

MEMORANDUM

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

DATE: November 13, 2014

TO: Board of Adjustment

FROM: Chrissy McNally, Planner 
Community Development Department

FILE NO.: VAR2014 0025

PROPOSAL: A Variance to reduce the rear yard setback from 20 feet to zero feet for the placement of six containers for use as a commercial hydroponic vegetable farm.

GENERAL INFORMATION

Applicant: Allen Butner

Property Owner: Allen and Gerri Butner

Property Address: 9220 Lee Smith Drive

Legal Description: Airport Acres Block C Lot 8

Parcel Code Number: 5-B16-0-105-005-0

Site Size: 0.22 Acres

Comprehensive Plan Future Land Use Designation: Urban Low Density Residential (ULDR)

Zoning: D-5

Utilities: City water & sewer

Access: Lee Smith Drive

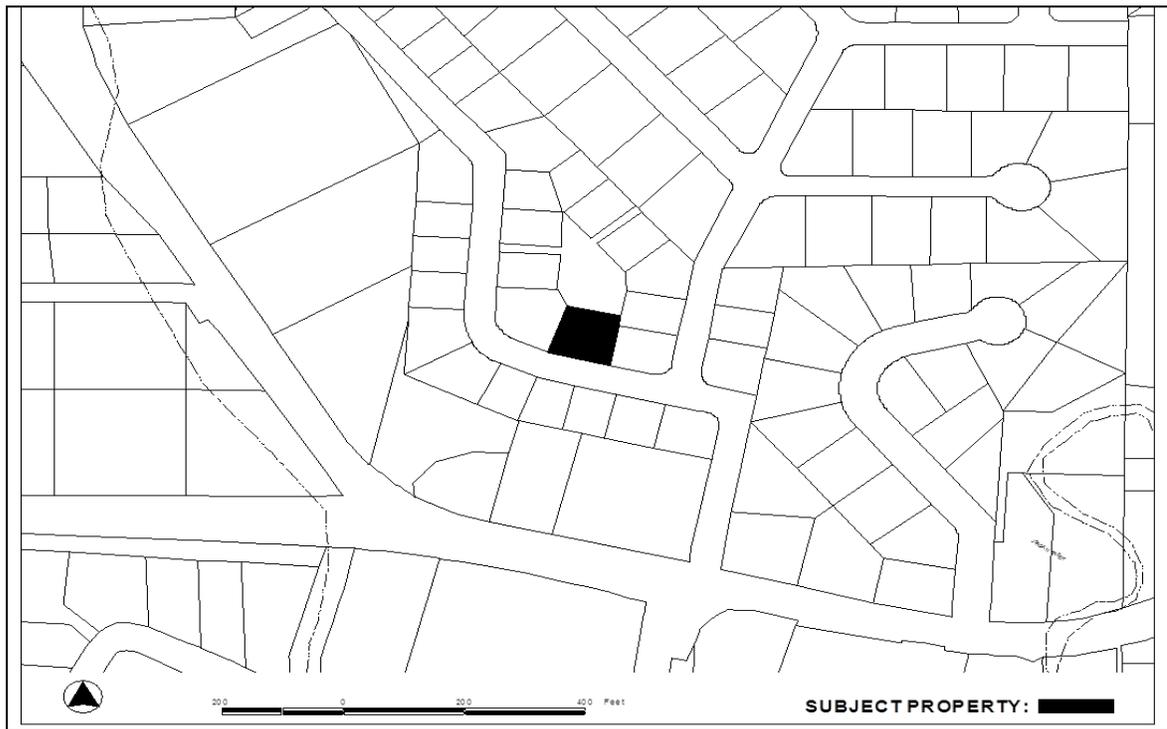
Existing Land Use: Single Family/Day Care

Surrounding Land Use:

North	-	D-5/Vacant
South	-	Light Commercial/Lee Smith Drive
East	-	D-5/Duplex
West	-	D-5/Duplex



VICINITY MAP



ATTACHMENTS

- Attachment A: Variance application
- Attachment B: 1955 Plat
- Attachment C: Zoning map
- Attachment D: Site plan
- Attachment E: Vicinity aerial
- Attachment F: Public notice

PROJECT DESCRIPTION

The applicant is seeking a Variance to the required rear yard setback of 20 feet to 0 feet for the placement of six 53 foot by 8 foot containers to be used for a commercial hydroponic vegetable farm. The applicant informed staff in the application that the containers were 10 feet wide. The applicant has since learned the containers are 8 feet wide. The applicant is simultaneously seeking a Conditional Use Permit for the development of a commercial hydroponic vegetable farm.

The applicant proposes placement of six insulated containers to house the hydroponic growing operation. The produce harvested from this operation will be sold to area stores. The containers are 53 feet long 8 feet high and 8 feet wide. The proposal is to stack the containers with three on the bottom and three on top with a small deck and staircase to access the second story (Attachment D). Therefore the structures would occupy 1,272 square feet and be 16 feet high.

The accessory structure height allowance in the D5 zoning district is 25 feet. The applicant is undecided as to whether he will place a shelter over the containers. However, this shelter cannot exceed the 25 foot height limit.

BACKGROUND

The property located at 9220 Lee Smith Drive was platted in 1955. The residence was built in 1962. It has been used as a residence and professional office for several decades. The Community Development Department records indicate a Conditional Use Permit was granted in 1983 for the operation of an accounting firm out of the residence.

According to the applicant an insurance company operated out of the residence for several years. Ownership then transferred to Boy Scouts of America which managed their Southeast Alaska operations from the site. CDD does not have a record of these uses.

The current owner purchased the property from the Boys Scouts of America in 2009. The owners have operated a day care for up to 8 children for the last few years which is allowed with a building permit in the D5 zoning district. The applicant stated that they intend to continue operating the day care until the hydroponic farm is profitable.

The recorded plat identifies the lot to the north as a recreation area (Attachment B). This lot is owned by CBJ Lands and Resources. CBJ Lands and Resources commented that this parcel has not been placed in any land management classification. When solicited for comments, both CBJ Lands and Resources and Parks and Recreation stated that they have no objection to the proposed use. However they request a Variance of only five feet to ensure that the owner has sufficient space on his property to access and maintain the containers.

ANALYSIS

The neighborhood includes both D5 and Light Commercial zoned properties. The subject property is located in the D5 zoning district. The minimum lot size in the D5 zoning district is 7,000 square feet with a minimum width of 70 feet and depth of 85 feet. The lot is 9,806 square feet, with an average width of 98 feet and depth of 99 feet. The lot exceeds the minimum dimensions for the zoning district.

The required front and rear yard setbacks are 20 feet, with side yard setbacks of five feet. There is 45 feet between the house and the rear property line. The applicant proposes placing the containers along the rear lot line to maintain 21 feet between the containers and the house.

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 or a lesser relaxation is required for the applicant to place the proposed six containers on the site. If the applicant were to place the containers a few feet from the house in order to allow access into and out of the house, in addition to the 24 feet occupied by the containers, approximately 18 feet would remain between the containers and the rear lot line (see Attachment D).

Modification of the business plan would help the applicant meet the required setbacks. The applicant could place four containers and maintain nine feet between the house and meet the rear yard setback. Based on the applicant's narrative, it is not yet known if there will be demand for the produce yielded from three of the six containers. This is significant infrastructure to remain on the lot should supply exceed demand for the produce.

However, modification to the plan can still be made since the containers are not yet purchased. Six containers cannot be located at all without some relaxation to the rear yard setback requirements. Some relief would be given to the applicant in that he would not have to order additional containers if demand for the produce exceeded the four containers. However, an unused 53x8' container on the property would not be consistent with justice to other property owners.

The use is unique and is not related to the residence. There are no other such structures in the D5 zoned section of the neighborhood. Therefore, the relaxation applied for or a lesser relaxation is not consistent with justice to other property owners.

NO. 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.*

In general, the intent of the CBJ Land Use Code is to ensure that growth and development is in accord with the values of its residents, to identify and secure beneficial impacts of growth while minimizing the negative impacts, ensure that growth is of the appropriate type, design and location, to provide open space for light and air, and to recognize the economic value of land and encourage its proper and beneficial use. The requested relief does not support the intent of this title as it asks for a relaxation that only benefits the applicant. In order to minimize negative impacts of growth, if a Conditional Use Permit is approved for the commercial hydroponic farm; four containers could be placed on the property without requiring a Variance to yard setbacks. With a Conditional Use Permit, four containers would provide for legitimate design in that they could comply with the required setback. The requested relief does not recognize the value of properly utilized land and development because the proposed use is possible with fewer containers.

NO. This criterion is not met.

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

The proposed number of containers requires a Variance to the rear yard setback. However, four containers would still visually impact the residences to the west, east, and northeast. However, the proposed relaxation would most affect the lot adjacent to the rear lot line. This lot is owned by CBJ and is currently vacant, but does not have a CBJ land designation applied to it. Therefore, it could be developed at some point in the future. Given there is no land designation for this lot, appropriate space should be maintained between the subject lot and the CBJ parcel to avoid future injury in the way of protecting open space for light and air.

If the Variance were to be approved, staff recommends that the containers be placed a minimum of 5 feet from the rear yard property line in order to accommodate the concerns of Lands and Resources and Parks and Recreation.

NO. This criterion is not met.

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

With an approved Conditional Use Permit, the Variance would not authorize a use not allowed in the 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;*

The principle use of the property is a single family residence with child care. Compliance with the required rear yard setback of 20 feet would not unreasonably prevent the owner from using the property for a permissible principle use. The proposed use requires a Conditional Use Permit. If the permit is approved, the use is not a principle use of the residential lot.

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 rear yard setback of 20 feet for the placement of containers to house a hydroponic vegetable farm will not unreasonably prevent the owner from using the property in a manner consistent with the neighborhood. The property is in the D5 zoning district and is a use unique to the rest of the neighborhood located in the D5 zoning district. Four containers stacked two high takes up less space and have less of a visual impact than six containers and can meet the required yard setback. Therefore, fewer containers would be more consistent with the scale and appearance of existing development in the neighborhood.

NO. This criterion is not met.

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

The property is level and open. The property owner could meet the required rear yard setback with four containers instead of the proposed six.

NO. 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 no preexisting nonconforming conditions on the subject parcel. Therefore, a granting of the Variance would result in a net decrease in overall compliance with the Land Use Code, CBJ Title 49.

NO. This criterion is not met.

Criterion 5 is not met.

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

The Variance requested or a lesser relaxation will create a visual detriment to the neighborhood while yielding no net benefits. While in time the produce will be sold at local grocery stores, this is not necessarily a benefit to the impacted neighborhood.

NO. This criterion is not 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. The Juneau Coastal Management Program is not applicable to this Variance.

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

No. The project does not meet criteria 1, 2 ,3, 5, and 6; therefore, it does not satisfy Section 49.20.250.

RECOMMENDATION

Staff recommends that the Board of Adjustment adopt the Director's analysis and findings and **DENY** the requested Variance, VAR2014 0025.

If the Board of Adjustment chooses to approve the Variance staff recommends a 5 foot rear yard setback instead of the requested zero foot setback.

VARIANCE APPLICATION

Project Number	Project Name (15 characters)	Case Number VAR20140025	Date Received 9/26/14
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TYPE OF VARIANCE REQUESTED:

- | | |
|---|--|
| <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 type="checkbox"/> Variance to Setback Requirements (VSB) | |

DESCRIPTION OF ACTIVITY WHICH REQUIRES A VARIANCE:

To place up to six 53 ft container vans on the rear of the property to be used as a commercial hydroponic farm with a variance to the setback so that they may be placed on the back of the property line

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):

It is a flat paved lot that butts up to undeveloped city land. Property is zoned residential but is surrounded by commercial and rental properties.

UTILITIES AVAILABLE: WATER: Public On Site SEWER: Public On Site

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

It would not. It is specific to the needs of the current owner

WHAT HARDSHIP WOULD RESULT IF THE VARIANCE WERE NOT GRANTED?

It is approximately 45 ft from the back of the house to the property line. We are needing to place three vans wide, 30 ft. This would allow sufficient product to meet currently identified needs of the community. Not granting the variance would require us to place vans extremely close to the house and limit us to one, possibly two vans wide. This would not meet the needs as expressed to us.

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</u>	_____	_____	_____
	Adjustment	\$ _____	_____	_____	_____
	Total Fee	\$ _____	<u>694</u>	<u>CDD5804</u>	<u>9/26/14</u>

NOTE: MUST BE ACCOMPANIED BY DEVELOPMENT PERMIT APPLICATION FORM

ATTACHMENT A

TO BE COMPLETED BY THE APPLICANT

DEVELOPMENT PERMIT APPLICATION

Project Number	CITY and BOROUGH of JUNEAU	Date Received: <u>9/26/14</u>
Project Name <small>(City Staff to Assign Name)</small>		

PROJECT / APPLICANT INFORMATION	Project Description To place up to six 53 ft container vans on the rear of the property to be used as a commercial hydroponic farm with a variance to the setback so that they may be placed on the back of the property		
	PROPERTY LOCATION		
	Street Address 9220 Lee Smith Dr	City/Zip Juneau AK 99801	
	Legal Description(s) of Parcel(s) (Subdivision, Survey, Block, Tract, Lot) Airport Acres BL C LT 8		
	Assessor's Parcel Number(s) 5B1601050050		
	LANDOWNER/ LESSEE		
	Property Owner's Name Allen and Gerri Butner	Contact Person: Allen Butner	Work Phone: (907) 723-7829
	Mailing Address 9220 Lee Smith Dr, Juneau AK 99801	Home Phone: (907) 789-9492	Fax Number:
	E-mail Address butner2272@gmail.com	Other Contact Phone Number(s): (907) 957-4847	
	LANDOWNER/ LESSEE CONSENT ****Required for Planning Permits, not needed on Building/ Engineering Permits****		
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 <u>9/26/14</u>	
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 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):		
X	 _____ Applicant's Signature	Date of Application <u>9/26/14</u>	

OFFICE USE ONLY BELOW THIS LINE					
STAFF APPROVALS	<input checked="" type="checkbox"/>	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)			
	X	Variance Case (De Minimis and all other Variance case types)		9/26/14	VAR20140025
		Wetlands Permits			
	Zone Change Application				
	Other (Describe)				
***Public Notice Sign Form filled out and in the file.					
Comments:				Permit Intake Initials	

Conditional Use Permit

Project Description: A detailed letter or narrative describing the project.

We are looking to place up to six 53 ft. insulated container vans that have been modified to serve as hydroponic grow facility for leafy greens of various types and with the option to grow any manner of plant matter as dictated by the market. We may or may not place a concrete pad under the vans. Water, sewer and electric will be run underground to the vans. If we put in more than three, they will be stacked two high. This will still conform within the CBJ height maximum of 25 ft. We may or may not put one of the plastic fabric covered garage structures over the entire farm site. They will be placed side by side, three wide. They will be placed on the asphalt area of the backyard, so as not to remove any vegetation from the property to conform to CBJ requirement of 20% vegetative cover. We are currently at approximately 27%. Access will be from the southern end of the property. There will be no significant foot traffic in this area. There will be no additional external lighting. No delivery vehicles will be going back there, beyond our vehicles occasionally. This is not anticipated to be needed other than rare occasion. I will be hand carrying boxes of product to the packaging room on the eastern side of our house, packaging it for delivery and loading it into the vehicle at the existing front parking area. We anticipate the hours of operation will be limited to 8am to 8pm as a general rule. Actual operation of the farm will only require a few hours a day, but we reserve the right to accommodate emergency orders or the needs of our customers. There will be no retail sales on site. The property is currently being utilized as a state licensed child care facility with the plan being that once the farm is solidly established, we will close the childcare facility. A French drain will be installed to control rain water drainage and dispose of the wastewater from the farm. Containers will be painted in a manner that will not be garish or loud, unless they are covered with plastic tarp garage or metal building. Every attempt will be made to get them to blend in. If needed for screening, additional vegetation may be added. Property is already very secluded. Back of property is CBJ property, an unused swamp full of trees with very little drainage, so it is not used at all by even wildlife. To the west are storage sheds that are approximately 15 ft. tall, with a six ft. fence behind it, partitioning it from the neighboring rental unit. To the east, it is fairly treed for the back part of the property. Originally there was a dilapidated wood fence there that was removed and eventually will be replaced. There is a rental unit beside the property to the west and to the east. There is a church to the northeast, shielded from the property with trees.

Plans: All plans are to be drawn to scale and clearly show the items listed below:

A. Site plan, floor plan and elevation views of existing and proposed structures

See attached

B. Existing and proposed parking areas, including dimensions of the spaces, isle width and driveway entrances

See Attached Photos

C. Proposed traffic circulation within the site including access/egress points and traffic control devices

There should be no increase in traffic in the region due to this project. There will be no retail sales, so the traffic will be limited to me taking deliveries to the stores occasionally. If anything, once this business is up and running, we will be closing the child care in our home, so traffic should decrease due to this project...

D. Existing and proposed lighting (including cut sheets for each type of lighting)

We will not be adding any additional external lighting

E. Existing and proposed vegetation with location, area, height and type of plantings

See attached photos. Daughter is about 6 ft. for scale.

F. Existing physical features of the site (i.e. drainage, eagle trees, hazard areas, salmon streams, wetlands, etc.)

Drainage is currently gravity fed from house to the back of the property. We will be installing a French drain to capture this rainwater runoff. There are no eagle trees, hazards or salmon streams involved in this project.

Variance Request

Project Description: A detailed letter or narrative describing the hardship and/or practical difficulties that is the result of an extraordinary situation or unique physical feature affecting a specific parcel of land or structure. Also include how the proposed project meets the variance criteria listed on the attached sheet.

It is approximately 45 ft. from the back of the house to the back of the property. To meet the current demand from just 3 of the 5 stores in town that we have talked to, we will need to have three vans. Once we talk to the other two, it is very likely we will need all six. The plan is to put three vans, side by side along the property line. This will leave approximately 15 ft. between the vans and the house. The current 20 ft. setback would only leave us 25 ft., effectively restricting us to 2 vans maximum, with them crammed up against the house. While technically feasible, this would certainly not be ideal, and would not even meet the demand of the stores we have contacted, let alone the needs of the rest of Juneau.

Locating the vans on the property line will have no impact on the neighborhood. Behind our property is city land that has been left undeveloped. It is the low spot and has little to no drainage so has become a swamp. It is wet enough we have not even seen wildlife using it, other than an occasional duck. There is ample vegetation between our property and the church to the Northeast. There is a fair amount of screening between us and the rental units to the East, and we anticipate putting in a 6 ft. wooden fence eventually, replacing the fence that rotted and was removed. To the West, there are three storage sheds and a six foot fence between us and that rental unit.

Plans: A site plan, drawn to scale, is required for all Variance Applications. The site plan should include the following information:

See attached

- A. The location of existing and proposed structures (i.e. buildings, fences, signs, parking areas, etc.); and**

See attached Photos

- B. The location of existing physical features of the site (i.e. drainage, eagle trees, hazard areas, salmon streams, wetlands, etc.).**

Drainage is currently gravity fed from house to the back of the property. We will be installing a French drain to capture this rainwater runoff. There are no eagle trees, hazards or salmon streams involved in this project.

Site Plan



Site plan showing the expected placement of the container vans on the property

CERTIFICATE OF OWNERSHIP AND DEDICATION

We hereby certify that we are the owners of the property shown and described hereon and that we hereby adopt this plan of subdivision with our free consent, and dedicate all streets, alleys, walks, parks and other open spaces to public or private use as noted.

January 4, 1958

Witnessed by:

[Signature] By *Anna B. O'Day*
[Signature] By *Betty J. Smith*

CERTIFICATE OF REGISTERED ENGINEER

I hereby certify that I am a registered professional civil engineer, and that this Plat represents the survey made by me or under my direct supervision, and that all dimensional and other details are correct, to the best of my knowledge.

January 4, 1958

[Signature]
 Felix J. Toner, Registered Engineer

CERTIFICATE OF APPROVAL BY THE BOARD

I hereby certify that the Subdivision Plat shown hereon has been found to comply with the Subdivision Regulations of the Juneau District Planning Board, and that said Plat has been approved by the Board by Plat Resolution No. 2, dated JAN. 4, 1958, and that the Plat shown hereon has been approved for recording in the office of the United States Commissioner, as official Recorder, Juneau.

JANUARY 4, 1958

[Signature]
 Chairman
 Juneau District Planning Board

ATTEST:
[Signature]
 Clerk

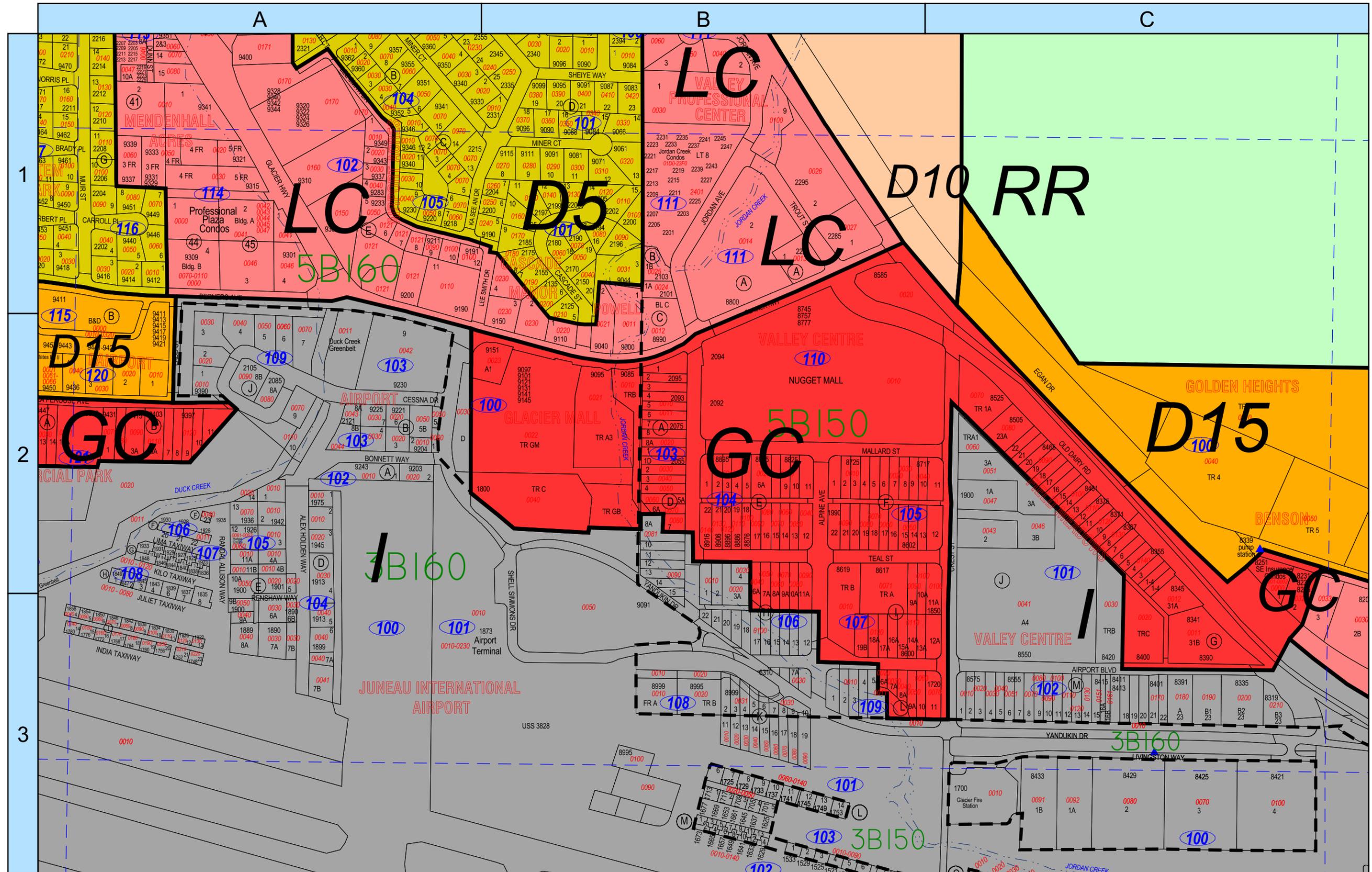


TERMINUS OF ALASKA
 BUREAU OF ALASKA
 The right hereunder was filed for record
 at the office of the official Recorder, Juneau,
 on page _____ of the record of said District.
 Filed for \$ _____ District Recorder
 Per _____ Clerk

AIRPORT ACRES
 SUBDIVISION
 OF A FRACTION OF
U. S. SURVEY 381

SCALE: 1" = 50' DECEMBER, 1954
 FELIX J. TONER, REGISTERED ENGINEER JUNEAU, ALASKA

PLAT No 201



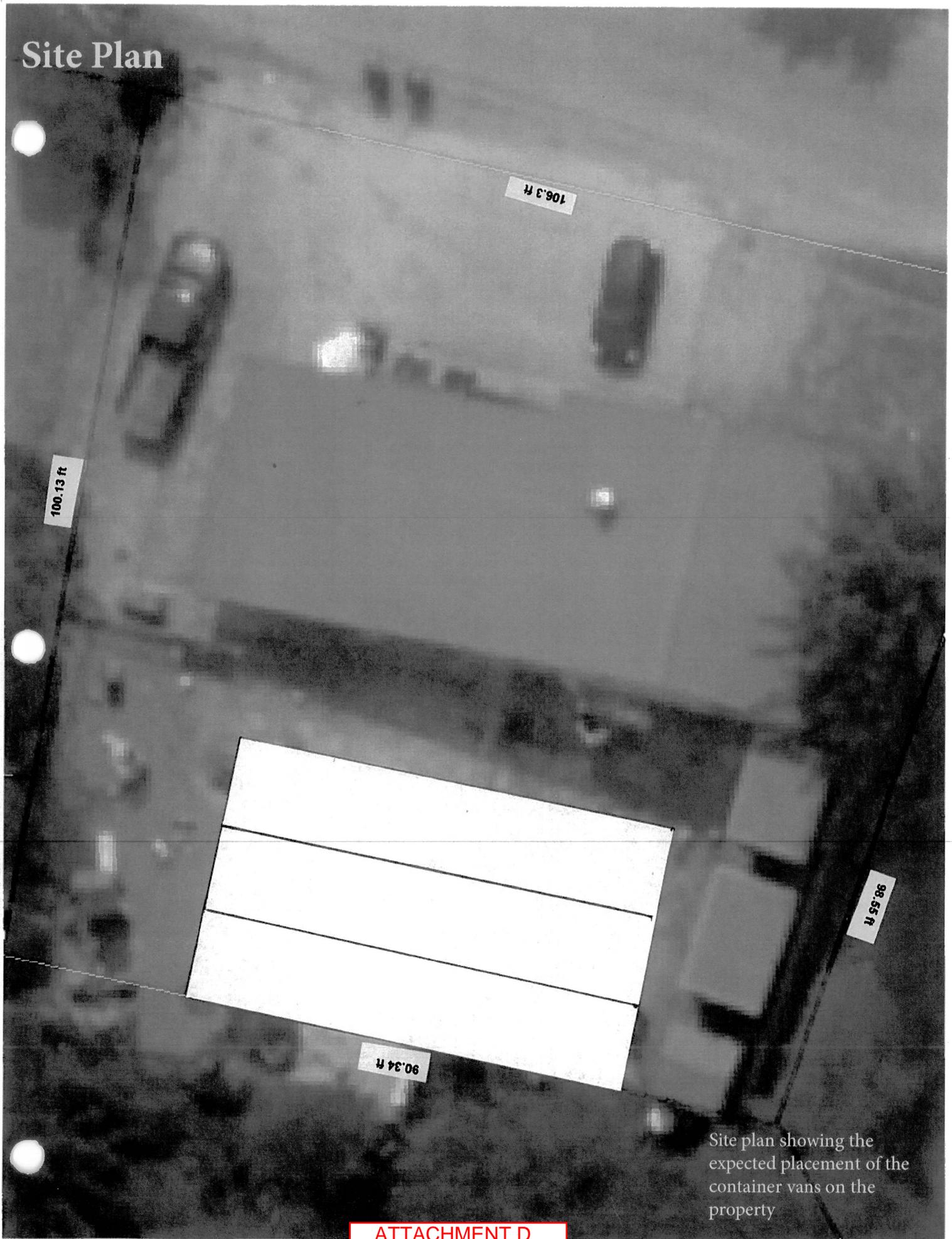
Assessor Tax Number Code

6D090
102
0030
Parcel Code Prefix
Block Number
Lot Number

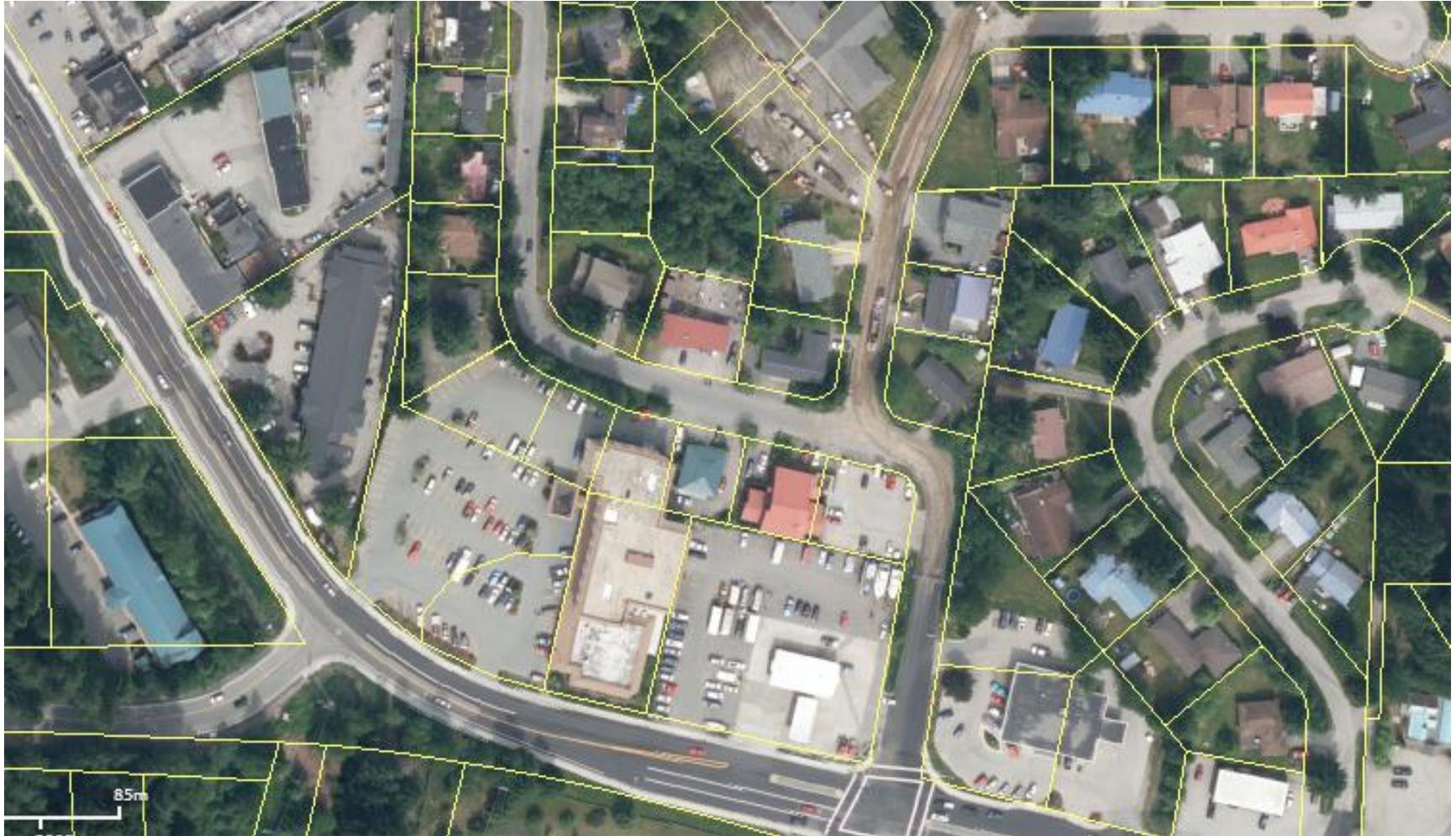
Continued on Page 74
ATTACHMENT C



Site Plan



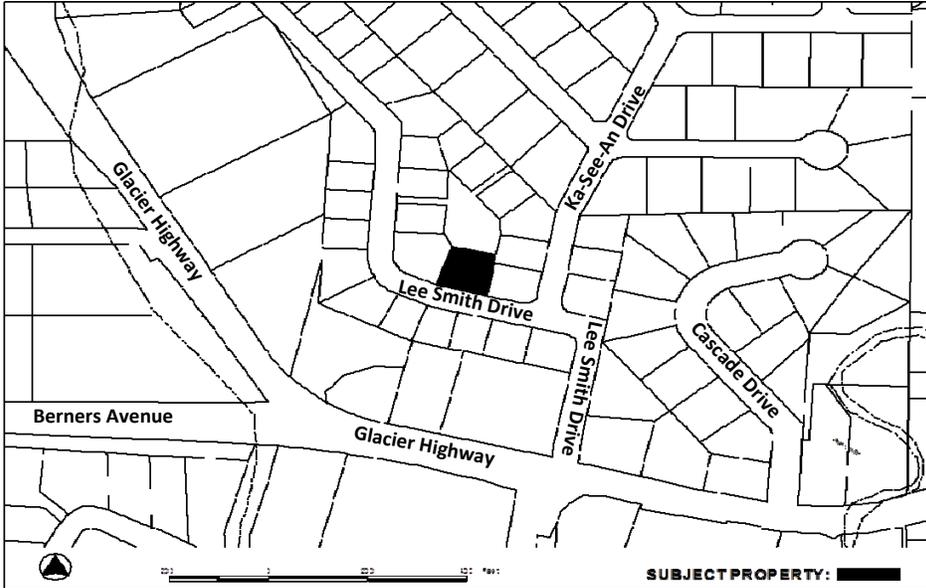
Site plan showing the expected placement of the container vans on the property



ATTACHMENT E



NOTICE OF PUBLIC HEARING



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

SHIP TO:



PROPOSAL: Conditional Use to allow commercial hydroponic vegetable farm in the D5 zoning district. Variance to reduce the rear yard setback from 25 feet to 0 feet to place three shipping containers for a commercial hydroponic farm.

File No:	USE2014 0014 & VAR2014 0025	Applicant:	Allen & Gerri Butner
To:	Adjacent Property Owners	Property PCN:	5-B16-0-105-005-0
Hearing Date:	November 25, 2014	Owner:	Allen & Gerri Butner
Hearing Time:	7:00pm	Size:	9,806 Square Foot / 0.23 Acre
Place:	Assembly Chambers	Zoned:	D5
	Municipal Building	Site Address:	9220 Lee Smith Drive
	155 South Seward Street	Accessed Via:	Glacier Highway
	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 week 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 Chrissy McNally at Christine.McNally@juneau.org or at 907.586.0761

Planning Commission
www.juneau.org/planning

ATTACHMENT F

Meeting Results can be viewed at