

Meeting Agenda of the City and Borough of Juneau
Title 49 Committee of the Planning Commission

Tuesday, October 9, 2018
City Hall Assembly Chambers
5:30 – 7:00 pm

Members Present:

Nathaniel Dye, Michael Levine, Dan Miller, Paul Voelckers, Benjamin Haight

Members Absent:

Carl Green

Staff Present:

Laura Boyce (CDD Planner), Jill Maclean (CDD Director), Jane Mores (CBJ Attorney), Beth McKibben (CDD Planning Manager), Marjorie Hamburger (CDD Admin)

Public Present:

Marna McGonegal

I. Call to Order

Meeting called to order at 5:39 pm.

II. Approval of Agenda

The agenda was approved as is.

III. Approval of Minutes

A. September 17, 2018 Draft Minutes

MOTION: *by Mr. Voelckers to approve the September 17, 2018 minutes.*

The motion passed with no objection.

IV. Agenda Topics

A. AME2018 0009: Proposed amendments to 49.30, Nonconforming Development

Ms. McKibben walked committee members through the memo and said most of the content was to refresh their memories. It was not new information. The nonconforming section in code is not well written, is difficult to use or explain, and does not differentiate between different types of nonconforming situations. Repealing and replacing this section of code is what is proposed, creating processes to evaluate nonconforming uses, nonconforming lots, nonconforming structures and nonconforming density.

Ms. McKibben said that nonconforming density is a category not previously found in code. The language for this was borrowed from Portland, Oregon.

Zoning is a policing power intended to protect public health, safety, and welfare, said Ms. McKibben. Nonconforming is something that was legal when it was created, built, etc. but a zoning change has now made it not legal. This is seen most noticeably in the historic areas of Juneau. Lot sizes have become too small and don't conform to setback requirements in the zoning areas. Also a property may have more dwelling units than the new zoning allows and so has become nonconforming in terms of density. Aurora Arms, a condominium property on Glacier Highway, is one such situation, she said. The city is figuring out how to help them continue to finance sales of these units, since the current nonconforming code makes this difficult. Another example is a 4-plex in the Valley that under current code could not be rebuilt as is.

The language in the draft ordinance provides a process for a property owner to establish that a given nonconforming situation was legal when it was created, which if true may allow for development. This places the burden on the property owner rather than the Community Development Department, said Ms. McKibben. This is a significant change from any process now in place and it helps appraisers to show that a property is legally nonconforming.

Ms. McKibben said that another thing created in this new ordinance is a nonconforming situation review process, to take place in front of the Planning Commission. Nonconforming densities or uses could be reestablished via this process. She said her favorite example was Amerigas on Mendenhall Loop Road which was permitted but is located in a residential zone.

Nonconforming situation review is appealable to the Planning Commission to consider changes of use within the same use category which do not comply with zoning standards or when the director determines that an increase in off-site impacts can reasonably be anticipated. An example might be an office building in a D1 zone that wants to become a 4-plex residence.

Ms. Maclean said she wanted to clarify that what was before the committee was not the ordinance but was draft language. She asked that members look to getting the concepts clear so Law can draft the ordinance. Stick to policy or concept at this point, she cautioned.

Page 4 of the memo includes the key policies for discussion, said Ms. McKibben. The committee needs to resolve the definition of "normal maintenance", and she put some sample language on this page from Anchorage. She pointed out that this language was different from the committee's previous conversation, however it allows for flexibility. She said that the concept about violating setbacks needs to be worked on. Existing code allows reconstruction on an existing footprint when damaged up to 75%. Is that the right number, she asked the committee? Would we want to go to 100% to make it easier for a property owner to reconstruct?

Purpose

Mr. Haight asked if the creation of nonconforming lots which occur when roads are reconstructed should be addressed here or is this situation already incorporated into the concepts? Ms. McKibben said that when a lot becomes nonconforming by an expansion of a right-of-way then it is a legally nonconforming lot and this language would apply. New lots that are created via a subdivision are not allowed to be nonconforming.

Ms. Maclean said that if part of a property is lost that will effect setbacks or lot size and make the situation nonconforming, this might impact density but would be cared for within this ordinance and be legally nonconforming.

Mr. Dye said that Mr. Miller discussed lots becoming nonconforming with the installation of a new road such as Glacier Highway or Fritz Cove Road. There was not a process to address this for the Planning Commission. Ms.

Boyce said that the Department of Transportation gave additional land behind the houses to offset the loss and there should have been a lot consolidation which did not happen. However now there is language that addresses this type of situation.

Mr. Dye said that in Fritz Cove some lots are now nonconforming and asked how these are being utilized? Ms. Maclean said any substandard lot is allowed at to have at least one single family home and Fritz Cove is zoned D1. Ms. McKibben said that this will be preserved with this concept. She also made a note to clarify with Law that this ordinance and right-of-way acquisition methods play nicely together.

Mr. Voelckers said he thought paragraph 3 (lines 16-21) was not useful; there was not a specific utility to it. What are we trying to get at, he asked? Ms. McKibben said it is useful to explain the code to the public and provide some reference to future planners to understand how to read it and what the intent is. It helps the public understand why it is the way it is.

Nonconforming Situations

Mr. Voelckers asked if a "situation" is always just a site rather than a building. Ms. McKibben said that a site could have a nonconforming lot that was too small and could contain a nonconforming structure that did not meet setbacks as well as a nonconforming use or density. The site could have all of these but each would be evaluated independently.

Mr. Miller asked if the ordinance was titled "nonconforming situations". He suggested that Line 24 ought to list all of the types of situations that could be nonconforming. Line 23 says "contains a nonconforming use" but these are not listed one after the other. Line 25 does have them all listed but he suggested starting the paragraph with that sentence. Mr. Voelckers asked if the title is *Nonconforming Situations*. Ms. McKibben said she did not know. Ms. Boyce said the working title is *Nonconforming Development* now. Mr. Voelckers said he felt the word "situation" worked better for use than "development". There was more discussion about the language for the title. Ms. McKibben pointed out that there are other nonconforming situations like signs and vegetative cover.

Applicability

Mr. Voelckers and Mr. Dye asked if the statement "a nonconforming situation may be changed" (Line 35) meant by a Planning Commission hearing? Ms. McKibben said that an example might be if a nonconforming propane store wants to become a childcare facility, a Conditional Use Permit might need to be obtained. Mr. Voelckers asked if they are not appropriate for the zoning as a propane store, why would there be any action for a different use. Ms. Maclean said this could also be the same situation as a 4-plex on Star Hill that wants to become a single family home. Now the property owner just obtains a building permit but this language states that once a situation becomes conforming, nonconforming rights are lost. The property cannot go backwards.

Mr. Dye asked if once a permit is pulled, the property owner loses it all, not just after 365 days. Ms. McKibben said yes, there is no clock; once the change is done it is done. Mr. Dye said that it seemed contrary to him that if someone can cease nonconforming operations but after 200 days decide the new use is not working, they cannot go back to the original use. Ms. Maclean confirmed that no, at that point the owner has relinquished the grandfathered rights. On other hand, she said, if the business were to close up shop for up to 365 days, for example due to personal hardship, but they did not choose to become a different business that was conforming, this would not be abandoning the rights to remain legally nonconforming. Ms. McKibben said that over time the city wants things to become conforming if possible.

Mr. Dye asked what happens if a Conditional Use Review is not approved? Mr. Voelckers asked if when there is an application for a change of use does that include the nonconforming review? Ms. McKibben said no, nonconforming review is a new process. If a nonconforming propane store wants to change to a conforming use a nonconforming review is not needed. Mr. Voelckers asked if during a nonconforming situation review someone requests greater density and it is approved, does that become a conforming use thereafter? Ms. McKibben said that if the fundamental status is changed, the density can be a 4-plex into perpetuity. Mr. Dye asked if for something like the nonconforming propane store, can they apply for a Conditional Use Permit for something else which is not allowed in that zoning area? Ms. Maclean said that a nonconforming review is to make a nonconforming situation legally nonconforming. Ms. McKibben said she sensed that the next time this topic was discussed, she needs to walk the committee through these processes using hypothetical examples to help explain.

Mr. Miller asked if something is made legally nonconforming and burns down, can it be rebuilt? Ms. McKibben said yes, if it is rebuilt within 365 days. Mr. Miller asked if there is a nonconforming lot, containing a nonconforming use, taking place in a nonconforming structure is that legally nonconforming? Ms. McKibben said that would trigger two processes. The applicant/owner would need to provide information showing that the situation was legally nonconforming such as a plat created in 1958 when the area was zoned differently. This would prove that the situation was created legally. Mr. Miller asked if the structure is burnt or abandoned can it be rebuilt? Yes, if it is determined to be a legally nonconforming structure, said Ms. McKibben. However, she said, the use happening inside is a different nonconforming situation. Proof would need to be provided to demonstrate that a business had been operating at the location and evidence such as tax returns could prove the length of time of the nonconforming use. In other words, there would need to be proof of each nonconforming situation individually. Mr. Miller asked if the use was abandoned for a year, can it be lost? Yes, said Ms. McKibben. However the building could remain as a nonconforming structure.

Mr. Voelckers asked if the city has powers separate from the ordinance language so that if a use is deemed to be a public hazard that use can be removed. The example of propane in a residential zone is close to that type of situation; should there be a mechanism for this sort of authority, he asked? Ms. McKibben said that some situations are regulated by other agencies for example an asphalt plant is regulated by DEC, however she was not sure of the answer. Mr. Voelckers gave an example of the fuel tanks which were located where the SLAM building is now. He said there was a time when the neighborhood had to be evacuated. He said he felt that this topic should be explored.

Continued Operation

Mr. Dye wondered where the “hours of operation between 11 pm to 6am” came from in this section. Ms. McKibben said that this was open for discussion. The concept is that nonconforming uses in residential zones might need to have limited hours in order to limit impacts on the neighborhood. Mr. Dye wondered how this might work for a use currently operating in the evening. Ms. McKibben said there was flexibility to change this language. Mr. Dye asked if noise was the intent because there is already a noise ordinance elsewhere in code. Ms. McKibben said that it could depend on the use; truck deliveries happening at 5 am might not be appreciated by the neighbors. Mr. Voelckers said he also found this kind of weird and also the phrase “may not extend” is imprecise. He felt that this was in need of clarification.

Mr. Levine noted that there is a possibility that creating this time limit might deprive someone of their use. He felt it was better to phrase it more generally as in “must comport to the neighborhood” because otherwise the language could run afoul. Mr. Miller proposed the idea that nonconforming uses in places where it is benign ought to become legal. There might be a situation where the use only operates from 11 – 6 am and is completely benign. Perhaps the proof is on the owner, he suggested.

Mr. Dye asked for clarification asking if the city cares about a legally nonconforming status if a review process is not initiated? Ms. Maclean said typically there is enforcement, especially if there has been a complaint.

Change in Use

Mr. Levine addressed the issue of a use being “allowed by right” and asked why the language should not include the ability to review it? Mr. Dye asked if this section alluded to the Table of Permissible Uses. Yes, said Ms. McKibben. Mr. Levine said he thought the ordinance should give the Planning Commission the opportunity for review. For Lines 58-62, you want them all to receive that determination, asked Ms. McKibben? Mr. Levine said he thought that if there is an unusual situation or a problem, the language should not surrender the right to have a conversation. Mr. Voelckers said he thought it appropriate to keep the burden of proof on whoever is proposing the changes.

Ms. McKibben asked if the committee members felt the review should be done by the director or the Planning Commission. Should the director review first with the option for an appeal to the Planning Commission or should all come before the Planning Commission? Ms. Maclean said she was in favor of a first review by the director and the second level being the Planning Commission or the Board of Adjustment. Mr. Levine said he thought it should just be the director; he did not see the need to come to the Planning Commission. Ms. McKibben said for changes of use in the same category, the director would review in order to confirm there would be no increase in off-site impacts. If such impacts were discovered, then the issue could come before the Planning Commission.

Mr. Voelckers said that Line 60 included an implied “where”.

Change of use in a different category

Ms. McKibben pointed out the new ideas in this section, but Mr. Dye said he did not understand them. Ms. McKibben gave an example of a nonconforming use – a dog grooming business in the middle of a residential neighborhood decides to discontinue the business but does not want to become a single family home. The owner wants the building to be converted to a 4-plex structure. The property owner could be allowed to have more density than the zoning allows. Mr. Dye asked why. Mr. Voelckers said perhaps this might be a way to talk the owner out of a greater nuisance; it may be better to add more density than more commercial activity in the neighborhood. Ms. Maclean said yes. Mr. Levine asked if there was a real-world example of this in Juneau. None that she was aware of, said Ms. McKibben. One goal is to provide more opportunities for more density. Ms. Maclean said that when the NOAA lab closed in the D1 zone is Auke Bay, is it reasonable to tell them they can only have a single family home on the property now that it is not a laboratory? Mr. Miller said he wanted to think about this idea and see it again next time. It is a powerful thing, he said, for a person in a D1 or D3 zone who has a nonconforming use to get an opportunity that no one else in the borough gets. He said he was trying to wrap his head around this type of situation. Mr. Dye said that it brought to his mind the efforts to rezone Auke Bay. This language seemed contrary to that effort, to him. It felt like a get-out-of-jail-free card, and so he was struggling with this paragraph. Mr. Levine said he was not adverse to this idea but felt it may need some limits in terms of increasing density. He suggested that a disincentive might be created so that people would be unlikely to seek out nonconforming situations to take advantage of. There needs to be some sort of sideboards, he felt. Ms. McKibben said she might feel comfortable with a nonconforming review including the consideration of these things.

Expansions

Mr. Dye addressed the phrase “manifestly designed” and asked if there is to be no change to the exterior, does it matter? He asked if CDD would want to argue with people about this. He suggested putting a period after “existing building” and leaving it at that. Mr. Levine asked how much concern is there about this? Ms. McKibben

said the concept is not wanting nonconforming uses to get bigger. Ms. Maclean said that a neighbor might care. Mr. Levine said he could imagine a situation where someone comes in with a great idea involving their shed but is not allowed to do it. Mr. Voelckers suggested chopping “manifestly” to imply junk shed. Ms. McKibben said a situation of this sort is Gastineau Humane Society, which is a nonconforming use and cannot expand their dog runs out back of the building. Mr. Levine said he also wanted sideboards here. Mr. Dye asked about the zoning of the doctor’s office which is next door to Gastineau Humane Society? He said his concern is if the nonconforming section is too liberal, it might be better to get a rezone. Ms. McKibben said the best fix is having zoning that works, but over time zoning is how the community changes and becomes the community we want. When Amerigas was permitted, the valley was undeveloped and so it seemed ok, but the plans were for a developed residential area. Mr. Dye said that if there is allowance for too much nonconforming in code, this does not allow the code to fix itself.

Mr. Voelckers said this needed to be clarified, by right or by situational review. Is the committee happy with it being by right? Situational review is firmer, he said.

Discontinuance

Mr. Dye asked why a year was selected as the amount of time. Isn’t the burden of proof on the applicant to convince the city that the nonconforming use should be continued? What if they work 1 day out of a year just to keep this open, he asked? Mr. Miller suggested if the use ceases operation for 365 days, the use can be discontinued but the last sentence says the review must take place within 3 years. He said he did not understand how someone could lose their use in a year but come back in 3 years for review. Does this mean they can get it back? Ms. McKibben said yes. Mr. Miller said the reason to have the 3 years is to allow someone to get back on their feet if they need to close for a year due to illness or something. Mr. Levine said it made sense to him but that he did not like uncertainty with the dates and does not want to fight with the director about that. A better way could be to say the right can be preserved by notice within 365 days instead of arbitrary deadlines, he said. Ms. Maclean asked how people will know that. Mr. Levine asked what the importance was of 3 years, if the business plans to resume when the owner gets back to town. Ms. McKibben said the only nonconforming uses are those that can show they are legally nonconforming but she is not sure that language is in there. In Homer there was a situation where operations ceased for period of time and a complaint was filed when the business reopened. Time was spent to showing it was not closed for 365 days. So, she looks at this as if the nonconforming uses ceases and then neighbors complain, there would be a need to explain that the owners can apply for the use to be reestablished. Ms. McKibben said she did not know how this works in practice in other communities but this draft ordinance asks for documentation in order to move on to review. Mr. Miller said the concern remains that people likely won’t know this option. A year later when they start back up they might come up against new neighbors who were not aware of a business operating next door. Had the business owners known about the 365-day drop dead deal, they might have made a different decision. Mr. Voelckers said he thinks this section is well written and is close, philosophically. After a year of non-use the owner does not have the right to continue but there is a reasonable comfort zone to reclaim it by making their case.

Accidental destruction

Mr. Voelckers asked why do we care if the destruction happened by fire or arson or whatever. If there is a need to rebuild why differentiate? Ms. McKibben said we care if something happens which is unintentional. In that case we want them to be able to rebuild. However intentional destruction is different. The list is not intended to be exhaustive. Mr. Voelckers said he did not feel the need to list the causes if the dividing knife blade is unintentional or intentional. Mr. Miller said he did not agree with Mr. Voelckers; some people might not realize what they are looking at in their building, such as rot. He described a job he did where the bottom row of siding was buckling and it turned out that when the crawl space was insulated, the contractor used bad materials and

an incorrect method so all the moisture from the dirt had condensed in the rim joints for 2 years resulting in lots of rot. There was no way to prove intention when the owner hired people to insulate her basement.

Mr. Levine has a comment about the two different categories. It seemed clear to him the situations where the city would not want to allow the owner to rebuild, like in the case of arson, but others seemed to him more difficult to pinpoint. It might help if the default is if it can't be proven to be intentional, then it was not. Ms. McKibben pointed out that this language is for nonconforming use but later in the document there is language that fits. Mr. Levine said that someone has to determine the status – intentional or maybe it could be ordinary lax care of a house resulting in significant damage. Mr. Levine said he was in favor of not letting people rebuild if they have not been taking care of their house at all. Mr. Dye asked what happens when a property changes hands and the previous owner was the culprit. Mr. Levine said a buyer would need to figure out the condition of a building before buying.

Mr. Miller pointed out that the percentage of 75% keeps coming up. He said he thought this was too low a number because people can't rebuild at that percentage. Ms. Maclean said there were important distinctions to point out. This is section about uses and so 75 % is appropriate here, she said. Ms. McKibben said that in the example of the propane store if a fire destroyed 50% of the store, under this section the owner could rebuild and continue this nonconforming use. Ms. Maclean said that nonconforming uses are the things the city really wants to make conforming. It is not so much the size of a lot that is egregious to neighbors, rather uses are. If it costs more than 75% to reconstruct for a nonconforming use, it might be better to relocate the nonconforming use to an appropriate zoning area. Mr. Levine asked if the whole thing blows up and leaves an empty property, does this mean the owner cannot rebuild the business there. Yes, said Ms. Maclean. Mr. Dye said the owner could get a density bonus and rebuild apartments instead, but he has heartache about this thinking that due to a catastrophic incident an owner would not be able to rebuild his/her livelihood. Mr. Haight suggested moving on saying it might make more sense as the discussion plays through the other categories. Mr. Levine said 75% makes less sense; he felt there was a cost inequality. Ms. McKibben said that 50% is common, and she has not seen more than 75%. Mr. Levine said it was worthwhile to think about the cost of making the site useful for other purposes.

Nonconforming residential densities

Ms. McKibben said this was a brand-new concept and a new nonconforming situation. An example is a 4-plex in a D5 zone that could be reconstructed even though the current zoning only allows for a duplex; even if the structure was vacant for 5 years the nonconforming density would not be lost. Mr. Dye asked why nonconforming density should run with the land. Ms. Maclean said the city created quite a few nonconforming situations through applied zoning which might not have been appropriate. Valley zoning placed downtown does not work. Aurora Arms was a conforming density when it was built but after valley zoning was in place it became nonconforming. To add to that, housing is needed so this is an easy way to keep housing in a neighborhood without getting complaints about the density. Mr. Dye asked why, if Aurora Arms were to be abandoned for a number of years, can the property resume that density later? Nonconforming density runs with the land, said Ms. Maclean. If a property owner can prove that the land once had a higher density, they can reclaim that density, but if it becomes conforming, then they cannot go back to nonconforming. The current situation is that many places cannot get mortgages and can't sell or rebuild which is why there is this attempt to address these situations. There are little to no complaints about residential uses, she said. Mr. Levine said that there was an inconsistency between lines 99 and 108. This is the section that needs a guarantee that the property owner can rebuild, he said.

Ms. Maclean said that a property such as Aurora Arms could come in the day after the adoption of this ordinance and apply for a nonconforming review. Mr. Levine said that made sense but was not what he read

here. He said he likes the concept but it is not understood via the language in this section. Ms. McKibben said she assumed tighter lending practices have caused trouble but the APA service has not heard about this problem which indicates it might not be a national lending challenge. She is interested to hear about Portland's practice. Mr. Levine said that the situation had more to do with words in the code rather than interpretation and practice, so the words need to be totally clear in order to assist people who are trying to get financing. Ms. McKibben said that the nonconforming code is pretty generous, so it is interesting that this problem exists. Ms. Maclean said that the number of 75% is a trigger on mortgages; people don't have the absolute assurance that they can rebuild. Mr. Dye asked why nonconforming density is not sunsetted? How does this help? Lending practices are about rebuilding in the event of a catastrophic and have nothing to do with keeping density in perpetuity. Why is nonconforming use valued differently than nonconforming density? Why limit the code in shaping the future, he asked?

Ms. Maclean said that the reason may be the need for housing and zoning that does not fit the area or has been misapplied like downtown. Some locations have not been up-zoned even if sewer/water has been extended. The Comprehensive Plan has not caught up. Mr. Miller said that fixing this is not shaping future; it is fixing the past and trying to make it all legal because it once was. He said that he likes the density part of it but he was confused about lines 111-117 where it says more than 1 dwelling unit, but line 118 says one dwelling unit then returns to the 75% figure. He said he thinks that ought to go away. If a building is destroyed by fire, lending institutions need to know the structure can be rebuilt. In 2009, it cost 115% of appraised value to build a new home, after the 2008 crash. He felt that the percentage in this section should be deleted. Ms. McKibben said this only applies to buildings in WI and I zoning. All other zones get at least a single family home, she said. Ms. Maclean said if a single family home in an Industrial district burns down, this is the only time it applies because the city wants to transition away from residential uses in an industrial zone. Mr. Miller asked why can't an owner rebuild a family house? Mr. Levine asked what does it matter about the costs? The language says an owner can only rebuild if more than 75% of the cost to rebuild? If the city wants to make it more difficult to rebuild a family home, there should be reasons listed, like to save WI zones for other uses. He said he felt the language included the wrong criterion. He said he was inclined to go the other way and say if a cabin in WI burns down, that is too bad but now the owner must use that parcel for something else. He felt this was a better way to achieve the zoning aims, rather than the 75% figure; it would be more direct. Maybe the issue is more about harmony in a location, rather than cost.

Mr. Miller commented that he did not understand until just now that the only zones not conforming are WI and I, and he has been on the Planning Commission for 11 years. This indicated to him that the language is not clear. If the language states that it applies only to WI or I where residential uses are not allowed, that takes the ambiguity out. Ms. Maclean said that this might be true for today at least, but it could change.

Mr. Levine asked why on line 105 is it stating just that one way something can be illegal when there are more ways to be illegal? Ms. McKibben said maybe it was not self-evident when she was writing it and suggested this be crossed out.

Mr. Levine suggested including "damaged by owner", because it could be damaged by someone else.

Mr. Miller said he liked the way lines 132-135 were written, but on page 4 he wanted to use similar language as on page 5.

Nonconforming structures

Ms. McKibben said that a lot of this section is already in current code.

One concept not in here, said Ms. McKibben, is nonconforming structures with residential uses and allowing them to be reconstructed on the existing footprint. She asked the committee members what they wanted to do about that. Mr. Miller said yes, these should be allowed. In Anchorage, he said, there is flat land everywhere and in Portland too but here we need to make every piece of buildable land count. Ms. McKibben said this would not allow encroachments into ROWs and adjacent property, and she will work on incorporating that language. Mr. Dye said he sees references to other code sections and was concerned about that if those other sections change. Mr. Levine said he wanted to incentivize creating more conformance on a lot.

Mr. Miller asked where the maintenance discussion comes in. Ms. McKibben said it is in here somewhere, and this was talked about quite a bit before.

Mr. Miller said that the non-bearing part needs more definition. Ten percent is normal maintenance. Mr. Dye asked about the purpose of defining "maintenance". Ms. McKibben said there is a distinction between maintenance and reconstruction. Ms. Maclean said an example is an historic building where all but one wall is demolished but the project is labeled "maintenance" when, in fact, it was demolition. Having a definition of normal is useful. Ms. McKibben said more work is needed in this section.

Nonconforming lots and lot fragments

Ms. McKibben said that any nonconforming lot can have a single family home. There are situations of two nonconforming lots under the same ownership existing side-by-side, but one home is vacant and so this is treated as one property. The proposed language provides some options, lines 171-184. If there is a house on one lot with a vacant lot next to it, together they become conforming or almost so and shall be treated as one lot. The language says that in order to be treated as separate lots, the owner would have to go through the director process. Mr. Levine said he lived on exactly this situation in the Casey Shattuck neighborhood; he had a giant lot in the middle of the flats. He did not think this criteria should have been used to determine if he could put a second house on his front lawn since having two dwellings on these parcels would be in harmony with the neighborhood. Why put these criteria here, he asked? He said he was not adverse to the director process but thought these were not the right conditions, especially when the city wants to incentivize housing, especially small, affordable housing.

Ms. McKibben said if an owner wanted to build separate detached garage they would be asked to consolidate the lots or make the garage be attached to the house. Mr. Miller said he felt the potential should not be taken away. Mr. Levine said his vote was to allow this with director approval and other conditions like neighborhood harmony. Ms. Maclean said the idea is striving to get to conformity and so unless someone can prove there is intention to keeping the lots separate, the lots should be combined to be conforming. Mr. Dye said that if the argument is that density should remain in perpetuity, slap it right on here. Ms. Maclean said this has to do with property tax. Mr. Dye asked what this has to do with Title 49 or density. Mr. Miller said that in Mr. Levine's situation, he knew the potential for building a second structure which could be money in the bank to sell later. If a platted as a separate lot, he shouldn't have to prove that. Mr. Levine pointed out that he should not be able to build a nonconforming house on the second lot; he should meet legal setbacks even if it is a legally nonconforming lot. Ms. McKibben said that under current code, he could build a second house on that lot, but how would an appraiser give it second tax ID number? This language provides a process so an owner can have the choice to consolidate or keep as two separate lots and go through a process to establish the intent to keep as two separate. Mr. Levine said that this only comes up when the owner wants to sell and separate them. Mr. Miller said if I own 3 lots, who cares if there is one tax bill or 3? I can sell at any time I want, he said. These are platted lots, and I cannot be prevented from selling. Mr. Levine said if an addition to the house were to be built, the owner would have had to consolidate to conform.

Ms. McKibben asked if the committee wanted to go through the conceptual language again or see a draft ordinance. Mr. Dye said he needed to go through the remaining section and understand about percentages of the cost of rebuilding, so he wanted to see it again. Mr. Levine and Mr. Miller agreed.

B. Alternative Residential Subdivision (ARS)

Ms. Maclean reminded the commissioners that it was left to staff to work on the language in this ordinance, but a minimum was never set. It cannot be zero. She said she proposed 25% of the setback. Mr. Miller asked if the minimum should be 5 feet. Ms. Maclean said the base starting point is the underlying zoning but asked what should be the absolute minimum? Mr. Dye said he liked the idea of 25% of street side setback on all sides. Ms. Maclean said that might be more than the underlying zoning setback in some areas, but 25% across all works. Mr. Miller asked if all four sides could be different minimums. Yes, said Ms. Maclean. This might not be approved, but that would be the absolute minimum. Mr. Levine asked if 2 feet should be a minimum. Ms. Maclean said she did not think it should be zero. Mr. Dye said he did not have a preference.

V. Next Meeting

- Monday, October 15, 2018, 12:00 – 1:30 pm, Urban Agriculture

VI) Adjournment

The meeting adjourned at 8:03 pm.