

# MEMORANDUM

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

**DATE:** March 8, 2013

**TO:** Board of Adjustment

**FROM:** Jonathan Lange, Planner *JL*  
Community Development Department

**FILE NO.:** TMI2013 0001

**PROPOSAL:** Text interpretation of Title 49 CBJ Land Use Code, regarding whether an accessory apartment can be permitted on a lot less than the minimum lot size for lots with two stand-alone single-family residences per CBJ 49.25.510(d)(2)(g)(i) and CBJ 49.25.510(e)

## GENERAL INFORMATION

**Applicant:** Gerald O Butler

**Property Owner:** Gerald and Pamella Butler

**Property Address:** 5167 North Douglas Highway

**Legal Description:** USS 2960 Lot 12A

**Parcel Code Number:** 6-D07-0-101-007-0

**Site Size:** 54,989 square feet

**Comprehensive Plan Future Land Use Designation:** RDR (T) ULDR – Rural Dispersed Residential (Transition Zone) Urban Low Density Residential

**Zoning:** D-1 (T) D-3

**Utilities:** Public water and sewer

**Access:** North Douglas Highway

**Existing Land Use:** Two legally nonconforming single-family dwellings



Surrounding Land Use:

North	- D-1(T)D-3 Residential; single-family dwelling
South	- RR – vacant rural reserve; and D-1 (T) D-3 Residential; single-family residence under construction
East	- D-1(T)D-3 Residential; single-family dwelling
West	- D-1(T)D-3 Residential; mobile home on lot

The City and Borough of Juneau's Land Use Code, CBJ §49.20.300 authorizes the Board of Adjustment to interpret the Land Use Code text.

*The board of adjustment is authorized to interpret the zoning map and the text of this title and to pass upon questions of lot lines or district boundary lines and similar questions presented by the department or a property owner directly concerned.*

## **PROJECT DESCRIPTION**

Community Development Department staff requests a text interpretation of the City and Borough of Juneau's Land Use Code to determine which sections of code should be applied when considering permit review for accessory apartments on a legally non-conforming substandard lot with two detached single-family dwellings.

## **BACKGROUND**

The Community Development Department has received a Conditional Use permit application for an Accessory Apartment permit for a 524 square foot accessory apartment (AAP2013 0004). The Conditional Use permit has also been requested because the lot is 76% of the minimum lot size required for two single-family dwellings listed in the Table of Dimensional Standards, CBJ §49.25.400 in a D1 district.

## **ANALYSIS**

The Land Use Code contains the following provision for accessory apartments on substandard lots:

*CBJ §49.25.510(d)(2)*

*(G) The Accessory Apartment shall be reviewed through the Conditional Use Permit process at CBJ 49.15.330 if the lot upon which the accessory apartment is proposed is:*

*(i) smaller than the Minimum Lot Size for Permissible Uses listed in the Table of Dimensional Standards, CBJ §49.25.400;*

A Conditional Use permit is also required per the Table of Permissible Uses in *all* cases where two single-family lots are present on a lot of any size:

*CBJ §49.25.300 section 1.135*

*Two single-family detached, one or two accessory apartments, in the D-1 zone:*

*(3) A Conditional Use permit is required with planning commission approval.*

The purpose of Conditional Use permits is explained in CBJ §49.15.330 – *Conditional Use permit*:

*(a) Purpose. A conditional use is a use that may or may not be appropriate in a particular zoning district according to the character, intensity, or size of that or surrounding uses. The conditional use permit procedure is intended to afford the commission the flexibility necessary to make determinations appropriate to individual sites...*

The inquiry under review is whether it is appropriate for Accessory Apartments to be permitted on lots which are below the minimum lot size that contain two legally nonconforming single family dwellings.

When evaluating this question, the intent of CBJ §49.25.510 also needs to be considered:

*(e) Detached single-family dwellings. Two detached single-family dwellings located on a single lot within the Rural Reserve, D1 and D3 zoning districts **shall each meet 100 percent of the applicable square-footage requirement.***

*CBJ §49.30.400 Aggravation of nonconforming situations* is also relevant to this issue:

*(a) ...nonconforming situations may not be aggravated. As used herein, “aggravate” includes...*

*(2) ...further violation of density requirements...*

While the Land Use Code provides a provision for the owner of a substandard lot with one single-family residence to apply for a Conditional Use Permit to build an Accessory Apartment, the same provision is not clearly appropriate for a legally nonconforming substandard with two single family dwellings.

The effect of allowing an accessory apartment in one or both of the homes on a substandard lot is to create a tri-plex or four-plex in a low density neighborhood. To allow this on a substandard lot creates a small area of multifamily density in a low density neighborhood.

## **FINDINGS**

Although it is rather rare for a substandard lot to legally have two single family dwellings, the interpretation of this issue will be applied to all similar situations Borough wide. If the Board of Adjustment determines that it is appropriate for two dwellings on substandard lots to have Accessory Apartments through the Conditional Use process, this interpretation would be applied by staff to similar situations in the future.

## **RECOMMENDATION**

The Director of Community Development is requesting that the Board of Adjustment interpret analysis above and determine if:

1. A Conditional Use permit, as requested per *CBJ §49.25.510(d)(2) to allow an accessory apartment, and the Table of Permissible Uses CBJ §49.25.300 section 1.135*, would allow for a substandard lot with two single-family homes to apply for a Conditional Use Permit for an accessory apartment one, or both, single-family residences.

Or;

2. Substandard lots with two single-family homes do not meet *CBJ §49.25.510(e)* which requires 100 percent of the applicable required square footage. Accessory Apartments may not be permitted on lots below the minimum lot size if two legally nonconforming single-family residences are present. If this is determined to be the case, then Conditional Use permit APP2013 0004 will be withdrawn.