

# MEMORANDUM

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

**DATE:** March 21, 2013

**TO:** Board of Adjustment

**FROM:** Beth McKibben, Planner *BMK*  
Community Development Department

**FILE NO.:** VAR2013 0006

**PROPOSAL:** Variance request to reduce the required 20 foot front yard setback to 13.8 feet for a one car garage.

## GENERAL INFORMATION

**Applicant:** Dale Whitney

**Property Owner:** Dale Whitney

**Property Address:** 3621 Mendenhall Loop Road

**Legal Description:** Lureco Block B Lot 2 Fraction

**Parcel Code Number:** 5-B25-0-102-002-0

**Site Size:** Current 20,737 sq ft \*(7,557 sq ft proposed)

**Comprehensive Plan Future Land Use Designation:** Map G ULDR (urban low density residential)

**Zoning:** D-5, single-family and duplex residential

**Utilities:** City water and sewer

**Access:** Current driveway to Mendenhall Loop Road, proposed access to McGinnis Drive

**Existing Land Use:** Single Family residential

**Surrounding Land Use:**

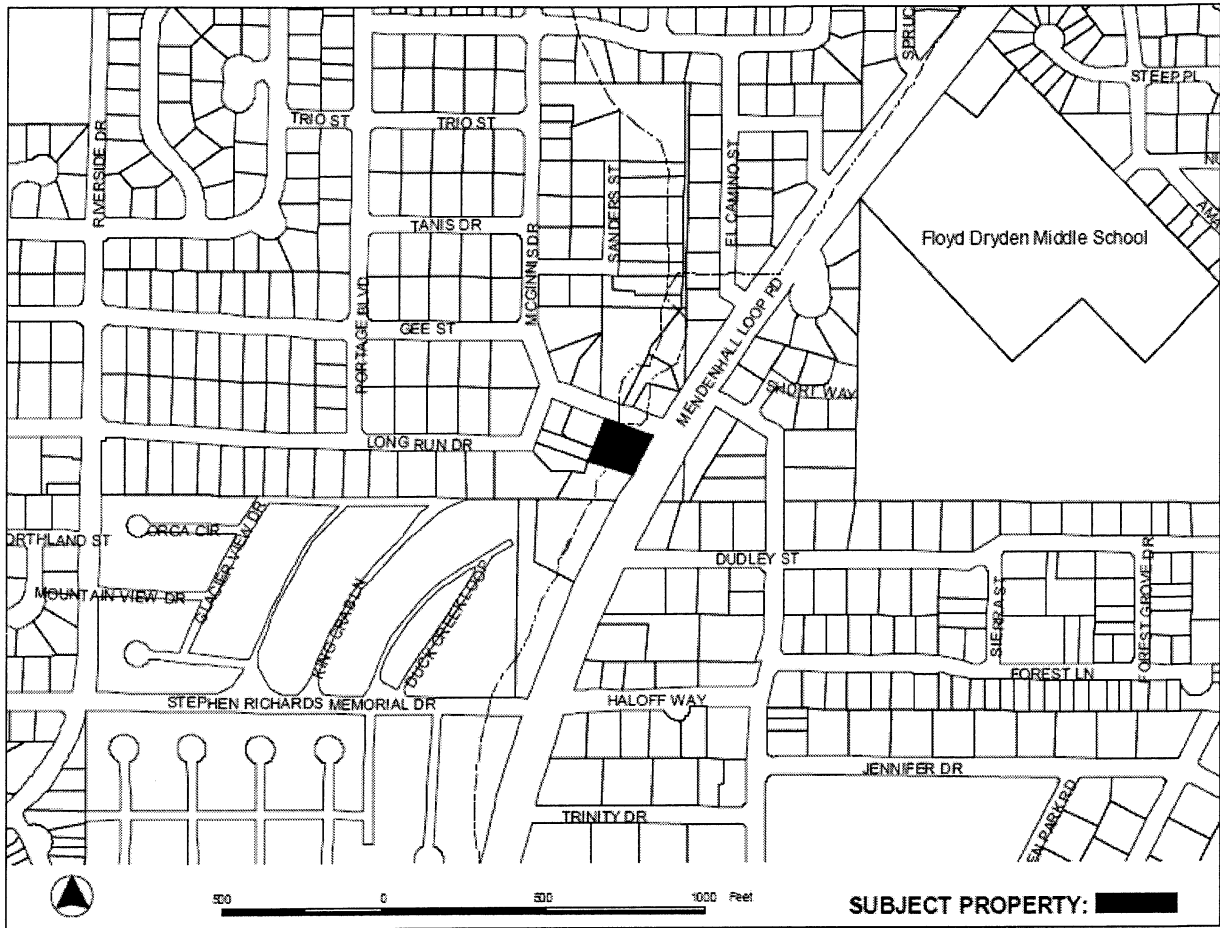
North	McGinnis Drive, D-5 residential
South	D-5 residential
East	Mendenhall Loop Road, D-5 residential
West	D-5 residential



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### **PROJECT DESCRIPTION**

The applicant has submitted a minor subdivision application (SMN2012 0009) to create two new lots from one existing parent lot. One of the proposed lots, the subject of this variance request, will be a corner lot with frontage on both Mendenhall Loop Road and McGinnis Drive, and will contain an existing home and driveway. The existing driveway currently has back-out parking with access onto Mendenhall Loop Road, a minor arterial street. The second, undeveloped lot will have frontage only on McGinnis Drive. The completion of the subdivision will require bonding for the installation of a new driveway on McGinnis Drive and the decommissioning of the non-conforming back out driveway on to a minor arterial.

The applicant is remodeling the home and wishes to construct a single car garage on the north side of the building and move the driveway access from Mendenhall Loop Road to McGinnis Drive. In

order to construct the garage the applicant is seeking to reduce the 20 foot front yard setback to 13.8 feet.

### **BACKGROUND**

The applicant sought a variance (VAR2012 0015) to CBJ §49.40.130(b), which requires that all resulting lots from a subdivision of land involving frontage directly along a minor arterial street must comply with the D-1 zoning district lot area standards and must prevent back-out parking. The purpose behind this variance request was to keep the existing driveway on Mendenhall Loop Road and keep the existing garage in its current location. This variance request was denied.

The applicant has revised his plans for the house and would like to use the existing garage space for other space in the home. He would like to build a single car garage on the north side of the house and have a driveway that accesses McGinnis Drive. If this variance is approved and the driveway access is no longer on Mendenhall Loop Road, the lot may be subdivided as a regular lot without restrictions associated with providing access directly on a minor arterial street.

The lot is bordered by Duck Creek on the west. In order to subdivide the property the new lot has to accommodate a 50 foot no development zone per CBJ §49.70.310(a)(4) and a 25 foot no disturbance zone per CBJ §49.70.310(b)(1). This limits the area of the lot on which the existing house is located, therefore limiting opportunities for alternative garage locations.

### **ANALYSIS**

The lot is zoned D5 and fronts both Mendenhall Loop Road and McGinnis Drive. CBJ §49.25.430(3) addresses multiple frontage lots – those bordered by more than one right-of-way. CBJ §49.25.430(3) requires the buildings on such lots to meet the required front yard setback from one lot line fronting a ROW and the setbacks from the remaining lot lines abutting ROWs to be considered street side yards. This section of code stipulates that corner lots with existing buildings setbacks shall be established based on the yard that most closely meets the respective yard setback.

In this case, the southeast corner of the building is 18.8 feet from the Mendenhall Loop property line. The front yard setback is 20 feet; therefore, the Mendenhall Loop (east) property line cannot be considered the front yard because it does not meet the required front yard setback. It does comply with the 13 foot street side setback requirement. The McGinnis Drive (north) end of the existing building is currently 27.7 feet from the property line and complies with the 20 foot front yard setback. Therefore, the front yard is considered to be the one fronting McGinnis Drive then the lot has a front setback of 20 feet on the north; a side street setback of 13 feet on the east; a side yard setback of 5 feet to the west and a rear yard setback of 20 feet to the south.

CBJ §49.25.430(H) allows carports and garages to be located a minimum of five feet from any property line in all residential districts if the following conditions can be met:

- (i.) the topography of the lot makes construction a hardship;
- (ii.) the garage has a maximum height of 17 feet from the finished floor level;
- (iii.) sight distance is approved by the Director;
- (iv.) enclosed space under the garage is subject to the setback exception and no additional stories are allowed over the garage.

This proposed garage does not meet all four of the CBJ §49.25.430(4) criteria in that the topography of the lot does not make the construction a hardship. However, it is less than 17 feet in height, is situated so as to not affect sight distance, there is no enclosed space under the structure, and consequently meets the other three required criteria.

### **Comments**

At the time of the writing of this report staff had not received any public comments.

The Alaska Department of Transportation would like to see a plan for the removal of the decommissioned driveway. They have stated that “A plat note is NOT sufficient and a decommissioned driveway could still be used / parked on.” Staff notes that Alaska DOT did not support continued access to Mendenhall Loop Road in the previous variance request.

CBJ Streets has no concerns as long as the new driveway is located on the western most corner of the proposed new lot.

### **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 this variance would provide relief to the property owner it would allow the remodeling of the existing building to provide a larger living space while also providing a single car garage. However, this relaxation is not consistent with justice to other property owners in that the majority of the property owners in the area that have comply with required front yard setbacks.

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 intent of Title 49 is established in Section CBJ §49.05.100 Purpose and Intent. If approved this variance will not meet the intent of the Land Use Code, specifically CBJ §49.05.100(5) “to provide adequate open space for light and air.” and in part CBJ§49.05.100(4) “to ensure that future growth is of the appropriate type, design and location.....”

The public health and welfare will be preserved as the proposed garage will be located so as to not impact sight visibility. Furthermore, public safety and welfare will be enhanced by moving the access from the minor arterial to a residential street. However, a garage is not required and the access could be relocated to uncovered parking without the garage.

Yes. Staff finds that criterion 2 is met.

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

No evidence has shown that granting this variance would injure nearby property. The garage does not create any obstructions or sight distance concerns to McGinnis Drive.

Yes. Staff finds that criterion 3 is met

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

The current use is single-family residential and garages are normally associated with this class of use. The use is allowed within this district, per CBJ§49.25.300 *Table of Permissible Uses*, section 1.110.

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 is currently developed with a single family residential building, which complies with the front and street side setbacks.

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

Review of aerial photos show that while most of the nearby properties appear to have attached garages, none appear to be located within the front setback. However, the proposed garage appears to be of a scale and appearance consistent with other existing development.

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

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

The lot is fronted by two ROWs and therefore is required to have a front yard setback and a side street setback, which is more restrictive than a side yard side back. However, this is not unique to this property. Duck Creek borders the west side of the property. In order to subdivide the property the new lot has to accommodate 50 foot no development zone per CBJ §49.70.310(a)(4) and a 25 foot no disturbance zone per CBJ §49.70.310(b)(1). This limits the area of the lot on which the existing house is located, therefore limiting opportunities for alternative garage locations.

**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.***

The pre-existing nonconformity on this lot is the back out parking on to a minor arterial street. Relocating a garage and driveway will remove the non-conforming situation, increase safety and not result in a net decrease in overall compliance with Title 49.

**Yes.** Staff finds that sub-criterion 5(D) is met.

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

The lot may be subdivided, and access moved to McGinnis Driveway without the granting of this variance. The variance is required to allow a proposed single car garage located in such a way as to facilitate the subdivision of the property. A garage is an accessory use and not required for a single family home. Removing back out parking on to a minor arterial is a benefit to the neighborhood.

**Yes.** Staff finds criterion 6 is 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.** According to the previous analysis, the JCMP does not apply to the development.

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

**No.** Criteria 1 is not met.

## **RECOMMENDATION**

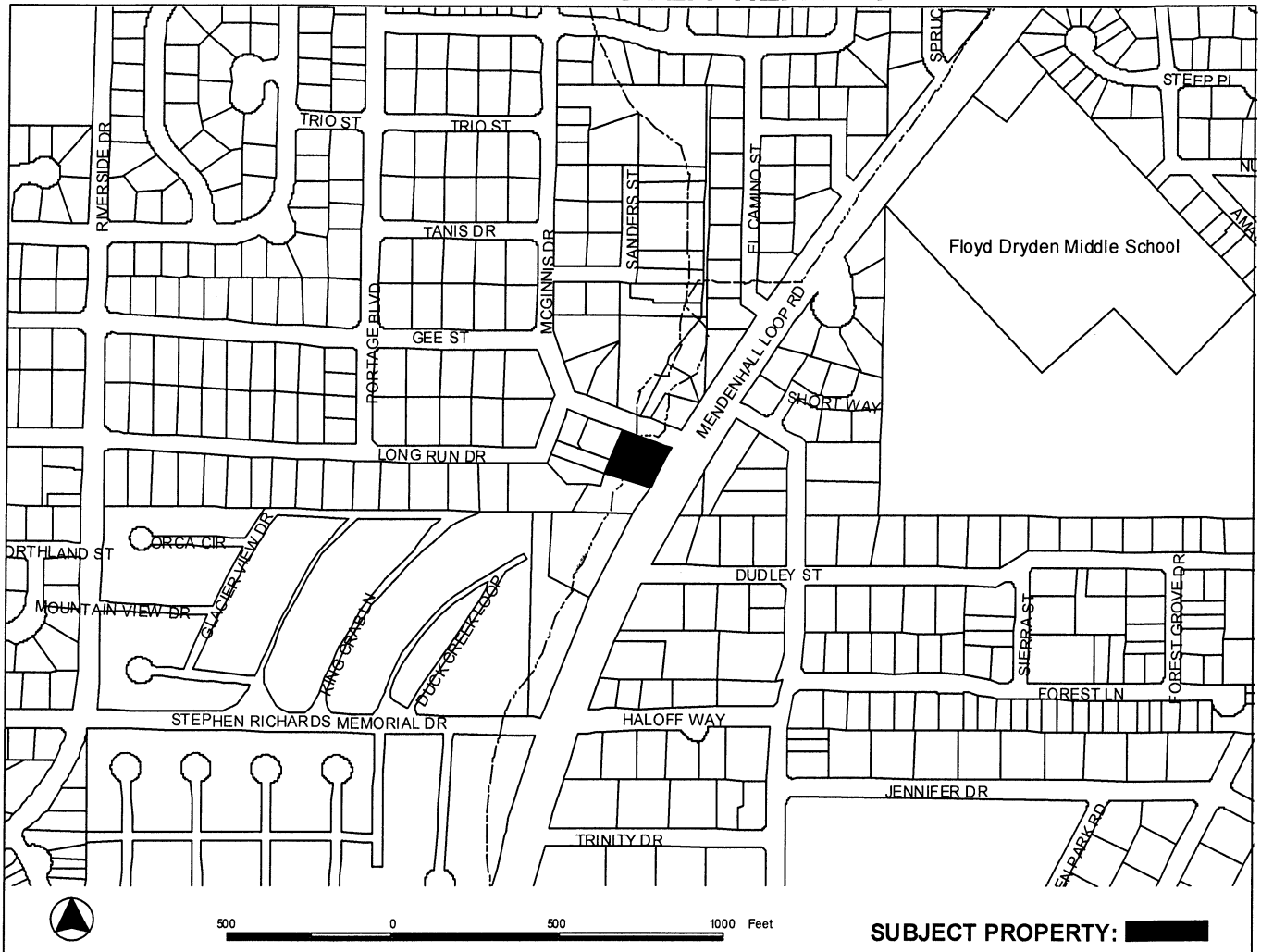
Staff recommends that the Board of Adjustment adopt the Director's analysis and findings and deny the requested Variance, VAR2013 0006.

If the Planning Commission elects to amend the findings and approve the requested variance the following condition is recommended:

1. The applicant shall submit a plan for decommissioning the existing driveway on to Mendenhall Loop Road approved by CDD staff prior to issuance of a building permit for the garage.
2. Prior to issuance of a Certificate of Occupancy or Temporary Certificate of Occupancy, for the dwelling, the driveway accessing Mendenhall Loop Road must be removed.



# NOTICE OF PUBLIC HEARING



**PROPOSAL:** A Variance request to reduce the required 20 ft. front yard setback to 13.8 ft. for a one car garage.

<b>FILE NO:</b> VAR2013 0006 <b>TO:</b> Adjacent Property Owners <b>HEARING DATE:</b> March 26, 2013 <b>HEARING TIME:</b> 7:00 PM <b>PLACE:</b> <b>ASSEMBLY CHAMBERS</b> Municipal Building 155 South Seward St Juneau, Alaska 99801	<b>APPLICANT:</b> DALE A WHITNEY <b>Property PCN:</b> 5-B25-0-102-002-0 <b>Owner:</b> DALE A WHITNEY <b>Size:</b> 20737 sqft <b>Zoned:</b> D5 <b>Site Address:</b> 3621 MENDENHALL LOOP RD <b>Accessed via:</b> MENDENHALL LOOP RD
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**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 Beth McKibben at [beth\\_mckibben@ci.juneau.ak.us](mailto:beth_mckibben@ci.juneau.ak.us) or at 586-0465.

Planning Commission Agendas, Staff Reports and Meeting Results can be viewed at [www.juneau.org/plancomm](http://www.juneau.org/plancomm).

Date notice was printed: March 14, 2013

# DEVELOPMENT PERMIT APPLICATION

Project Number <u>VAR20130006</u>	CITY and BOROUGH of JUNEAU	Date Received: <u>2/15/13</u>
Project Name (City Staff to Assign Name)		

INFORMATION	Project Description <u>Const. of garage chgs. F. yard S.B from 20' to 13.8'</u>
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PROJECT / APPLICANT	PROPERTY LOCATION	
	Street Address <u>3621 Mendenhall Loop Rd</u>	City/Zip <u>Juneau 99801</u>
	Legal Description(s) of Parcel(s) (Subdivision, Survey, Block, Tract, Lot) <u>Lureco Block B Lot 2FR</u>	
	Assessor's Parcel Number(s) <u>532561820020</u>	

PROJECT / APPLICANT	LANDOWNER / LESSEE	
	Property Owner's Name <u>Dale Whitney</u>	Contact Person: <u>Dale Whitney</u>
	Mailing Address <u>PO Box 23293, Juneau AK 99802</u>	Work Phone: <u>907-321-3504</u>
	E-mail Address <u>dwhitney@sci.net</u>	Home Phone: Fax Number:
	Other Contact Phone Number(s):	

PROJECT / APPLICANT	LANDOWNER / LESSEE CONSENT	
	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 <u>Dale Whitney</u> Landowner/Lessee Signature	<u>2/15/13</u> Date
	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.

PROJECT / APPLICANT	APPLICANT	
	Applicant's Name <u>Same</u>	Contact Person: Work Phone:
	Mailing Address	Home Phone: Fax Number:
	E-mail Address	Other Contact Phone Number(s):
	X <u>Dale Whitney</u> Applicant's Signature	<u>2/15/13</u> Date of Application

STAFF APPROVALS	OFFICE USE ONLY BELOW THIS LINE		
	<input checked="" type="checkbox"/>	Permit Type <u>Building/Grading Permit</u>	Application Number(s)
		City/State <u>Project Review and City Land Action</u>	
		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)	<u>2/15/13</u>
	<input checked="" type="checkbox"/>	Variance Case (De Minimis and all other Variance case types)	<u>2/15/13 VAR20130006</u>
		Wetlands Permits	
		Zone Change Application	
		Other (Describe)	
	***Public Notice Sign Form filled out and in the file.		
	Comments:		Permit Make Initials

# VARIANCE APPLICATION

Project Number	Project Name (15 characters) <u>Var20130006</u>	Case Number	Date Received <u>2/15/13</u>																				
<b>TYPE OF VARIANCE REQUESTED:</b>																							
<input type="checkbox"/> Variance to the Sign Standard (VSG)	<input type="checkbox"/> Variance to Dimensional Standards (VDS)																						
<input type="checkbox"/> Variance to Habitat Setbacks (VHB)	<input type="checkbox"/> Variance to Parking Requirements (VPK)																						
<input checked="" type="checkbox"/> Variance to Setback Requirements (VSB)																							
<b>DESCRIPTION OF ACTIVITY WHICH REQUIRES A VARIANCE:</b>																							
<u>Construction of one-car garage on northeast side of home to front yard set back from 20 feet to 13.8 feet variance</u>																							
<b>Previous Variance Applications?</b> <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO Date of Filing: _____																							
Previous Case Number(s): _____																							
<b>Was the Variance Granted?</b> <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO																							
<b>UNIQUE CHARACTERISTICS OF LAND OR BUILDING(S):</b> _____																							
<u>Existing garage and driveway faces and accesses minor arterial. One corner of existing home is 20.1 feet from Mendenhall Loop Road right of way, but other corner setback is only 18.8 feet. Because of the 1.2-foot encroachment, de facto front yard is regarded as side yard; de facto side yard is regarded as front yard, requiring 20-foot setback.</u>																							
<b>UTILITIES AVAILABLE:</b> WATER: <input checked="" type="checkbox"/> Public <input type="checkbox"/> On Site SEWER: <input checked="" type="checkbox"/> Public <input type="checkbox"/> On Site																							
<b>WHY WOULD A VARIANCE BE NEEDED FOR THIS PROPERTY REGARDLESS OF THE OWNER?</b>																							
<u>If the proposed subdivision is completed and the existing two-car garage is closed as a required condition, a garage for the existing house would not be allowed to be constructed without a variance because of how the existing home is situated on the property.</u>																							
<b>WHAT HARDSHIP WOULD RESULT IF THE VARIANCE WERE NOT GRANTED?</b>																							
<u>Applicant would not be able to proceed with an otherwise permissible subdivision and have a garage serving the existing home.</u>																							
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.	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">VARIANCE FEES</th> <th style="text-align: center;">Fees</th> <th style="text-align: center;">Check No.</th> <th style="text-align: center;">Receipt</th> <th style="text-align: center;">Date</th> </tr> </thead> <tbody> <tr> <td>Application Fees</td> <td style="text-align: center;">\$ <u>400<sup>00</sup></u></td> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> </tr> <tr> <td>Adjustment</td> <td style="text-align: center;">\$ _____</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> </tr> <tr> <td><b>Total Fee</b></td> <td style="text-align: center;"><b>\$ <u>400<sup>00</sup></u></b></td> <td style="text-align: center;"><b><u>CDA3333</u></b></td> <td style="text-align: center;"><b>_____</b></td> <td style="text-align: center;"><b><u>2/15/13</u></b></td> </tr> </tbody> </table>			VARIANCE FEES	Fees	Check No.	Receipt	Date	Application Fees	\$ <u>400<sup>00</sup></u>	_____	_____	_____	Adjustment	\$ _____	_____	_____	_____	<b>Total Fee</b>	<b>\$ <u>400<sup>00</sup></u></b>	<b><u>CDA3333</u></b>	<b>_____</b>	<b><u>2/15/13</u></b>
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TO BE COMPLETED BY THE APPLICANT

**NOTE: MUST BE ACCOMPANIED BY DEVELOPMENT PERMIT APPLICATION FORM**

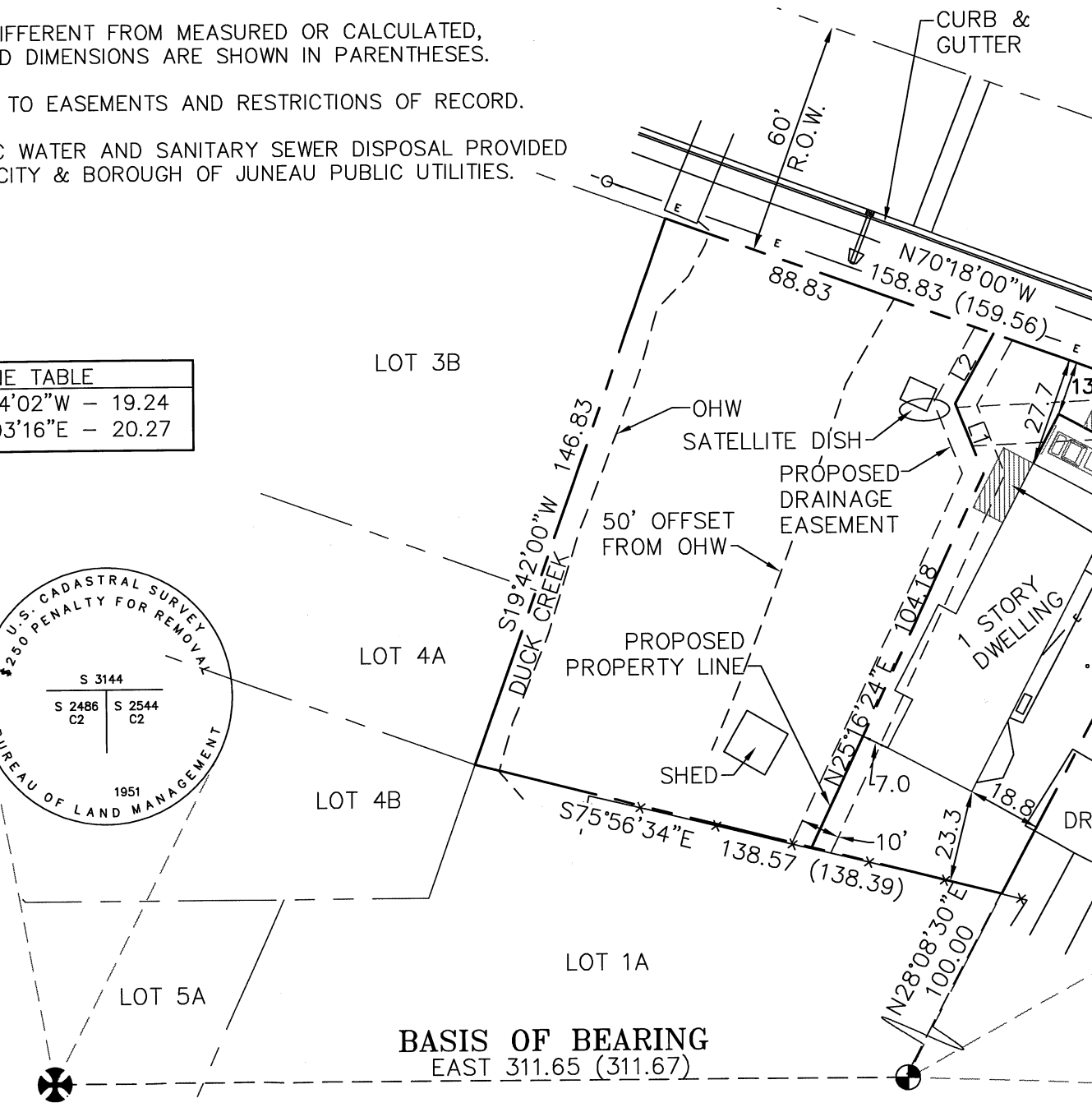
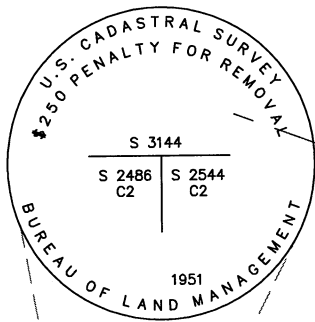
# NOTES

# BASIS OF BEARING

THE BASIS OF BEARING FOR THIS PLAT IS THE  
RECORD BEARING OF EAST BETWEEN  
BRASS CAP MONUMENTS NOTED, PLAT

1. ALL DISTANCES ARE MEASURED IN U.S. SURVEY FEET.
2. RECORD INFORMATION DERIVED FROM SUBDIVISION OF A FRACTION OF U.S. SURVEY No. 3144, PLAT No. 366, STATE OF ALASKA DOT/PF RIGHT-OF-WAY MAP, ALASKA PROJECT No. CM-0966(22) 68308 AND TRUSTEES DEED, DOCUMENT No. 2011-004722-0, JUNEAU RECORDING DISTRICT, JUNEAU, ALASKA.
3. WHERE DIFFERENT FROM MEASURED OR CALCULATED, RECORDED DIMENSIONS ARE SHOWN IN PARENTHESES.
4. SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD.
5. DOMESTIC WATER AND SANITARY SEWER DISPOSAL PROVIDED BY THE CITY & BOROUGH OF JUNEAU PUBLIC UTILITIES.

LINE TABLE	
L1	N 21°44'02"W - 19.24
L2	N 29°03'16"E - 20.27



**BASIS OF BEARING**  
EAST 311.65 (311.67)

## CERTIFICATE OF REGISTERED LAND SURVEYOR

I HEREBY CERTIFY THAT I AM A REGISTERED LAND SURVEYOR LICENSE SURVEYING IN THE STATE OF ALASKA AND THAT THIS PLAT REPRESENTS BY ME OR UNDER MY DIRECT SUPERVISION OF THE FOLLOWING DESCRIPTION OF LOT 2, BLOCK B, LU-RE-CO SUBDIVISION, U.S. AND THAT ALL WALKS, ROADS, IMPROVEMENTS, ENCROACHMENTS AND SHOWN CORRECTLY TO THE BEST OF MY KNOWLEDGE.

DATED: MAY 2012

