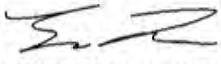


MEMORANDUM

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

DATE: January 31, 2014

TO: Board of Adjustment

FROM: Eric Feldt, Planner 
Community Development Department

FILE NO.: FZE2014 0001

PROPOSAL: A Flood Zone Exception to allow a building to be built on a dock seaward of the mean high tide in a Velocity flood zone.

GENERAL INFORMATION

Applicant: Tracy LaBarge

Property Owner: Michael Tripp

Property Address: 406 South Franklin Street

Legal Description: Lot 8 Block 83 Tidelands Addition

Parcel Code Number: 1-C07-0-K83-004-0

Site Size: 11,211 Square Feet (.26 acres)

Comprehensive Plan Future
Land Use Designation: Marine Commercial (MC)

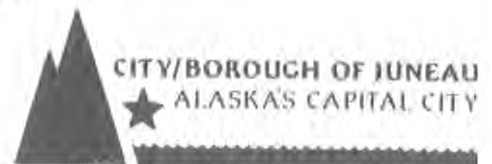
Zoning: Waterfront Commercial (WC)

Utilities: Public Water & Sewer

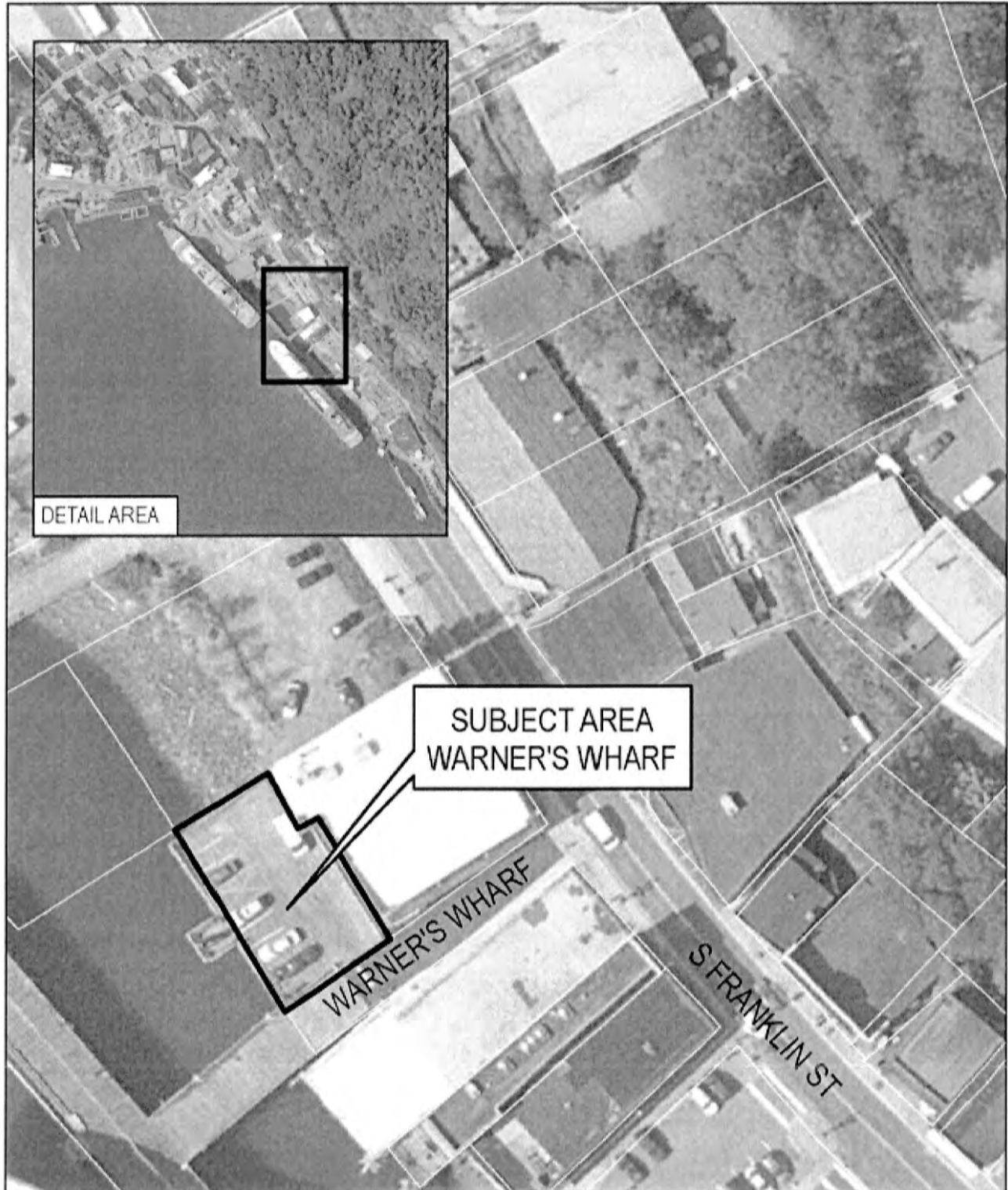
Access: South Franklin Street & Warner's Wharf

Existing Land Use: Retail and Residential

Surrounding Land Use: North - WC; Vacant; South Franklin Street
South - WC; Retail; South Franklin Street
East - MU; Retail; South Franklin Street
West - Gastineau Channel



VICINITY MAP



ATTACHMENT

Attachment	A	Preferred Site Plan
Attachment	B	Alternative Site Plan
Attachment	C	Project Letter

PROJECT DESCRIPTION

The applicant wishes to relocate their seasonal, outdoor seafood restaurant to the back deck of the Alaska Pacific Pier Building (also known as Warner's Wharf) in the downtown area. A picture of deck is provided in Figure 1. The applicant's project consists of outside improvements, including an outdoor cook shack, order shack, and dining area; and indoor improvements, including freezers, coolers, retail space, washing station, and restroom facilities.



Figure 1: Picture of the Alaska Pacific Pier building and back deck, indicated by a white arrow. Picture taken by CDD staff on January 24th, 2014.

The site is affected by a Velocity flood zone with a base flood elevation of 25 feet¹. The proposed location of the outdoor cook shack is in this flood zone, even though it will be elevated to 26.5 feet by the existing deck. This is allowed. However, its location is horizontally seaward of the reach of Mean High Tide (MHT = 15.3 feet). Habitable construction seaward of the reach of MHT in a Velocity flood zone is prohibited by the Land Use Code per 49.70.400(g)(2): *In Zones V1-V30, VE and V, all new habitable construction shall be located landward of the reach of mean high tide*. This prohibition aims to reduce damage from high wave force during a coastal 100-year storm event. The

¹ City & Borough of Juneau Flood Insurance Rate Map (FIRM) Map # 02110 C 1567 D, dated August 19, 2013.

applicant has filed a Flood Zone Exception to allow the cook shack to be located seaward of the MHT.

BACKGROUND

In 2004, the previous single-story Timberwolf Building was demolished for a new 2-story building (Alaska Pacific Pier), which contains retail, residential, and office spaces. The back deck of Timberwolf Building was kept in tact to provide access to the waterfront. According to staff's records, the deck has existed in its current form since at least 1972 and continues to be used for automobile parking. See Figure 2. Since the City & Borough didn't have its first flood map until 1978, the construction of deck pre-dates the flood maps and regulations. This means that the deck was not required to be structurally designed to withstand any specific wave impact that is indicated in current flood studies.

A current Elevation Certificate of the main buildings indicates that the bottom of the lowest floor is at elevation 24.7 feet above mean lower low water mark. Looking at the site, it is clear that this elevation of the building is at least one foot lower than the lowest horizontal member of the deck. Therefore, the bottom of the deck is higher than 25 feet and above the base flood elevation. This means that waves would not affect the horizontal members of the deck. However, the engineering of the vertical support columns is unknown of whether they can withstand 100-year storm forces.



Figure 2: Removal of old Timberwolf Building; back deck remains in place. Picture taken by City Assessor sometime in 2003.

ANALYSIS

As indicated earlier, the applicant wishes to place a cook shack, order shack and outdoor seating on an existing deck elevated above water. The cook shack would be located seaward of the reach of the MHT. See Figure 3. The applicant's preferred location (Attachment A) is desirable for the following reasons:

- Provides a functional and clear operation flow
- Increased seating
- Better able to abide by Department of Conservation regulations
- Being over water provides better experience for guests
- Enhance the seawalk and waterfront areas
- Bring more interest to the area

The alternative design (Attachment B) would place both the cook shack and order shack next to the existing building near the southern entrance of the deck. This would interrupt the flow of customers ordering, picking up their food/ beverage, and reduce vehicle movement during truck deliveries.

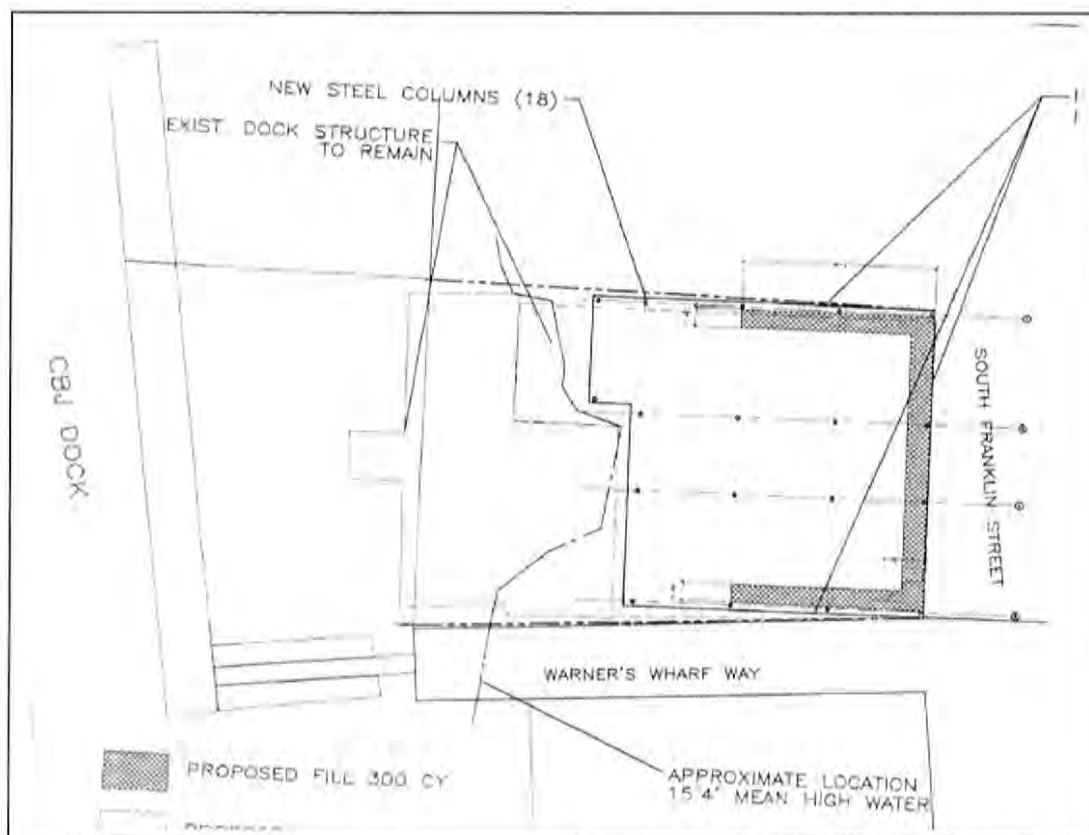


Figure 3: A 2004 drawing of the proposed footprint of the Alaska Pacific Pier. The Mean High Water line is shown.

As stated under Background, the deck pre-dates flood regulations and therefore, it is unknown if the deck can withstand forces from a 100-year storm. If approval of the Flood Zone Exception is gained, staff recommends a condition of approval indicating that the applicant complete a structural analysis of the deck and make improvements to it which would ensure it will withstand forces from the 100-year storm.

The Flood Zone Exception process of the Land Use Code is described below.

49.70.410 Exceptions.

(a) The board of adjustment shall hear all applications for an exception from the provisions of this article, and shall be limited to the powers granted in this article and those necessarily implied to ensure due process and to implement the policies of this article.

(b) In passing upon such application, the board of adjustment shall consider all technical evaluations, all relevant factors, standards specified in other sections of this article, and:

(1) The danger that materials may be swept onto other lands and cause injury to other persons or property;

The deck supporting the applicant's proposed building is higher than the base flood elevation. Therefore, the applicant's buildings will not be swept onto adjacent lands by the 100-year storm event.

This criterion is met.

(2) The danger to life and property due to flooding or erosion damage;

As stated above, the proposed cook shack is elevated above and will not be affected by the 100-year storm event nor be eroded. Further, with staff's recommended condition, the deck and proposed buildings will not endanger life or property due to flooding or erosion damage.

This criterion is met.

(3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

As mentioned earlier, the proposed cook shack will not be affected by the 100-year storm event with staff's recommended condition.

This criterion is met.

(4) The importance of the services provided by the proposed facility to the community;

The applicant is providing a seafood restaurant for the public, though marketed largely to cruise ship passengers.

This criterion is not met.

(5) The necessity to the facility of a waterfront location, where applicable;

The applicant's business is marketed to cruise ship passengers. Although the applicant's preferred location of the cook shack does afford shorter access to its customers and better business operations, it can be physically located landward of the MHT.

This criterion is not met.

(6) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;

The applicant may locate the cook shack closer to the back of the building, landward of the reach of MHT. As mentioned earlier, the proposed location is better for the applicant's business operations.

This criterion is not met.

(7) The compatibility of the proposed use with existing and anticipated development;

Development along South Franklin Street consist of retail, residential, and dining and is mainly devoted to serving the cruise ship industry. There are small, seasonal retail shacks in the area, as well. The applicant's business of selling seasonal seafood is compatible with existing development in the neighborhood.

This criterion is met.

(8) The relationship of the proposed use to the Comprehensive Plan and floodplain management program for that area;

The 2013 Comprehensive Plan and Zoning District both categorize the site as waterfront-oriented development, consisting of commercial and residential uses. The applicant's proposal of an outdoor season seafood restaurant is consistent with the Comprehensive Plan and Zoning District.

The City & Borough does not have a Floodplain Management Program. There are, however, floodplain policies listed in the Comprehensive Plan and regulations

provided in the Land Use Code. The applicant's preferred location of their cook shack is not consistent with the floodplain policies or regulations.

This criterion is not met.

(9) The safety of access to the property in times of flood for ordinary and emergency vehicles;

The access to the property for pedestrians and emergency vehicles will not be affected by the applicant's proposal because access is maintained at the nearby street and through the Alaska Pacific Pier building.

This criterion is met.

(10) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and

Since the applicant's location of outdoor improvements is on top of the existing deck which is higher than the 100-year flood waters, there will be no change to the expected heights, velocity, duration, rate of rise, and sediment transport of floodwaters nor effects of wave action at the site.

This criterion is met.

(11) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

The applicant's development is private and would be placed on private property. The utilities serving the applicant's proposal are also private. The deck in question is attached to a public deck. Having the applicant's outdoor improvements on the deck will not change the structural integrity of the deck nor make it more susceptible to flooding. With staff's recommended condition, structural improvements may be necessary that which will make the deck able to withstand forces from the 100-year storm.

Further, the applicant's outdoor improvements will not provide living space. Public service announcements are in place to warn and evacuate people from private places during flooding conditions.

No additional costs is expected to be provided by the government if the applicant's outdoor improvements were to be affected by flood conditions.

This criterion is met.

Criteria B (4-6) and (8) are not met; therefore, Criterion B is not met.

(c) Exceptions may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing subsections (b)(1)—(b)(11) of this section have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the exception increases.

The lot area is .25 acres in size. The elevation of the deck in question is higher than the flood elevation. The building immediately to the south (Miner's Hall) has its bottom of the lowest floor member above the flood elevation. The building across South Franklin Street is not in the high-risk flood. Therefore, existing development on surrounding lots are constructed above the base flood level.

This criterion is met.

(d) Upon consideration of the factors of subsection (b) of this section and the purposes of this article, the board may deny or grant the application and may attach such conditions to the grant of an exception as it deems necessary to further the purposes of this article.

As mentioned earlier under Analysis, If approved, staff recommends a condition of approval having the applicant complete a structural analysis of the deck and make improvements to it which would ensure it will withstand forces from the 100-year storm.

This criterion is met.

(e) Exceptions may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the state inventory of historic places, without regard to the procedures set forth in the remainder of this section.

As noted earlier, the building on the property was constructed in 2004 and, therefore, would not qualify for the National Register of Historic Places.

This criterion is not applicable.

(f) Exceptions shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

There are no floodways along this section of the Gastineau Channel.

This criterion is not applicable.

(g) Exceptions shall only be issued upon a determination that the exception is the minimum necessary, considering the flood hazard, to afford relief.

The Flood Zone Exception was filed because the applicant wishes to have the cook shack located in a way that they find is best for business operations and movement of people and truck deliveries. The alternative would be to place the cook shack closer to the building and to be reorganize the business flow. The applicant indicates that this would confuse customers of where to order food, reduce vehicle turning movement, and require relocating the dumpster.

With staff's recommended condition, there would be little flood hazard resulting from the applicant's proposal.

This criterion is met.

(h) Exceptions shall only be issued upon:

(1) A showing of good and sufficient cause;

The applicant's reasons for their preferred location has been addressed in the findings above.

This criterion is met.

(2) A determination that failure to grant the exception would result in exceptional hardship to the applicant; and

There does not seem to be any exceptional hardship of the applicant alternative design.

This criteria is not met.

(3) A determination that the granting of an exception will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances or conflict with existing local laws or ordinances.

As stated earlier, the location of the cook shack on the existing deck will not increase flood heights, additional threats to public safety, extraordinary public expense, or create nuisances. It will, however, conflict with section 49.70.400(g)(2) of the Land Use Code.

This criterion is not met.

Criteria (h) (2 & 3) are not met; therefore, Criterion (h) is not met.

(i) Submission requirements.

(1) If the building official determines that a proposed development lies within a special flood hazard area, a special flood hazard permit fee shall be collected and the following information shall be provided before further processing of a building permit:

(A) Elevation of the lowest floor, including a basement, of all structures;

As stated earlier, the applicant's proposed outdoor cook and order shacks will be on a deck elevated above the base flood elevation. Therefore, the lowest floor of the proposed buildings are higher than the base flood elevation.

This criterion is met.

(B) Elevation to which any structure has been floodproofed;

No buildings under the proposal are required to be floodproofed.

This criterion is not applicable.

(C) Certification by an engineer or architect that the floodproofing methods for any nonresidential structure meet generally accepted floodproofing standards;

This criterion is not applicable.

(D) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development;

No watercourses will be altered by the proposal.

This criterion is not applicable.

(E) Description of the plan for maintenance of the altered or relocated portion of the watercourse so that the flood-carrying capacity is not diminished; and

Not applicable.

(F) When base flood elevation data have not been provided, the building official shall obtain, review and reasonably apply any base flood elevation and floodway data available from federal, state or other sources.

As stated earlier, the base flood elevation affecting the property is 25 feet above mean lower low water mark.

This criterion is met.

Staff finds Criteria 49.70.410 (b), (e), (f) and (h) not met.

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 applicant may locate the buildings landward of the reach of mean high tide. This does not provide substantial relief to the owner of the property.

The nearby US Ports & Customs building and CBJ Visitors Center were allowed to be built seaward of the reach of mean high tide.

This criterion 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 49.70.400(g)(2) is to protect life and safety of people and buildings from the 100-year storm impact. With staff's recommended condition, the intent of the title will be observed and the public safety and welfare will be preserved.

This criterion is met.

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

With staff's recommended condition ensuring the deck will withstand forces from the 100-

year storm event, the applicant's proposal will not injure nearby property.

This criterion is met.

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

The proposal is for a seasonal restaurant in the Waterfront Commercial (WC) District that is only open during cruise ship months. The applicant's place of business is adjacent to the cruise dock and, therefore, is water-dependant and is allow in the WC district.

This criterion is not met.

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

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

There are commercial and residential uses on the property.

This 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;*

The nearby US Ports & Customs building and Visitors Center are both located on a deck over water. Denying the Flood Zone Exception would prevent the owner from using the subject property in a manner consistent as to appearance and feature with existing development in the neighborhood.

This criterion is met.

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

Denying the Flood Zone Exception would force the applicant to locate their outdoor buildings closer to the existing, main building. This would not be unreasonable expensive.

This 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.

There are many approved variances associated with the main building on the site. The applicant's proposal does not affect these variances or non-conforming conditions.

Therefore, this criterion is not met.

Criterion 5(C) is met; therefore Criterion 5 is met.

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

There is no evidence leading to find that the applicant's preferred location would result in more benefits than detriments to the neighborhood.

This criterion is not met.

FINDINGS

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

Yes. 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?*

Not Applicable. Based on the preceding staff analysis, it is found that no provisions of the Juneau Coastal Management Program apply to the proposed development.

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 proposal does not meet the criteria of CBJ §49.20.250, Grounds for Variance and 49.70.410 Exceptions.

RECOMMENDATION

Staff recommends that the Board of Adjustment adopt the Director's analysis and findings and deny the requested Variance, FZE2014 0001.

If the Board of Adjustment approves the Flood Zone Exception, staff recommends the following condition:

- 1) Prior to issuance of a Building permit the applicant shall complete and submit a structural analysis of the deck to determine whether or not it would withstand forces of a 100-year coastal storm to CDD.
- 2) Prior to obtaining TCO, the applicant shall make all improvements to the deck to ensure it will withstand forces from the 100-year storm.

FLOOD ZONE EXCEPTION APPLICATION

Project Number	Project Name (15 characters)	Case Number FZE 20140001	Date Received 12/23/13
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DESCRIPTION OF ACTIVITY REQUIRING A FLOOD EXCEPTION:

*Move Shacks to Dock behind Trade Bldg. Alaska Pacific Pier
Seasonal "Shack" - Summer only*

Base Flood Elevation _____	Flood Insurance Rate Map _____
Elevation of Lowest Floor of all Structures Including Basement _____	Elevation to which ANY Structure has been Floodproofed _____

WILL THE BASE FLOOD ELEVATION CHANGE AS A RESULT OF THE PROPOSED ACTIVITY:

YES NO If Yes, please explain.

PROPOSED USE OF LAND OR BUILDING(S): *Retail / Restaurant Business.*

To increase seating capacity + have restrooms, covered area + a cleaner operation with more storage.

SEE #1

UNIQUE CHARACTERISTICS OF LAND OR BUILDING(S):

Building are small self contained. There are no leaks + no need for flood insurance.

SEE #2

WHY WOULD A FLOOD EXCEPTION BE NEEDED FOR THIS PROPERTY/STRUCTURE REGARDLESS OF THE OWNER?

Because the building would sit starboard of the mean high tide.

WHAT HARDSHIP(S) WOULD RESULT IF THIS EXCEPTION WAS NOT GRANTED?

The flow of traffic does not work when the city says the building need to be acceding

SEE #3

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.

FLOOD ZONE EXCEPTION FEES

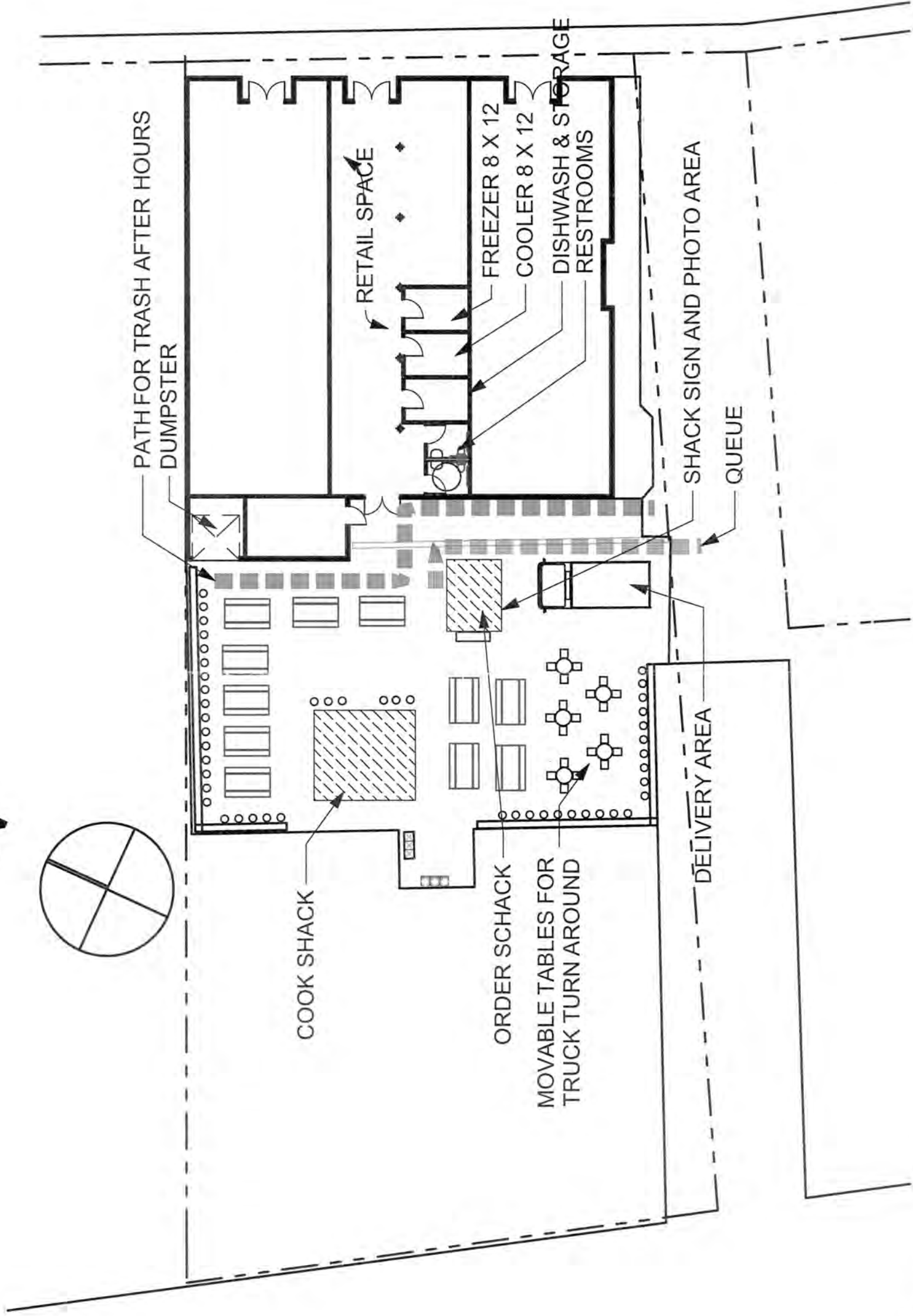
	Fees	Check No.	Receipt	Date
Application Fees	\$ <u>400.00</u>	_____	_____	_____
Admin. of Guarantee	\$ _____	_____	_____	_____
Adjustment	\$ _____	_____	_____	_____
Total Fee	\$ <u>400.00</u>	<u>4533</u>	<u>CDD4637</u>	<u>12/23/13</u>

NOTE: MUST BE ACCOMPANIED BY DEVELOPMENT PERMIT APPLICATION FORM

TO BE COMPLETED BY THE APPLICANT

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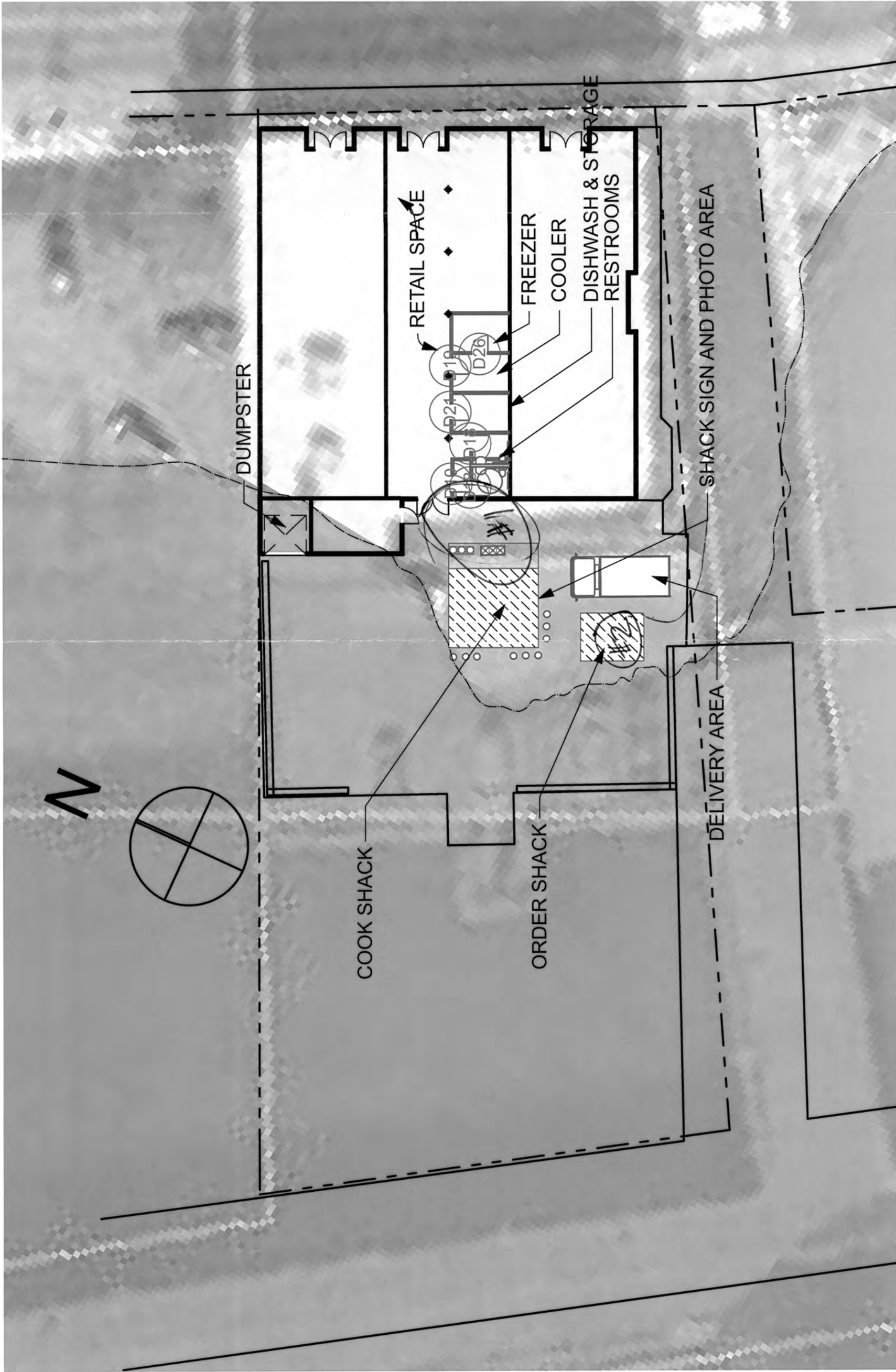
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RECEIVED
 DEC 23 2013
 PERMIT CENTER/GDD

SITE PLAN

SCALE: 1" = 20'



SITE PLAN

SCALE: 1" = 20'

#1 - ~~Customer~~ Congestion for customers & other trucks

#2 - Congestion on where to order

- Not much area for loading zone & turning vehicle
- Line will cross traffic
- Dumpster will have to go around

RECEIVED
DEC 23 2013
PERMIT CENTER/CDD



1) Proposed Land Use:

Seasonal operation - May - Sept.

The Crab Shack would like to move the restaurant operation to the dock behind the Pacific Pier Building.

This would allow for a more functional & cleaner operation. We would have restrooms, freezer space, increased covered area & more seating capacity and better able to abide by DEC regulations.

It would provide a better experience for guests to be out over the water, with a better view, and more exposure to sunlight and less wind.

It is an opportunity to still be close to where we started and not interrupt operations much.

It will enhance the sea walk and waterfront area of Juneau and bring more interest to that area.

We intend to keep the store front open year round and keep a few employees full time.

2) Unique Characteristics of Land or Buildings:

The Crab Shack built its reputation by offering a unique, Alaskan experience. The homey feel of the shack, quality of the food, personal service and quickness to get in and out but get a taste of Alaska's king crab have made it extremely popular & a favorite tourist destination. (Read Trip Advisor & Yelp reviews).

The shack was always designed and placed to appeal to folks on the ship as well as locals. They were able to see the process of the steaming pots and cooking of the crab.

I have no intention of making the Crab Shack an indoor restaurant. This would completely take away from what the Shack is all about. We don't want to increase operations. Just make the current operations more functional and make the seating more comfortable for guests.

The buildings are paid in full. No flood insurance is necessary.

The dock is built above the mean high tide.

The shacks are designed to be "hosed down". Floor drains stainless steel. Flooding would not result in any hardship to the shacks.

3) Why is an exception needed:

The dock is within the flood plain zone. Buildings would be placed 15 feet outside of the zone.

Since the flood zone and FEMA plan is being challenged at a Federal level, there is a possibility that we would be well within the exception.

It would be cost prohibitive to put the shack in the current zone, just to move it once the rulings take place. Since gas, electric & plumbing lines need to be run; I only want to pay for this once.



4) What hardships would result:

The current proposed placement of the shacks within the FEMA guidelines prohibits the flow of the operation from running smoothly.

It creates a jam in front of the building front and hinders access of other businesses up above to do business as it is in a loading zone.

The line for the shack would extend out into the loading zone area.

It makes it difficult for the vehicles to access the loading zone and turn around.

Atheistically, it does not represent the "feel" of the shack.

I do not have a lease in my current location. I am subject to closure if the land sells. This is my only option of a location that is permanent & close to what we are currently doing, without hurting business.

The alternative is to shut down the operation which would result in a loss of 30 seasonal jobs, 3 full time jobs & approximately \$80,000+ in sales tax revenue.



Building from Alaska Steam Ship Dock