

MEMORANDUM

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

DATE: November 16, 2011

TO: Board of Adjustment

FROM: Nicole Jones, Planner
Community Development Department

FILE NO.: VAR20110025

PROPOSAL: A Variance request to exceed the 10' maximum height standard for a canopy projecting into a city owned right-of-way.

GENERAL INFORMATION

Applicant: Rich Coneen, Architect

Property Owner: Alaska Red Dog Saloon, LLC

Property Address: 276 S. Franklin St., Juneau

Legal Description: Tidelands Addition Block 82 Lot 5 FR

Parcel Code Number: 1-C07-0-K82-004-0

Site Size: 6,159 square feet

Zoning: Mixed Use (MU)

Utilities: Public Water & Public Sewer

Access: Admiral Way

Existing Land Use: Commercial

Surrounding Land Use: Northwest - Mixed Use (MU), Commercial Retail
Southeast - Mixed Use (MU) Admiral Way right-of-way
Northeast - Mixed Use (MU) S. Franklin right-of-way
Southwest - Mixed Use (MU), Commercial Retail



ATTACHMENTS

Attachment A	Applicant's Submittals
Attachment B	Downtown Historic District Map
Attachment C	Vicinity Map

PROJECT DESCRIPTION

The applicant is requesting a variance to the ten foot maximum canopy height. The proposed canopy height for this project is 12 feet from the finished grade to the bottom of the canopy (see attachment A). This canopy, as proposed, will extend into the Admiral Way right-of-way by approximately 18 inches; all support structures will be located on the private property. Because of the proposed encroachment and the location of the parcel within the Mixed Use (MU) zoning district, the canopy must conform to CBJ § 49.15.800, specifically CBJ § 49.15.830(a-b).

CBJ § 49.15.830 (*Emphasis added*)

(a)Canopies and awnings shall comply with the following:

(1)Canopies or awnings shall be approved only if a sidewalk, curb, and gutter extending the entire length of the property frontage exists or is to be constructed under the same permit application as the awning or canopy.

(2)Vertical support structures from the pedestrian way are prohibited.

(3)Canopies shall be designed to direct drainage water into an approved drainage way.

(4)No awning or canopy shall be constructed in a location or manner which would obstruct, obscure, or interfere with traffic, a traffic control device, street sign, streetlight or utility pole.

(b)In the MU zoning district, canopies and awnings shall meet the following requirements in addition to those in subsection (a), above.

(1)Canopies and awnings shall span the entire frontage of a building.

(2)Canopy height, as measured from the sidewalk to the lowest point on the canopy, shall be a minimum of eight feet and a maximum of ten feet above the sidewalk. Canopies shall match the existing canopy heights of adjacent structures, where practicable.

(3)For new construction, any clerestory must be located above any canopy or awning.

This variance proposal does not meet CBJ §49.15.830(b)(1-2). The height of the canopy is 12 feet from finished grade to the bottom of canopy and the canopy does not span the entire frontage of the building or match the existing canopy height of adjacent structures. Section 3 does not apply because no clerestories are proposed.

BACKGROUND

The existing Red Dog Saloon property straddles the border of the Downtown Historic District and located within the Mixed Use Zoning District. The addition and canopy that is presented in this variance application is outside of the Downtown Historic District and is not subject to the Downtown

Historic District Guidelines (see attachment B & C). The portion of the Red Dog that fronts on S. Franklin is within the Historic District. This canopy however, is subject to additional requirements, but not the Downtown Historic District Guidelines, because it is proposed to project into a city right-of-way.

The Canopy and Awning section is a recent addition to the Land Use Code, codified in April of 2007. The purpose of the Canopy and Awning section is to allow canopies to project into the right-of-way while providing a standard. This section of code identifies additional criteria for canopies within the Historic District and the Mixed Use Zoning District. Very few canopies have been constructed since the adoption of the Canopy and Awning section. This proposal does not meet the criteria of the Canopy and Awning section as described above, therefore a variance is required.

This proposal was recently reviewed as a Conditional Use Permit because the parcel is located in a moderate hazard zone. In addition to the Conditional Use Permit (USE20110016), this site also recently received a variance to the 5% minimum vegetative cover (VAR20110016).

ANALYSIS

Staff solicited comments from Community Development Building Department, CBJ Streets, General Engineering, CBJ Assessor's Office, Fire Department, and CBJ Public Works.

Comments Received:

Charlie Ford, Building Codes Official, CBJ Building Department
The Building Department has no issues with this project.

John Sahnaw, Appraiser II, CBJ Assessor's Office
The Assessor's department has no issues with this variance application.

Dan Jager, Fire Marshall, CBJ Fire Department
I do not see any fire department issues with this project.

Ed Foster, Streets Superintendent, CBJ Public Works
I'm assuming the Land Use Code requirement of 8-10' was established to ensure the canopy was effective in protecting the area below of snow and rain. Since it doesn't appear this canopy is going to extend far enough into the ROW to protect the sidewalk anyway we don't have a problem with approval of a variance to make it 12' in height.

Ron King, Chief Regulatory Surveyor, CBJ Engineering
General Engineering has no issues.

Based on the comments received, staff does not recommend any conditions of approval.

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.***

Granting the variance would provide the property owner substantial relief because they would be spared the cost of redesigning their project. Meeting the 10 foot canopy height would most likely affect their project significantly since there are windows directly below the canopy.

There are several canopies downtown that exceed 10 feet in height. There are also a few canopies that exceed 12 feet in height. Most of the canopies that exceed the height limit were constructed prior to the adoption of the Canopy and Awning section of code which was codified on April 23, 2007. The Downtown Transportation Center is the only variance to canopy height. The Downtown Transportation Center was granted a variance to exceed the 10 foot canopy height limit by two feet (VAR2009-00008). Other canopies adjacent to this project comply with the Canopy and Awning section of code (CBJ §49.15.800). If this variance were to be approved, this canopy would be the only canopy for blocks that exceeds the canopy height and does not match existing adjacent canopies.

A grant of this variance may provide the property owner with substantial relief; however, this project is not consistent with justice to other property owners.

No. Staff finds that criterion 1 is not 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 purpose and intent of Title 49 is established in CBJ §49.05.100 Purpose and Intent. If approved this variance would meet the intent of the Land Use Code, specifically CBJ §49.05.100(5) and in part CBJ §49.05.100(2) and CBJ §49.05.100(4):

CBJ §49.05.100 (Emphasis added)

The several purposes of this title are:

(2) To ensure that future growth and development in the City and Borough is in accord with the values of its residents;

*(4) **To ensure that future growth is of the appropriate type, design and location,** and is served by a proper range of public services and facilities such as water, sewage, and electrical distribution systems, transportation, schools, parks and other public requirements, and in general to promote public health, safety and general welfare;*

(5) To provide adequate open space for light and air;

Title 49 Land Use Code, specifically the Canopy and Awning section of code provides a clear set of criteria for canopies. These criteria are established to ensure that new development meets the intent of CBJ §49.05.100(4), “to ensure that future growth is of the appropriate type, design and location...” Because the proposal does not match the height of the existing canopies and is not spanning the entirety of the façade this proposal does not meet the intent of Title 49.

There has been no evidence presented to suggest that a canopy at the height of 12 feet and encroaching into the right-of-way approximately 18 inches would endanger the public safety or welfare; however, this proposal does not meet the intent of Title 49 as discussed above.

No. Staff finds that criterion 2 is not met.

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

No evidence has been presented suggesting that granting this variance would result in injury to nearby property. Furthermore, the encroachment is into CBJ right-of-way and the Street Superintendent, Ed Foster, did not have any concerns with the proposal.

Yes. Staff finds that criterion 3 is met.

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

Canopies are allowed in any zoning district providing that they meet the setbacks or the Canopy and Awning section of code (CBJ §49.15.800). Furthermore, canopies are encouraged in the downtown area to protect pedestrians from inclement weather.

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 owner currently uses the property for a bar/restaurant and a retail store. Denying the construction of a 12 foot high canopy would not prevent the owner from using the property for a permissible principal use.

No. Staff finds that sub-criterion 5A 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;*

The owner could build a 12 foot high canopy if the canopy was not projecting into the right of way. Reducing the height of the canopy would be more consistent in scale and appearance with existing development in the neighborhood. The existing portion of the Red Dog Saloon has a canopy with a height of less than 10 feet.

No. Staff finds that sub-criterion 5B is not met.

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

This lot is flat and densely developed. There are no unique physical features identified for this property that complying with the standards would be unreasonably expensive.

No. Staff finds that sub-criterion 5C 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 property has an approved variance for vegetative cover. This proposal will not affect the applicant's ability to meet the conditions of the approved vegetative cover variance (VAR20110016). There are no pre-existing non-conformities for this parcel.

N/A. Staff finds that this sub-criterion 5D is not applicable.

Since none of the sub-criterion are met, criterion 5 is **not met**.

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

The granting of this variance would offer a canopy that would be 18 inches wider than what could be permitted outright. A wider canopy would offer more protection from wind and rain. However, taller canopies offer less pedestrian protection from the environment than lower canopies. It is not clear whether or not the added width of the canopy would compensate for the added height of the canopy.

The applicant states that this canopy is more visually appealing and offers a richer architectural presence. While this canopy may have architectural appeal, it is the intent of the Land Use Code for canopies to match existing canopies where appropriate. In this case it would be appropriate for the proposed canopy to match the existing canopy. This proposal is for the same commercial business on the same parcel (see attachment A).

A grant of this variance would not result in more benefits than detriments to the neighborhood.

No. Staff finds that criterion 6 is not 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 operations. The application submittal by the applicant, including the appropriate fees, substantially conforms to the requirements of CBJ Chapter 49.15.

Per CBJ §49.70.900 (b)(3), General Provisions, the Director makes the following Juneau Coastal Management Program consistency determination:

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

N/A. As discussed in the staff report above, this variance request would comply with the Juneau Coastal Management Program.

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

No. Based on the analysis above, staff finds that the Variance does not meet the criteria of CBJ §49.20.250 specifically because criteria 1, 2, 5, and 6 are not met.

RECOMMENDATION

Staff recommends that the Board of Adjustment adopt the Director's analysis and findings and deny the requested Variance, VAR20110025. The Variance, if approved, would allow for a new canopy to exceed the canopy height limit by 2 feet for a canopy that projects into a city owned right-of-way.

DEVELOPMENT PERMIT APPLICATION

Project Number	CITY and BOROUGH of JUNEAU	Date Received: 10/20/11
Project Name (City Staff to Assign Name)		

INFORMATION

Project Description <i>Variance to exceed the 10' maximum height standard for a canopy.</i>		
PROPERTY LOCATION		
Street Address <i>200 Admiral Way</i>	City/Zip <i>Juneau AK</i>	
Legal Description(s) of Parcel(s) (Subdivision, Survey, Block, Tract, Lot) <i>Tidelands Addition BL 82 Lt 5 FR</i>		
Assessor's Parcel Number(s) <i>1C070K820040</i>		
LANDOWNER/ LESSEE		
Property Owner's Name <i>Alaska Red Dog Saloon LLC</i>	Contact Person: <i>Eric Forst</i>	Work Phone: <i>463-3658</i>
Mailing Address <i>278 S. Franklin St.</i>	Home Phone:	Fax Number:
E-mail Address <i>eric@reddogsaloon.com</i>	Other Contact Phone Number(s): <i>723-1275</i>	

PROJECT / APPLICANT

LANDOWNER/ LESSEE CONSENT <small>****Required for Planning Permits, not needed on Building/ Engineering Permits****</small>		
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	Landowner/Lessee Signature 	Date <i>10/20/11</i>
X	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 may visit the property before the scheduled public hearing date.		
APPLICANT <small>If the same as OWNER, write "SAME" and sign and date at X below</small>		
Applicant's Name <i>Rich Coneen Architect</i>		Contact Person:
Mailing Address <i>7081 N. Douglas Hwy</i>		Home Phone:
E-mail Address <i>rich@richcooneen.com</i>		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)		<i>10/20/11</i>	<i>VAR20110025</i>
	Wetlands Permits			
	Zone Change Application			
	Other (Describe)			
***Public Notice Sign Form filled out and in the file.				
Comments: <i>Rich Coneen will provide narrative to address variance criteria. This is a variance to 49.15.830(B)(2)</i>				Permit Intake Initials <i>NKT</i>

ATTACHMENT A

VARIANCE APPLICATION

Project Number	Project Name (15 characters)	Case Number <u>VAR11-25</u>	Date Received <u>10/20/11</u>
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TYPE OF VARIANCE REQUESTED:

<input type="checkbox"/> Variance to the Sign Standard (VSG)	<input checked="" type="checkbox"/> Variance to Dimensional Standards (VDS)
<input type="checkbox"/> Variance to Habitat Setbacks (VHB)	<input type="checkbox"/> Variance to Parking Requirements (VPK)
<input type="checkbox"/> Variance to Setback Requirements (VSB)	

DESCRIPTION OF ACTIVITY WHICH REQUIRES A VARIANCE:

Height of new canopy

Previous Variance Applications?

☒ YES

☐ NO

Date of Filing: VAR 20110016

Previous Case Number(s): _____

Was the Variance Granted?

☒ YES

☐ NO

UNIQUE CHARACTERISTICS OF LAND OR BUILDING(S):

Red Dog Saloon is iconic Alaska destination

UTILITIES AVAILABLE:

WATER: ☒ Public ☐ On Site

SEWER: ☒ Public ☐ On Site

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

WHAT HARDSHIP WOULD RESULT IF THE VARIANCE WERE NOT GRANTED?

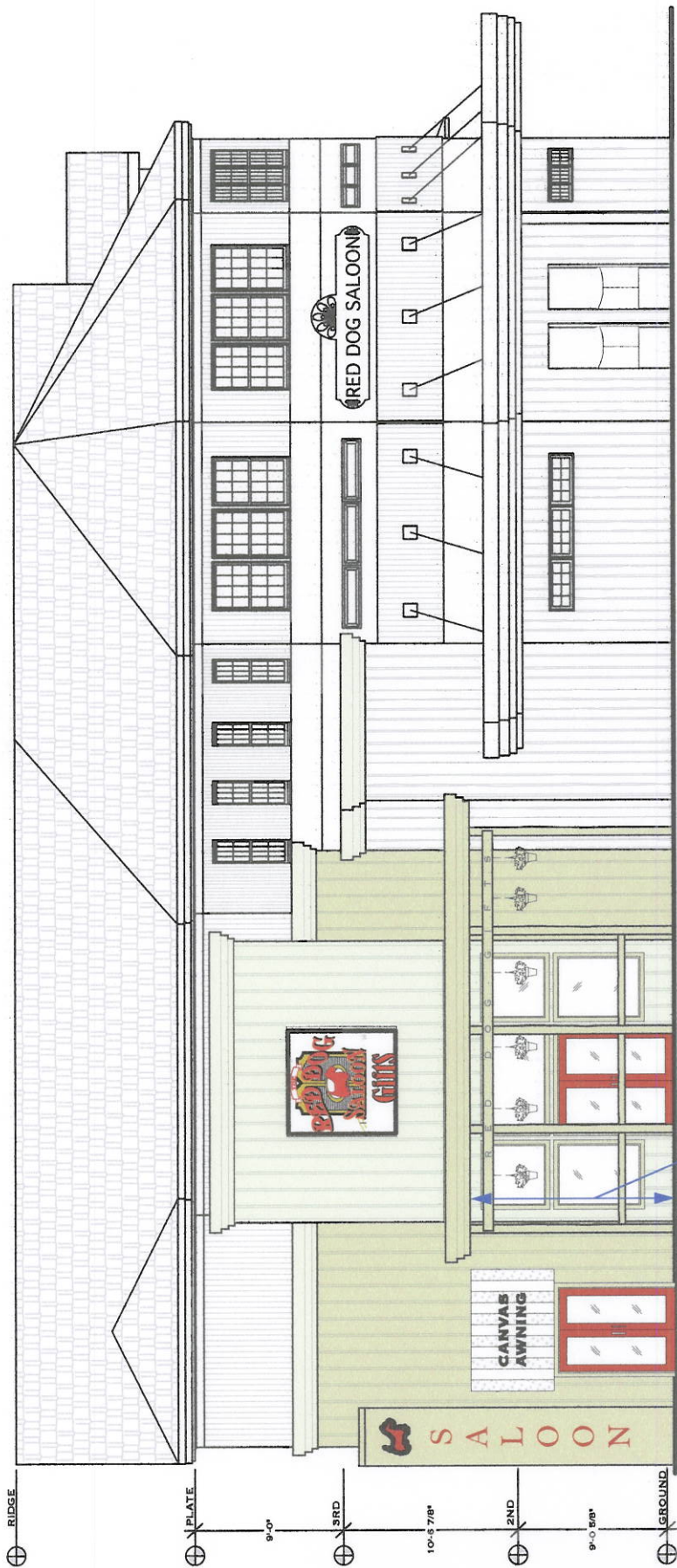
For more information regarding the permitting process and the submittals required for a complete application, please see the reverse side.

If you need any assistance filling out this form, please contact the Permit Center at 586-0770.

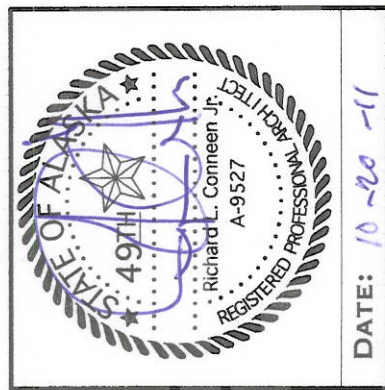
VARIANCE FEES

	Fees	Check No.	Receipt	Date
Application Fees	\$ <u>400.00</u>			
Adjustment	\$			
Total Fee	\$ <u>400.00</u>	<u>vc credit</u>	<u>CDD282</u>	<u>10/20/11</u>

NOTE: MUST BE ACCOMPANIED BY DEVELOPMENT PERMIT APPLICATION FORM



**VARIANCE REQUEST TO CANOPY STANDARDS:
THE PROPOSED CANOPY AT THE RED DOG RETAIL ADDITION
IS WITHIN THE PUBLIC RIGHT OF WAY. THIS VARIANCE WILL
ALLOW THE HEIGHT TO THE UNDERSIDE OF THIS CANOPY TO
BE INCREASED TO 12 FT. FROM THE REQUIRED 10 FT. MAXIMUM.
REFERENCE ORDINANCE #49.15.830-(B)-(2)**

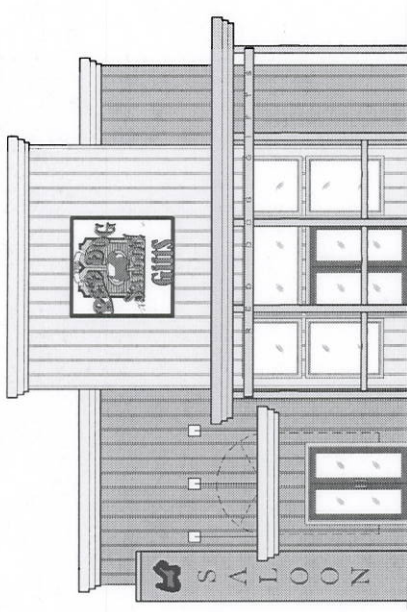


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OCT 20 2011
PERMIT CENTER/CDD

Red Dog Saloon Addition - elevation

10-20-11

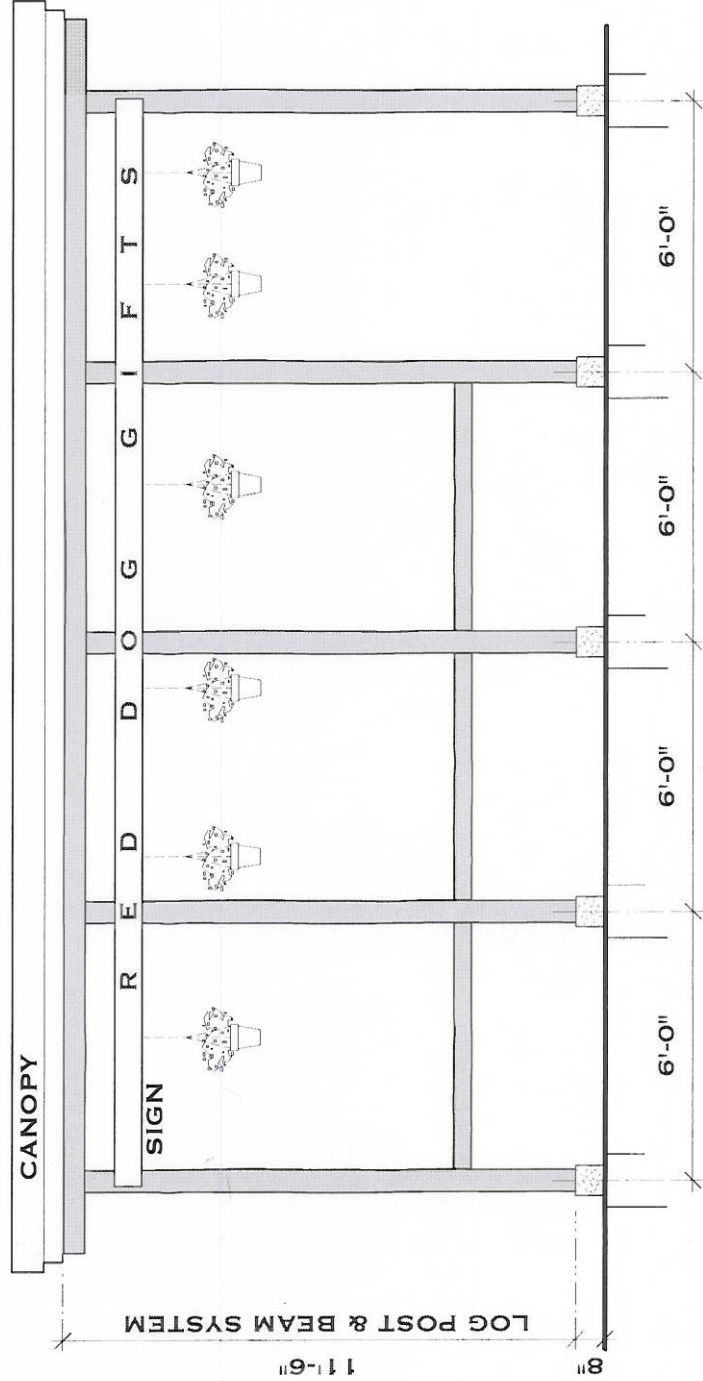
RICH CONNEEN
Architects LLC
tel (907) 596-3180
fax (907) 596-3182
rich@richconneen.com



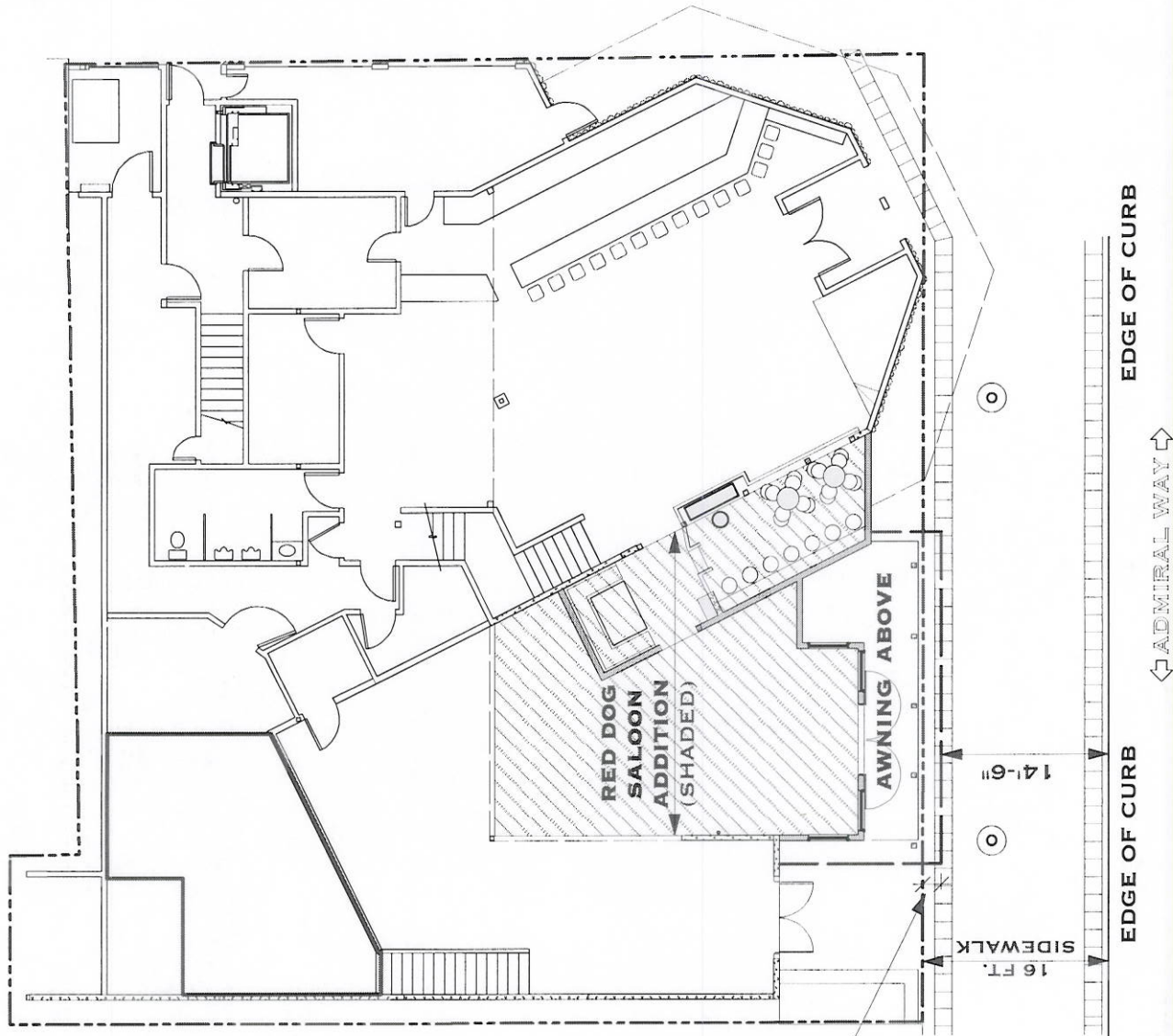
PREVIOUSLY APPROVED FACADE:
 THE RED DOG SALOON RETAIL ADDITION REPLICATES AN OLD WEST, FLAT FRONT, ITALIANATE ARCHITECTURAL STYLE. A LARGER FACADE WINDOW HEIGHT IS ONE OF THE INGREDIENTS OF THE FACADE'S SUCCESS. ALSO ONE OF THE FEATURES IS THAT THE CANOPY BE RAISED A FEW FEET HIGHER THAN IT'S ADJACENT RED DOG CANOPY.

FOR THIS REASON WE ARE ASKING THAT THE CANOPY BE ALLOWED TO HAVE A 12 FOOT CLEARANCE RATHER THAN THE ALLOWED 10 FOOT CLEAR HEIGHT FROM THE SIDEWALK.

SINCE THIS MINOR 18" ENCROACHMENT AFFECTS FACADES ON THIS MINOR PUBLIC WAY ONLY, AND SINCE THE APPROVAL SO GREATLY IMPROVED THE FACADES AESTHETIC APPEAL, WE ARE ASKING THAT THE PLANNING COMMISSION APPROVE THIS VARIANCE.



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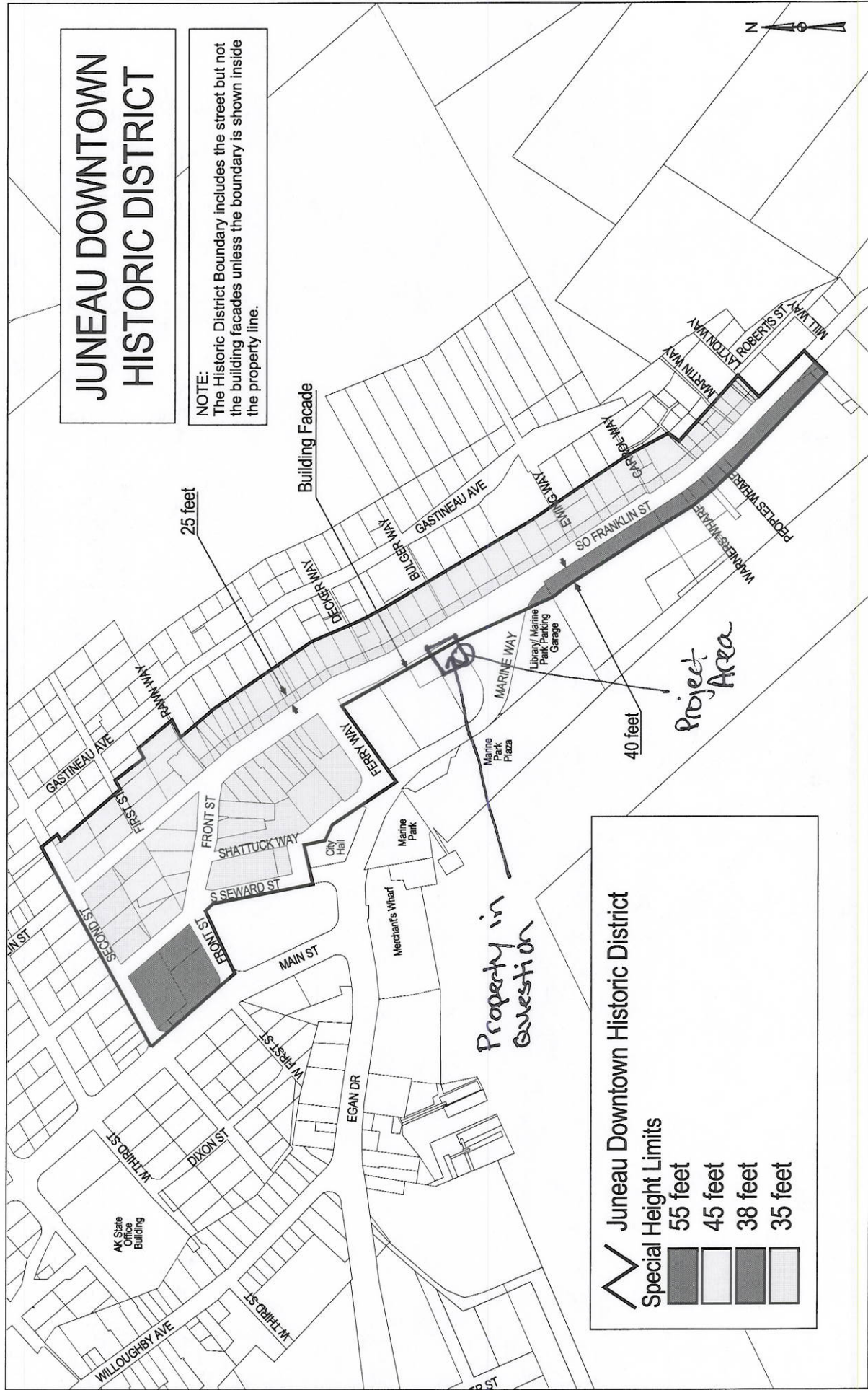


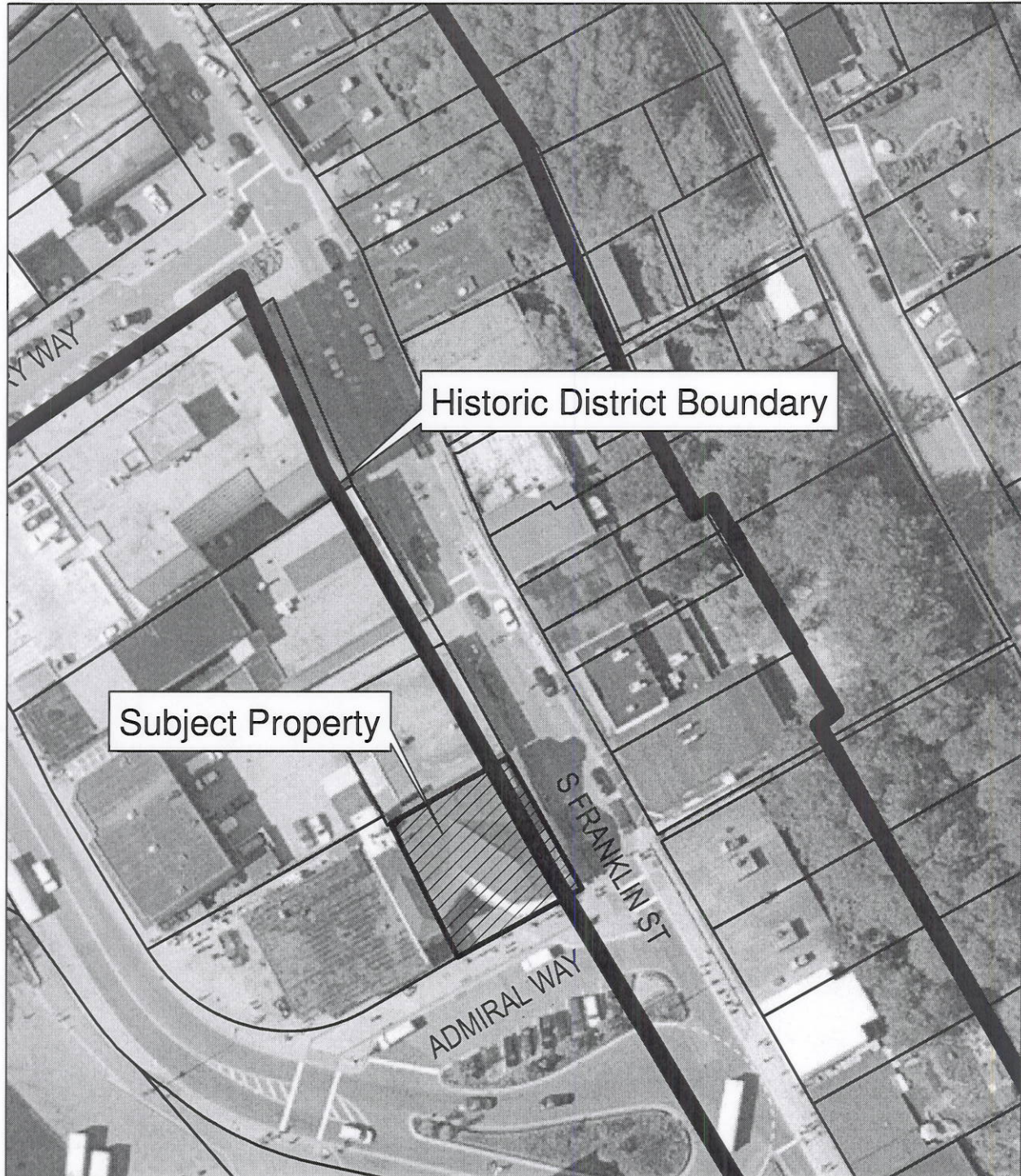
**SUBJECT ENCROACHMENT:
PROPOSED AWNING PROJECTS
18" INTO THE PUBLIC RIGHT OF WAY**

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OCT 24 2011
PERMIT CENTER/CDD

JUNEAU DOWNTOWN HISTORIC DISTRICT

NOTE:
The Historic District Boundary includes the street but not the building facades unless the boundary is shown inside the property line.





RED DOG SALOON
VICINITY

Map created: 10/31/ 2011



CITY/BOROUGH OF JUNEAU
ALASKA'S CAPITAL CITY

0 25 50 100 150
Feet

ATTACHMENT C