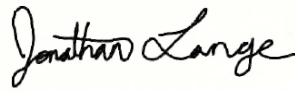


MEMORANDUM

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

DATE: July 30, 2014

TO: Board of Adjustment

FROM: Jonathan Lange, Planner 
Community Development Department

FILE NO: VAR2014 0014

PROPOSAL: A Variance request to allow construction of a single family home within the 330 foot required setback for an eagle's nest.

GENERAL INFORMATION

Applicant: Thomas & Kimberly Lawson Trust

Property Owner: Thomas & Kimberly Lawson Trust

Property Address: 16105 Point Lena Way

Legal Description: USS 3054 Lot 19B

Parcel Code Number: 4-B33-0-102-009-2

Site Size: 1.04 Acres

Comprehensive Plan Future
Land Use Designation: RLDR – Rural Low Density Residential

Zoning: D-3

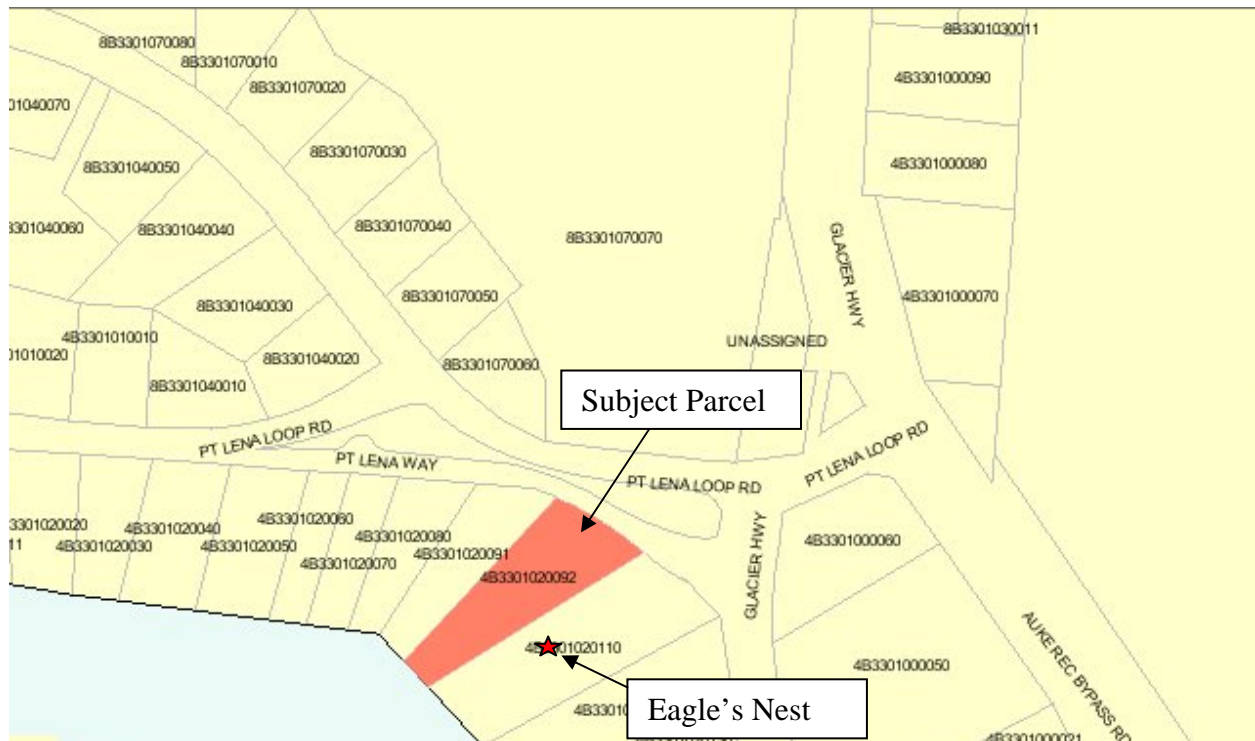
Utilities: Public water and on-site sewer

Access: Pt. Lena Way

Existing Land Use: Vacant

Surrounding Land Use: North D-3 – Vacant CBJ Greenbelt
South - Favorite Channel
East D-3 – Single-family Residence
West D-3 - Vacant

Vicinity Map



ATTACHMENTS

Attachment A – Variance and Development Permit Applications
Attachment B – U.S. Fish and Wildlife Services letter
Attachment C – Eagle’s nest map and development site plan
Attachment D – Public Notice

PROJECT DESCRIPTION

The applicant would like to build a two-story single-family home on their property at 16105 Point Lena Way. The construction would consist of a three (3) bedroom home and a two (2) car garage. The proposed development, which is within approximately 150 feet of an actively nesting eagle's nest, requires a Variance for construction within 330 feet of an actively nesting eagle's nest between March 1 and August 31. The CBJ Land Use Code states the following:

49.70.310 Habitat

(a) *Development in the following areas is prohibited:*

- (3) *Within 50 feet of an eagle nest on private land, provided that there shall be no construction within 330 feet of such nest between March 1 and August 31 if it contains actively nesting eagles;*

BACKGROUND

On April 14, 2014 the applicant applied for a grading and drainage permit for the driveway and house pad at their property at 16105 Pt. Lena Way. During review of the application, Community Development Department (CDD) staff found that the property was within 330 feet of a mapped eagle's nest. CDD staff contacted the applicant about the mapped eagle's nest and placed an advisory and operational condition on the permit that stated "No construction may occur within 330 feet of an actively nesting eagle's nest between March 1st and August 31st", and that "Eagle nest monitors are required on and between March 1 and May 31 regardless of whether the subject nest has been selected by pairing eagles or not. If the subject nest has been selected by June 1, an eagle nest monitor is required on and until August 31." The applicant complied with the above conditions for the grading and drainage permit.

The applicant then applied for a building permit for their proposed single-family home on July 7, 2014. CDD staff again placed an advisory condition on the building permit that "No construction may occur within 330 feet of an actively nesting eagle's nest between March 1st and August 31st".

During the time between the applicant applying for their grading permit and their building permit, the applicant contacted U.S. Fish and Wildlife Services (USFWS) about the above mentioned mapped eagle's nest. USFWS was able to send someone out to the site to investigate. The applicant has supplied CDD staff with a letter from the USFWS (see Attachment B) in reference to the subject mapped eagle's nest, nest #198.

According to the letter from USFWS, the subject eagle's nest was first documented in 1998. Since then, the eagle pair has demonstrated tolerance and have been habituated to construction noise and disturbances. USFWS have also stated in their letter that they would support issuance of a variance to the CBJ eagle ordinance and that it is "likely that the eagle pair would fledge their chick successfully, even with construction of Mr. Lawson's house."

ANALYSIS

CBJ has traditionally relied on the expertise of the Juneau USFWS field office to evaluate and condition, if necessary, projects within the 330 foot eagle nest buffer. The 2013 Comprehensive Plan acknowledges this relationship under POLICY 7.14.IA4;

“Request that the USFWS evaluate the bald eagle in the CBJ urban area in terms of population, behavior and tolerance of human presence and activity. Consider any new suggestions from USFWS for enhancing the presence and health of eagles in the urban area.”

USFWS has provided CDD staff with a letter confirming that they have no objection to a variance to the setback requirement for construction near an eagle’s nest, and in particular, the subject eagle’s nest has habituated eagles to construction noise and construction disturbance.

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 relaxation applied for would give substantial relief to the property owner in that they could begin building their home so that they can get it to a “weather tight” state prior to the onset of fall and winter weather. The variance will also allow the property owner to complete any future work on the house, during future March 1st thru August 31st windows. The variance would be consistent with justice to other property owners who built on and cleared their properties within 330 feet of the mapped eagle’s nest.

Yes. The criterion is 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 49.05.100 Purpose and Intent. Those sections, which are applicable to the requested Variance, are as follows:

- 1) To achieve the goals and objectives and implement the policies of the Juneau Comprehensive Plan and the coastal management program;
- 2) To ensure that future growth and development in the City and Borough is in accord with the values of its residents;
- 3) To identify and secure, for present and future residences, the beneficial impacts of growth while minimizing the negative impacts;
- 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; and
- 6) To recognize the economic value of land and encourage its proper and beneficial use.

There is no evidence to suggest that the construction of the proposed single-family home would impact public safety and welfare.

Yes. The criterion is met.

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

Construction within the eagle nest setback would not injure nearby property. All work would be on the applicant's property.

Yes. This criterion is met.

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

The application is for a proposed single-family home, with is an allowed use in the D-3 zoning district.

Yes. This criterion is met.

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

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

Compliance with the existing standards would not prevent the owner from using the property for a permissible principle use in that the owner could begin building on September 1. But compliance with the existing standard would setback the applicant from beginning construction on their home and would not allow the applicant to build and get their home weather tight before the fall and winter weather would set in.

No. 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;*

Compliance with the required setback would prevent the applicant from beginning to build their home for most of the construction season in Juneau. Granting the requested variance would be consistent to existing development that was built within 330 feet of the mapped eagle's nest between March 1 and August 31.

Yes. This criterion is met.

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

The proposed development is burdened by the fact that it is near a mapped eagle's nest. Compliance with the eagle nest setback would be unnecessarily burdensome in that this would delay the owner from building their home within the construction season. The fact that the USFWS has stated that the eagles present are habituated to the surrounding neighborhood and to construction noises and disturbances, leads to the conclusion that compliance with the above mentioned eagle nest setback requirement would be unnecessarily burdensome.

Yes. This criterion 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.*

Staff finds there to be no preexisting nonconforming condition on the subject parcel. Granting of the variance would result in a net decrease in the overall compliance of the Land Use Code, as the granting of the application would result in construction within 330 feet of an eagle's nest within the time frame of March 1 and August 31.

No. The criterion is not met.

Since sub criteria 5B and 5C are met, criterion 5 is met.

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

No detriments have been identified to the neighborhood if the Variance was granted. If the Variance was granted, the Variance would allow for an addition dwelling unit which would be a benefit for the property owner and the neighborhood.

Yes. The criterion is met.

FINDINGS

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

Yes. Staff finds 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.

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

Yes. Based on the evaluation above, the variance, as requested, meets the criteria of Section 49.25.250, Grounds of Variances.

RECOMMENDATION

Staff recommends that the Board of Adjustment adopt the Director's analysis and findings and **APPROVE** the requested Variance, VAR2014 0014. The Variance permit would allow for construction of a single family home within the 330 foot required setback for an eagle's nest.

VARIANCE APPLICATION

Project Number	Project Name (15 characters)	Case Number VAR20140014	Date Received 7/23/14
----------------	------------------------------	-----------------------------------	---------------------------------

TYPE OF VARIANCE REQUESTED:

- | | |
|--|--|
| <input type="checkbox"/> Variance to the Sign Standard (VSG) | <input type="checkbox"/> Variance to Dimensional Standards (VDS) |
| <input checked="" 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:

Allow construction of single family home within ~~150'~~ 150' of active eagle nest beginning in August

Previous Variance Applications?

☐ YES

☒ NO

Date of Filing: _____

Previous Case Number(s): _____

Was the Variance Granted?

☐ YES

☐ NO

UNIQUE CHARACTERISTICS OF LAND OR BUILDING(S):

Nesting pair of eagles in clearly habituated/tolerant of human activities per DFW letter of 7/21/14

UTILITIES AVAILABLE:

WATER: ☐ Public ☐ On Site

SEWER: ☐ Public ☒ On Site

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

To allow construction so that building can be weather tight before winter

WHAT HARDSHIP WOULD RESULT IF THE VARIANCE WERE NOT GRANTED?

Fall/Winter construction not feasible

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>100</u>			
Adjustment	\$ _____			
Total Fee	\$ <u>100</u>	<u>CC</u>	<u>CDD5519</u>	<u>7/23/14</u>

NOTE: MUST BE ACCOMPANIED BY DEVELOPMENT PERMIT APPLICATION FORM

DEVELOPMENT PERMIT APPLICATION

Project Number VAR20140014	CITY and BOROUGH of JUNEAU	Date Received: 7/23/14
Project Name (City Staff to Assign Name)		

PROJECT / APPLICANT INFORMATION	Project Description Construct single family dwelling		
	PROPERTY LOCATION		
	Street Address 16103 Pt. Lene Way	City/Zip Juneau AK 99801	
	Legal Description(s) of Parcel(s) (Subdivision, Survey, Block, Tract, Lot) USS 3054 LT 19B		
	Assessor's Parcel Number(s) 4B3301020092		
	LANDOWNER/LESSEE		
	Property Owner's Name Thomas Kimberly Lawson Trust	Contact Person: Tom Lawson	Work Phone: n/a
	Mailing Address PO Box 210465, Hike Bay AK 99821	Home Phone: 184-2870	Fax Number:
	E-mail Address twlawson1@gmail.com	Other Contact Phone Number(s): 321-0948	
	LANDOWNER/LESSEE CONSENT ***Required for Planning Permits, not needed on Building/Engineering Permits***		
<p>I am (we are) the owner(s) or lessee(s) of the property subject to this application and I (we) consent as follows:</p> <p>A. This application for a land use or activity review for development on my (our) property is made with my complete understanding and permission.</p> <p>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.</p>			
<input checked="" type="checkbox"/> Landowner/Lessee Signature 		7/23/14 Date	
<input type="checkbox"/> 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 If the same as OWNER, write "SAME" and sign and date at X below			
Applicant's Name Same		Contact Person:	Work Phone:
Mailing Address		Home Phone:	Fax Number:
E-mail Address		Other Contact Phone Number(s):	
<input checked="" type="checkbox"/> Applicant's Signature _____ Date of Application			

OFFICE USE ONLY BELOW THIS LINE					
STAFF APPROVALS	<input checked="" type="checkbox"/>	Permit Type Building/Grading Permit	Assigned	Date Received	Application Number(s)
		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)			
	<input checked="" type="checkbox"/>	Variance Case (De Minimis and all other Variance case types)		7/23/14	VAR20140014
		Wetlands Permits			
		Zone Change Application			
		Other (Describe)			
	***Public Notice Sign Form filled out and in the file.				
	Comments:				Permit Intake Initials TS



United States Department of the Interior



U.S. FISH AND WILDLIFE SERVICE
Juneau Satellite Office
3000 Vintage Park Boulevard, Suite 201
Juneau, Alaska 99801

July 21, 2014

Hal Hart, Director
Community Development Department
City and Borough of Juneau
155 S. Seward Street
Juneau, AK 99801

Dear Mr. Hart,

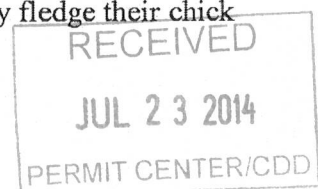
Staff of the U.S. Fish and Wildlife Service has worked with Mr. Tom Lawson over the last few months to evaluate potential impacts to bald eagles nesting approximately 150 feet from his Lena Loop building site.

The Fish and Wildlife Service first documented this nest in 1998. Since then, the eagle pair has demonstrated tolerance to various construction disturbances, and the nest has remained productive. These disturbances include construction of an adjacent home in 2005, and clearing of Mr. Lawson's lot this spring while the nest was active. Other neighbors have reportedly been clearing trees within 330 feet of the nest this year, as well. On July 8, we confirmed that at least one nestling was present in the nest, suggesting that the eagles have accepted the disturbance to date.

Our "National Bald Eagle Management Guidelines" (USFWS 2007) recommend that vegetation clearing and construction be kept 660 feet or further from active eagle nests, unless an eagle pair has already demonstrated tolerance to similar activity. Where such tolerance has been shown, building and clearing are allowed as close as existing activity of similar scope.

Where compliance with the Guidelines is not practicable, the Fish and Wildlife Service may issue a federal permit to allow disturbance (that results in loss of a nestling). Such loss may result from nest abandonment or avoidance by the adults, or from loud noise or other disruptive activity that causes a chick to jump or fall from the nest, for example. Issuance of such a permit typically takes 90 days from receipt of a complete application.

In this case, we advised Mr. Lawson that he may apply for a permit, at his discretion, to cover any liability he would otherwise assume if his activity caused the death of a nestling. We also observed that this eagle pair has already demonstrated tolerance to clearing and grading. The pair that used the nest in 2005 (which may have been the same birds or different ones) tolerated construction of the adjacent house. These observations suggest that the eagle pair will likely fledge their chick



ATTACHMENT B

successfully, even with construction of Mr. Lawson's house, so issuance of an eagle disturbance permit may not be necessary. We have reviewed the facts of this case and continue to believe it likely that Mr. Lawson can proceed with construction of his residence without interfering with nesting success of this eagle pair.

We understand that the City and Borough of Juneau requires that he wait until after the nesting season (September 1) to begin construction, to avoid disturbing the nesting eagles, unless a variance is approved by the Planning Commission. We have no objection to issuance of such a variance in this case.

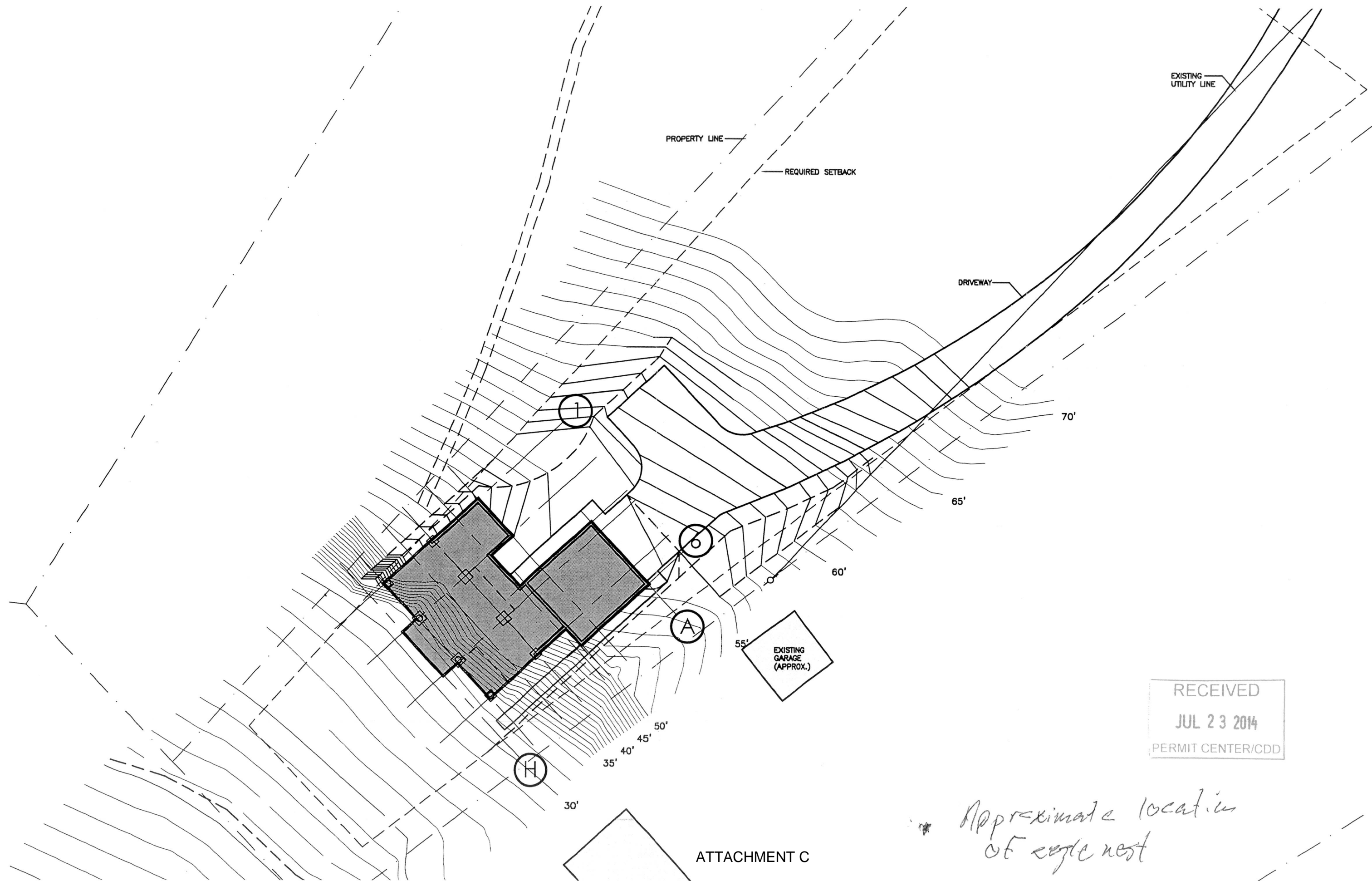
Sincerely,

A handwritten signature in black ink, appearing to read 'Steve Brockmann', with a long horizontal flourish extending to the right.

Steve Brockmann
Southeast Alaska Coordinator

Cc: Charlie Ford, CBJ Community Development Department
Travis Goddard, CBJ Community Development Department
Tom Lawson, property owner
Jordan Muir, USFWS, Anchorage
Steve Lewis, USFWS, Juneau





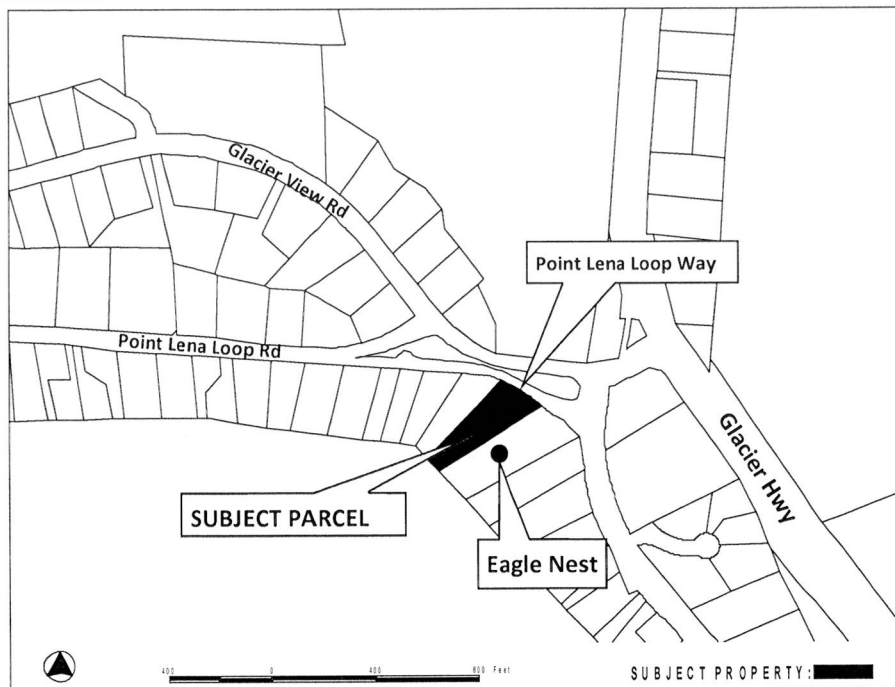
RECEIVED
JUL 23 2014
PERMIT CENTER/CDD

Approximate location
of eagle nest



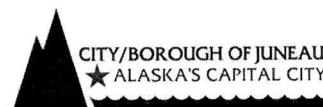


NOTICE OF PUBLIC HEARING



City & Borough of Juneau
Community Development Department
155 S Seward Street • Juneau, Alaska 99801

SHIP TO:

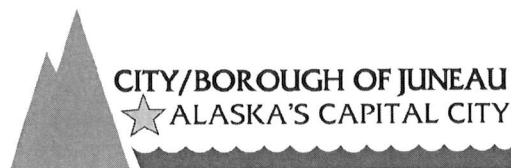


PROPOSAL: A Variance request to allow construction of a single family home within the 330 foot required setback for an eagle's nest.

File No: VAR2014 0014		Applicant: Thomas and Kimberly Lawson Revocable Alaska Community Property Trust	
To:	Adjacent Property Owners	Property PCN:	4-B33-0-102-009-2
Hearing Date:	August 12, 2014	Owner:	Thomas and Kimberly Lawson Revocable Alaska Community Property Trust
Hearing Time:	7:00 PM	Size:	1.04 Acres
Place:	Assembly Chambers	Zoned:	D-3
	Municipal Building	Site Address:	16105 Point Lena Loop Way
	155 South Seward Street	Accessed Via:	Point Lena Loop Road
	Juneau, Alaska 99801		

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 14 days prior to 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 Jonathan Lange at 586-0218 or jonathan_lange@ci.juneau.ak.us.

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

Date notice was printed: July 24, 2014