

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

Wednesday, December 20, 2017, 12 pm Community Development Department, Large Conference Room
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Commissioners Present:

Dan Miller, Kirsten Shelton, Paul Voelckers, Carl Greene, Nathaniel Dye, Ben Haight

Members Absent:

Dan Hickok

Staff Present:

Laura Boyce (CDD), Jill Maclean (CDD), Beth McKibben (CDD), Amy Liu (CDD), Robert Palmer (Law), Marjorie Hamburger (CDD)

I) Call to Order

Meeting called to order at 12:04 pm.

II) Agenda Topic

a) De Minimus Variances

Ms. Boyce clarified that a De Minimus Variance will be renamed to reflect that this is an administrative variance, decided upon by the Director of Community Development. She presented a draft of the revision to code to start the conversation (page 3 of the packet) as well as other handouts as follows:

- How to Calculate the Height of a Building
- Setback Exceptions
- The Table of Dimensional Standards, 49.25.400
- Appeals, Variances and Interpretations, Chapter 49.20
- Site Specific Setback Reductions

Ms. Boyce stated that the code is generous already and allows for encroachments and setbacks and reductions. Currently for the De Minimus Variance there are four (4) criteria to be considered by the Director before granting the variance (page 3, lines 9-17).

Mr. Voelckers asked if it is the intent to get the language cleaned up at this meeting. Ms. Boyce said she wanted commissioners to talk about administrative variances today. At the January 23, 2018, meeting staff can present these changes to variances along with court cases that explain the determining criteria and, if the draft is good enough, ask for a vote of approval on these administrative variances. Mr. Voelckers asked if at that point the Planning Commission will forward the draft to the assembly for consideration. Yes, said Ms. Boyce.

Ms. Boyce said staff would like to change the name to add the word “administrative” so as to be clear what it is. Also, as it stands it states that “projections not to exceed 25 percent of the yard setback” (page 3, line 6) and this figure needs discussion.

Mr. Voelckers asked if these types of variances are done as a pre-approval or post-project, like for someone who has made a boo-boo. For Criteria A, is it “an unreasonable hardship” because something is already in place? Ms.

Boyce said staff hopes this variance can more often be used a pre-approval. Ms. McKibben said currently it is used as a post-project solution. Mr. Palmer said this could be used for both situations.

Mr. Voelckers said he thinks this should be clarified in the language. Discussion ensued about how this has been used in the past for certain circumstances. If the intent is that it applies to both types of situations, it seems useful to have language indicating this, restated Mr. Voelckers.

Mr. Miller said he feels strongly about the 25% determination on post-project variances, if a mistake has been made. But asking for relief of a full 25% of the yard setback requirement ahead of time seems problematic to him.

Mr. Dye suggested that it might make more sense to be stated as 25% or 3 feet, whichever is less. This might mean applications for this variance are requested less often?

What is the intent for adding 3 feet, asked Mr. Voelckers? What is our biggest setback in code, he asked? Ms. Boyce said 25 feet.

Mr. Palmer said the uniqueness of the unreasonable hardship criteria helps both pre- and post-project. For a post-project there is a financial hardship. Pre-project there may be different hardships.

Mr. Greene asked if granting the variance is by the Director and is denied, does it go to the Planning Commission? Mr. Palmer said this is interesting, and he does not know of a recent appeal of a De Minimus Variance. He does not think this could happen legally. Any time a director does something, the public has the right to appeal. But for an administrative variance, there are fewer elements to consider than for a regular variance. So there would be no motivation to apply for a regular variance based on those fewer elements.

Ms. McKibben said the current process is the applicant needs to get their application for a variance signed off by neighbors. The De Minimus option is different. Either an applicant meets or does not meet the criteria, regardless of neighbor sentiment.

Mr. Voelckers said he believes there is a broad presumption in the community that for any director determination there is a right to an appeal. Mr. Palmer said he thinks it should be stated in this language that it is different for a De Minimus Variance.

Mr. Dye returned to the topic of the 25% figure; he said it makes him uneasy. Interpreting the variance as applicable both pre- and post-project, it seems easy to go ahead and build something knowing that you can obtain a variance of this sort. Mr. Dye wants to avoid abuse of this option.

Mr. Voelckers said he likes the addition of a maximum of 3 feet because 25% of a larger setback could be much larger, maybe even 18 inches or 2 feet to make requesting this variance more as a response to a small boo-boo, not about taking advantage of something while in the planning stages.

Mr. Miller suggested looking at exceptions already in code before determining the right number or percentage.

Mr. Voelckers asked why the department has allowed some exceptions outright while others have kicked in with this variance. Ms. McKibben said it is more applicant-friendly to have exceptions allowed over the counter. De Minimus was first created to address mistakes.

Ms. Boyce and Ms. McKibben listed some situations, such as slope of a property, unheated arctic entries, adding exterior insulation, which have been allowed a setback exception and not gone through this administrative process.

Ms. Boyce pointed out the handout about encroachments. Generally this applies to things that are not living space, like a deck or a shed. Living space with setback reductions is generally when variances are requested.

Mr. Voelckers said the usual cases are “problem children”- a steep or substandard lot, for example.

Mr. Voelckers said he likes Mr. Dye’s suggestion about adding the geometric upper limit to the exception so as to not create a mechanism to game the system. We don’t want to create an unintended consequence, he said. Mr. Miller said he brought it up because of the potential for people building on smaller and smaller a lot which increases the possibility of a mistake. He is okay with the idea of 25% not to exceed 3 feet. Mr. Dye pointed out that he just grabbed that number randomly and asked Mr. Miller what he thinks would be reasonable, from his perspective as a builder. Mr. Miller said he thinks 3 feet is either enough or too much. Mr. Voelckers said he thinks 2 feet is better, because it is hard to justify a 3 foot mistake. Mr. Dye suggested the committee to consider the low side, not the high side.

Mr. Greene asked if the size criteria should be the same for pre- and post-requests. Mr. Voelckers said there could be a situation with a neighbor who has a fence too close to the lot line and this might indicate a need to exempt an overhanging eave to accommodate.

Ms. Maclean said for the most part we require setbacks to be confirmed for building permits and a surveyor needs to sign off. Most surveyors will not jeopardize their career for manipulations to the code like this, she said. Inspectors go out to the site as well.

Mr. Voelckers suggested drafting the number at 2 or 3 feet for now, to allow the committee to move on and address other areas of the code.

Ms. McKibben said that Criteria C (page 3, line 14) has to do with sight visibility, which falls under the area of public health and safety. How do you think staff should evaluate an after-the-fact encroachment in such a situation, she asked the commissioners.

Where is the harmonious piece, asked Mr. Greene? We played with that, said Ms. Boyce, and did not include that language because as part of looking at the built environment, if there are already encroachments and unmet setbacks in the neighborhood, we do not want to continue to repeat that pattern. Harmony with the built environment is not necessarily the goal, she said. Mr. Palmer added that if this is used after the fact, would commissioners want the director to base the decision on neighboring properties, when, for example, no one else has a bump out of 2 feet?

Mr. Miller asked about Criteria B. What does this mean? Mr. Voelckers said he thinks this might hamper the ability to respond to a mistake. Ms. Boyce said this could be worded better. Mr. Voelckers asked if it is necessary to keep this item. What are we trying to solve with Criteria B? Mr. Palmer said it could come out. Is there a problem he could foresee, asked Mr. Voelckers? Not that I see at this point, said Mr. Palmer. Mr. Dye said if the wording contained a maximum amount for the variance (3 feet, for example) then B could be deleted, he thinks.

Mr. Dye said that Criteria D might have a relationship to harmony and gives the director some flexibility without stating harmony specifically. The word ‘tailored’ works here, said Mr. Voelckers.

Mr. Voelckers asked on about language on Page 4, Line 24; what does “not caused” mean? The staff report would need to clarify this, he said. Mr. Palmer said now it says “conditions of the property” to address a nonconforming lot situation. Mr. Voelckers said he wanted to remind people that a too narrow interpretation needs to be avoided.

Mr. Miller pointed out number 3 (Page 5, Line 2), and said that if the variance has to meet number 3, no variance will ever be granted. Ms. McKibben said when she looks at this from staff perspective, if in a neighborhood of single family homes there is an extreme slope and a narrow envelope for building, an applicant can be permitted to build in a way that is compatible with the neighbors who do not have the same situations on their properties. Mr. Miller said he argued previously against this. Mr. Voelckers wondered if one reading of #3 could be an unintended overreach as in a height variance. Mr. Miller pointed out that the Soboleff Center on Front and Seward Streets would not have made it past this determination, for example.

Ms. Shelton said perhaps the word “necessary” could be removed and the language just says it would enable or help. Mr. Voelckers asked if the term was about being consistent with the neighbors. If a property owner is surrounded by underutilized properties, then this determination works against fully utilizing a property. Ms. Maclean gave an example of wanting to deny a variance on Meander Way because given the current status of the Mendenhall River, allowing a smaller setback would be a terrible idea, although other properties bordering the river have such a setback and are currently threatened.

Mr. Dye said regarding neighborhood harmony and height, does #5 cover such considerations enough already?

Mr. Miller said he is trying to get rid of #3, thinks it is covered by 5(A) of 49.20.240. He has never been able to find for 5(A). Mr. Voelckers asked staff to struggle with this and come back with some solution. Ms. Boyce said the main concept here is justice. Mr. Voelckers said the words “reasonably tailored” are good words.

Mr. Voelckers asked staff what was the 7th criteria lurking in shadows? Mr. Miller talked about the “CRAP concept”. He recalled Mr. LeVine’s concern – while staff and commissioners are working to fix things in code so as to reduce or eliminate the need for variances, some properties or situations don’t yet fall into the fixed categories. Mr. Miller explained that he and Mr. LeVine joked about this as the Code Review Analysis Process = CRAP. Mr. Miller appreciates the thought that we cannot just dismiss the variance process because people are not receiving justice right now. He advocated for a 7th criteria for property owners who need relief from the code because staff has not yet been able to fix things in code.

Mr. Voelckers said an obvious example is the 50 foot stream buffer. This is a problem that is not fixed yet. Mr. Dye suggested including a bulleted list of these unfixed things that could be struck once new code is approved by the Assembly. Mr. Palmer said this could be put in on Page 1, Line 16/17. This could include things like canopies, signs, eagles, etc. that have not been address or are not yet finalized.

Mr. Greene said would this mean we would be prematurely hearing a case that may be addressed later on? Mr. Voelckers said until we’ve done the other fixes, we would be crazy not to consider a variance. Mr. Dye said we would have to put this in for the meantime. Mr. Greene said if, for example, we grant the variance for eagle setbacks and the new eagle ordinance gets denied by the Assembly, then what happens? Ms. Maclean said the person who got the variance would still go through with their project, that particular variance would still stand, but no longer would eagles be a cause for a variance if denied by Assembly.

Are there other categories not addressed yet, asked Mr. Voelckers? We didn’t talk about page 7 or 8, he said.

Mr. Hickok said some of the points discussed, like 5(A), struck a note that it was an “or” statement. He agreed that this particular statement was one commissioners could never say yes to. By eliminating it, he said he thinks this is solved. It seems this addresses all the concerns the commission had.

Mr. Voelckers restated that this variance addresses pre- and post-activity.

Ms. Boyce brought up the issue of public notice. At present, De Minimus Variance requests do not need the big red sign posted on the property but code says this is required for a regular variance. Requiring a posted sign means an additional upfront fee of \$150 with a return of \$100 if the sign is returned, so there is more cost for an applicant. Mr. Dye asked why signs are not used for administrative variances. Can a neighbor appeal this variance, he asked? Yes, within 20 days, said Mr. Palmer. Ms. McKibben asked if Mr. Palmer and Ms. Boyce had thought about this already.

Mr. Dye said he thinks it would be fair if the sign is up for an administrative variance as well.

Ms. McKibben gave an example from the past where neighbors submitted comments against the applicant. What would staff do if neighbors do not like the situation, she asked? For a De Minimus Variance the director is only reviewing established criteria and not taking public comment into account. Mr. Dye said comments could be useful if some information is brought forward that staff might not be able to learn otherwise, for example about a school bus pick up spot that people in the neighborhood know about.

Mr. Voelckers said he likes erring on the side of extra notice.

Mr. Miller said he has personal experience of pouring a foundation that is 6 inches off. It is a huge deal when this happens. That said, he thinks more public notice is probably fine. Before, an applicant had to go to the neighbors and have them sign off. If the circumstance is a small mistake after the fact, when you put the red sign out you allow everyone driving by to be able to comment.

Ms. Boyce said red signs let the public know about a public hearing. She said she does not propose the red signs be up for some decision that the director has the authority to make. There could still be some sort of notice, though. Ms. Maclean said minor subdivisions do not get the red notice sign, for example, but the abutters get noticed, the adjacent properties. Ms. Boyce said she thinks noticing the adjacent neighbors only could be a good idea.

Mr. Dye asked if the variance is appealed, does further notice go out? No, said Mr. Palmer.

III) Next Meeting

Tentative: Wednesday, January 17, 3:15 pm.

VI) Adjournment

The meeting adjourned at 1:09 pm.