses by provisions of the CBJ Land Use Code, Title 49. As mentioned above, it is the opinion of the USFWS that the proposed development will not negatively impact the eagles. Since no impact is envisioned, the variance meets the intent of CBJ §49.70.310.

FINDINGS

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

Yes. Staff finds the variance application complete. The applicant has submitted adequate information to make a determination on the variance request.

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

Yes. With the variance for the eagles nest granted, staff finds that the proposed development will fully comply with the JCMP. Based upon the opinion of the USFWS, the tenants of the Bald and Golden Eagle Protection Act will also be upheld.

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

Yes. Based upon the above analysis and findings, 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, VAR2007-00001. The variance would allow the construction of a single-family dwelling approximately 100-feet from an established bald eagle nest (nest #193). The approval is subject to the following condition:

1. This variance applies to the period of June 1 through August 31, to protect eagles during the critical period of courtship and nest establishment in early spring. The required 330' setback remains in effect for the period between March 1 and May 31.

U.S. SURVEY
 No. 3059 ALASKA
 TEE HARBOR SMALL TRACT GROUP No 2
 EMERACING
 LOTS 19 TO 35, 19A, 22A, AND 33A

Situated
 on the westerly shore of Favorite
 Channel approximately 1/2 mile
 westward of Stearns, it

Latitude 28° 34' 22" North Longitude 134° 45' 20" West
 At Seaside Corner No. 1
 Area 19.78 acres

o Indicates an iron post
 x Indicates a wooden post

Surveyed by
 Jack C. Mann, District Engineer
 May 18 to May 24, 1951

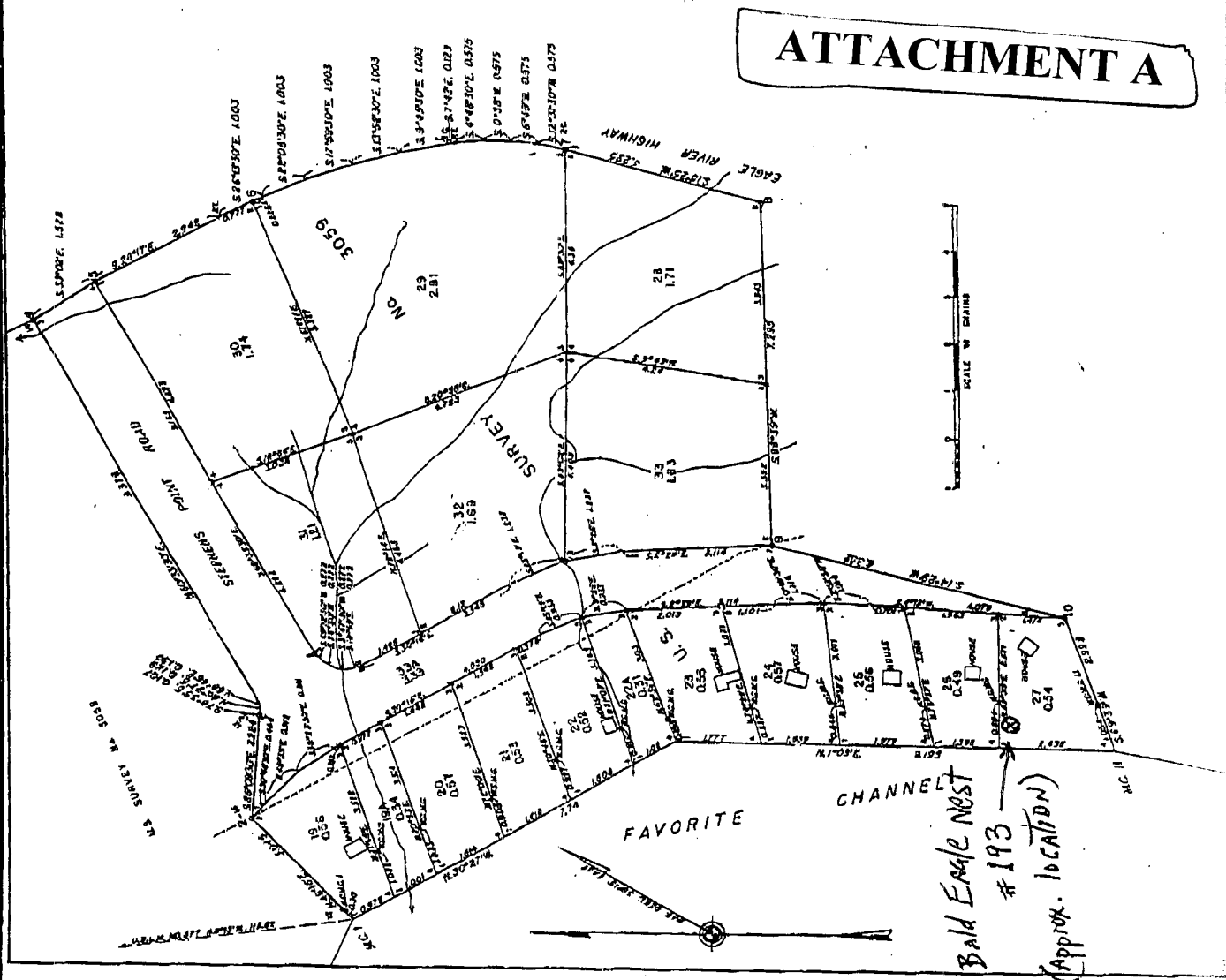
Under amended Special In-
 structions dated September
 27, 1952 and approved
 December 4, 1950

UNITED STATES DEPARTMENT OF THE INTERIOR
 BUREAU OF LAND MANAGEMENT
 Washington, D. C., August 14, 1953

This plat is strictly conformable to the approved
 field notes, and the survey, having been properly
 checked in accordance with the requirements of law
 and the regulations of this Bureau, is hereby accepted.

For the Director
William F. Block
 Chief, Branch of Surveys

ATTACHMENT A





United States Department of the Interior
FISH AND WILDLIFE SERVICE
Office of Migratory Bird Management
Raptor Management Studies
3000 Vintage Blvd., Suite 240
Juneau, Alaska 99801-7100
(907) 780-1163

December 19, 2006

Greg Chaney
City/Borough of Juneau
Community Development Department
155 South Seward Street
Juneau, Alaska 99801

ATTACHMENT B

Dear Greg,

Tim Buchanan contacted me regarding property (lot no. 26) he plans to develop at Pt. Stephens Spur Road. A bald eagle nest (#193) is located on the adjacent lot to the south (address 17705), and Mr. Buchanan's lot is within 330 feet of the nest tree.

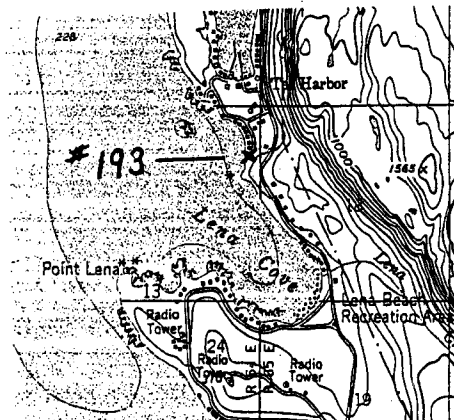
The early nesting period, during courtship and nest establishment, is the period when eagles are most sensitive to disturbance. To help avoid a violation of the Bald and Golden Eagle Protection Act, we typically recommend against the use of heavy equipment or other potentially disturbing construction activity within 330 feet of a nest tree from March 1 to May 31, and this period should continue to August 31 if a nest contains a nesting pair of eagles. If a nest is not in active use by May 31, construction activities within 330 ft could proceed throughout the remainder of the year as long as the nest tree is not jeopardized.

Bald eagle nest #193 is in a residential area with several houses nearby, and it appears the eagles are accustomed to quite a lot of human presence and activity. Even if nest #193 is in active use by eagles after May 31, I believe work at lot no. 26 could take place with a significantly reduced risk of disturbing the eagles.

Please contact me (780-1172) if you have any questions.

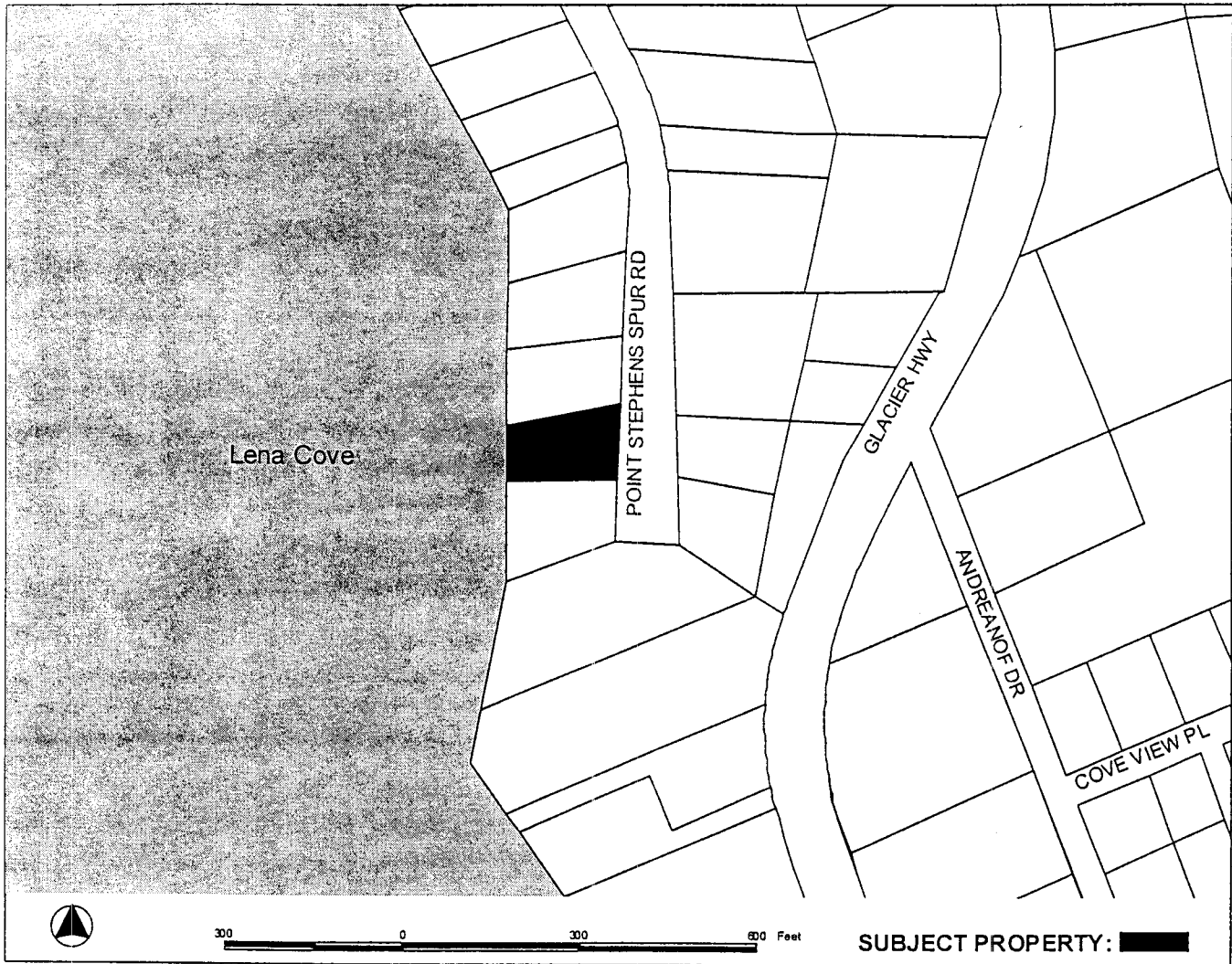
Sincerely,

Mike Jacobson
Mike Jacobson
Wildlife Biologist



RECEIVED
JAN 08 2007
PERMIT CENTER / CDD

NOTICE OF PUBLIC HEARING



PROPOSAL: VAR2007-00001: A Variance request to build a house within 330ft of an active eagle's nest.

FILE NO:	VAR2007-00001	APPLICANT:	TIM BUCHANAN
TO:	Adjacent Property Owners	PROPERTY OWNER:	EILEEN O'DAY
HEARING DATE:	February 13, 2007	PROPERTY ADDRESS:	17715 PT STEPHENS SPUR RD
HEARING TIME:	7:00 P.M.	PARCEL CODE NUMBER:	8-B35-0-103-002-0
PLACE:	CENTENNIAL HALL Egan Room 101 Egan Drive Juneau. AK 99801	SITE SIZE:	21,344 square feet
		ZONING:	D1
		ACCESS:	PT STEPHENS SPUR 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

Matt Halitsky at 586-0781, or via e-mail: Matthew_Halitsky@ci.juneau.ak.us

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

Date notice was printed: January 29, 2007

VARIANCE APPLICATION

(APPLICANT PLEASE FILL IN SHADED AREAS AS A MINIMUM)

Project Number PRJ2007-002	Project Name Buchanan Eagle Nest setback	Case Number VAR07-001	Hearing Date	Date Received 1/8/07
VARIANCE TYPE: Eagle Nest <input checked="" type="checkbox"/> Setback <input type="checkbox"/> Height <input type="checkbox"/> Bulk <input type="checkbox"/> Other (Describe) CBJ 49.70.310				

DESCRIPTION OF ACTIVITY WHICH REQUIRES A VARIANCE:
Build simple family dwelling.
 A variance request to build an eagle's nest a house within 330 feet of an active eagle's nest between March 1st and August 31st per CBJ 49.70.310.

PREVIOUS VARIANCE APPLICATIONS:

Date of Filing: _____ Yes No

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

Was variance granted? Yes No

EXISTING USE OF LAND OR BUILDING(S):
HAS a CABIN there already.

PROPOSED USE OF LAND OR BUILDING(S):
Full time residence

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?
It would be difficult to build the home

REVIEW APPROVALS		VARIANCE FEES			
Buildings	<u> </u>	Application Fees	\$ <u>350</u>	<u> </u>	<u> </u>
Engineering	<u> </u>	Adjustment	\$ <u> </u>	<u> </u>	<u> </u>
Planning	<u> </u>	Total Fee	\$ <u>350</u>	<u> </u>	<u> </u>

VOISIB 23771 1/8/07