

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

Wednesday, October 11, 2017
Community Development Department, Large Conference Room
3:15 p.m. to 4:30 p.m.

Members Present:

Dan Miller, Paul Voelckers, Carl Greene, Dan Hickok (Alternate)

Members Absent:

Kirsten Shelton

Staff Present:

Laura Boyce (CDD), Beth McKibben (CDD), Rob Steedle (CDD), Amy Liu (CDD), Marjorie Hamburger (CDD)

I) Call to Order

Meeting called to order at 3:20 pm.

II) Approval of Minutes

September 20, 2017 Draft Minutes

Ms. McKibben pointed out that on Page 2, second to last paragraph, it was she who talked about the minimum lot size in Homer, not Ms. Boyce.

MOTION: *by Mr. Miller to approve the September 20, 2017 minutes as amended.*

The motion passed with no objection.

III) Agenda Topics

a) Update on Committee Topics and Actions

Mr. Voelckers reminded staff that the committee would like to start each Title 49 meeting with an update on legislative topics and actions. Ms. Boyce reviewed:

- Privately Maintained Access Roads Amendment is scheduled for the Assembly's Lands Committee meeting agenda on October 23. If the committee wants to move it forward, they will then schedule a hearing with the Planning Commission.
- Variances (AME2016 0002) is scheduled to be heard at the November 14 Planning Commission meeting.
- Eagles (AME2016 0019), Panhandles (AME2017 0003) and Essential Public Facilities (AME2017 0006) are scheduled to be introduced at Assembly meetings in October and November.
- Urban Agriculture (AME2017 0011) is in internal review with plans to come before the Committee of the Whole (COW) soon.
- Staff is working on a clean up to Junk and Salvage Yards (AME2016 0014) and will bring this to a COW, not back to the Title 49 Committee.

Mr. Miller asked how sure staff was about November 14th for variances. This date coincides with the American Planning Association (APA) training in Anchorage, but he doesn't want to miss that hearing. Mr. Steedle

concurred and said staff will push back the hearing date. Mr. Voelckers suggested the commission may even want to consider not having a meeting at all that night, since three commissioners will miss it.

b) Language for Nonconformities - Continued

Discussion on Nonconforming Residential Densities (Beginning Line 217)

Ms. McKibben said this is a whole new concept borrowed from Portland as they have similar challenges for housing, therefore it may be useful to use these concepts. The language creates new nonconforming situations. When use is residential, a triplex in a D5 zone for example, the dwelling is legally nonconforming. While the use conforms, the density does not, she said. In this case we are separating density from use. Is Aurora Arms an example, asked Mr. Voelckers? Yes, said Ms. McKibben. This building is a challenge in the world of finance; if Aurora Arms burnt to the ground, they would not be able to rebuild all 18 units – only 5 of them according to the zoning. Property owners of these condominiums would suffer a loss – 13 of them. The language in this section creates a new way of looking at that type of nonconforming, said Ms. McKibben.

Ms. McKibben said that Line 219, “Existing dwelling units may continue” needs more definition and description about what is meant by “amenities” so planners can understand the intent. There is a new process suggested in this section which is a nonconforming review. Would this be done by the department or the Planning Commission? She suggested maybe a departmental review with the option to kick it up higher. Mr. Voelckers asked about the overlay zone as now we have the Alternative Development Overlay District (ADOD) in place.

Does Aurora Arms meet the height requirement for the zoning, asked Mr. Miller? It is close, said staff. What is the point, then, he asked? If it has to meet underlying requirements maybe that could also be reviewed. Ms. McKibben suggested that maybe in such a case Aurora Arms could be rebuilt to meet height restrictions but still include the same number of units.

Mr. Voelckers said that on Line 219 the word “enlarged” seems tricky if the dwelling is already above density. Ms. McKibben said she reads it to mean that if the owner wants to take out one unit, such as to combine two units into one larger one, s/he can do that. So for a triplex in a D5 zone the owner can add another room but not add another unit.

People are nodding with intent, said Mr. Voelckers. This is about existing dwelling units, not the creation of new units, said Mr. Steedle. Ms. McKibben said for legislative history, new units added is a no, modifications to existing units is a maybe. If at Aurora Arms an owner combines two units into one, is the density now 17 units for the building into the future or can this be undone and returned to the original 18, she asked? In Portland if a unit is removed, the building can't get it back. Staff and the commissioners need to think about this.

Discontinuance and Damage (Line 228)

This is interesting, and we have some of these buildings in Juneau, said Ms. McKibben. A building that is unoccupied but standing is a big policy question. Juneau has policies about housing and so having density rights continue despite being unoccupied is something we might want to support. Mr. Voelckers stated that the committee already talked about timelines for removing nonconforming structures in other categories and so why not be consistent? Mr. Miller said he thinks differently. If an owner discontinues a nonconforming use, then they lose that status in a year but in this situation, for example with a triplex that is nonconforming that suffers a fire which makes all units uninhabitable it might take more than a year to sort out insurance and contractors and so forth. Mr. Voelckers asked how fundamentally different density is to other nonconforming categories. Ms. McKibben said there is another section in this draft that talks about damage. However this section talks about

buildings that are vacant and deteriorating because of neglect, she said. The language here says you can redo the building; it is not about damage.

Mr. Voelckers said he thinks the situation should be treated the same as other types.

Accidental Damage or Destruction (Line 231)

Ms. McKibben said the language here is similar but there questions to be answered. She said she heard Mr. Voelckers liking the timeline of one year to rebuild. Mr. Miller said that if he gets a building permit but doesn't act on it, it expires in 18 months unless he renews it. Maybe there should be language here about in order to keep the status the owner has to have an active permit? Mr. Hickok asked doesn't the owner have to get an inspection within certain time? You can't renew a permit without getting an inspection, said Mr. Hickok. Mr. Voelckers said the 365 day marker was about the cessation of activity, but he agrees that if a process is underway and legitimate there could be some other timeline. But if nothing is happening, then the owner loses the nonconforming status. Ms. McKibben said we would have to create two different categories of passive and active regarding density. Portland has 5 years as the magic number. Mr. Hickok asked if the apartment building on Gastineau Avenue is an example of this. Why is it not being rebuilt? Ms. McKibben said it encroaches on a right-of-way; the issues for this building have to do with setbacks and parking, not density.

(Line 237 - If the structure is not rebuilt)

Ms. McKibben explained that this sentence is about if a structure is not rebuilt the density reverts to whatever zoning exists today. She said she likes having the two separate sentences. It is up to the commission to set the policy, the amount of time after which it reverts and if there is an opportunity for an extension. She thinks that 5 years is generous. If at 4.5 years the owner just poured a foundation, the status won't be taken away if work has begun. But if nothing has happened in 5 years, it will. Mr. Voelckers clarified that this is the first pass on language in this document, and the committee will finalize the draft later. Mr. Hickok said he thinks 5 years is generous. Mr. Greene said if within that time something has begun to be rebuilt, then the window should be extended. Mr. Miller said he wants to think about it a while. He said he likes the idea that every 18 months someone checks in about what is going on. What if an owner is elderly and doesn't have the energy to rebuild and leaves it to the grandkids, he postulated? There is value to having a triplex said Mr. Miller. Who will tell the owner they have to fill out the paperwork every 18 months? How do we make sure the person knows of the situation, he asked? Mr. Greene said that in this case it is damaged property. Ms. Boyce said 3 years could be reasonable for replacing housing units but if in 5 years the city doesn't get housing back this is a concern. Mr. Voelckers said he likes having 3 years to get something going, to initiate the rebuild. Mr. Miller asked again how a person will know they have to do this and that they will lose the value of the dwelling if they don't act. Mr. Steedle asked if thought the department should notify owners. Ms. McKibben recalled a burn on Basin Road and the house coming down immediately afterwards. Property owners have some responsibility, she said.

Ms. Boyce said she has trouble with the definition of abandoned buildings. If a person owns multiple homes around the country, for example, and spends only a little time in each, is the home considered vacant? Mr. Hickok said he wouldn't call it vacant if the house is maintained. Ms. McKibben said the concern is backwards, nonconforming status remains if a building is unoccupied. Mr. Steedle talked about squatters. There was a situation in Juneau where squatters were maintaining a building with water and electric being paid, but they were not the owners nor did they have permission to be there.

(Line 239 – If the repair cost is more than . . .)

Ms. McKibben said that this section takes us back to repair costs and the 75% figure, but the committee does not have to talk about that at this meeting. Mr. Voelckers said it seems we are saying the same thing a couple times. Why not state it once and then reference the statement for each of the nonconforming instances, he

wondered? Ms. McKibben said this is Law's job and the language should be consistent. There are pros and cons either way about restating it depending on use.

One Dwelling Unit (Line 242)

The language here is from Portland, said Ms. McKibben. Does this apply to us, asked Mr. Voelckers? Ms. McKibben said yes, in our industrial zoning with only caretaker units allowed as residences. There are some parcels where there is no industry but there is a caretaker unit. It may not apply to Juneau but we need to talk about it. How do we think about caretaker units in these zones, asked Ms. McKibben? Mr. Voelckers asked what we are thinking about here. Ms. McKibben explained that in industrial (I) and waterfront industrial (WI) zones, residences are not permitted but a caretaker unit as an accessory to industrial use is permissible. However Juneau has some residential use in these zones on lots with no active industrial use taking place on the parcel. She said there are lots of policies in the Comprehensive Plan that talk about the need for industrial areas in the borough and talk about not allowing residential uses in these zones. Ms. Boyce said that recently a Conditional Use Permit for a marijuana facility was protested due to residential use in the industrial zone where the facility was proposed to operate.

Mr. Voelckers suggested the committee should give this concept the benefit of half-engaged thought. He said it seems this raises a philosophical question about what might be considered a "bad actor", a house in a WI or I zone that is damaged, do we want to give the owner the ability to rebuild or have it go away because it doesn't belong? Yes, that is the question, said Ms. McKibben. Mr. Miller said he thinks this fits for industrial land that is very active and has a caretaker unit on it, storage for boat condos or a plumbing contractor or tour company as examples. But what about a caretaker unit on an industrial parcel owned by a contractor who just parks dump trucks and wants someone to keep eye on things? Ms. McKibben said a caretaker unit is still conforming for a parking yard; this is ok. But, she said, we also have situations where an industrial use took place and a caretaker unit was built in conformance but then that industrial building was made into condominiums and the caretaker unit was no longer associated with the industrial use. Anyone could buy the former caretaker unit but not do any care taking of the industrial use, said Ms. McKibben. This has happened. Mr. Voelckers asked if there are cases where people are just gaming the system. There are a few from a while back, said Ms. McKibben. Mr. Steedle pointed out Sherwood Lane and Crazy Horse Drive during a discussion about installing an asphalt plant. There were residences in this industrial zone, and people were against the asphalt. We can run some data on this, said Ms. Boyce.

Mr. Voelckers said this seems like a fringe situation. He would err on the side of if someone is gaming the system, then we should not have to accommodate. Mr. Hickok said what about the Fairweather barn, is that in an industrial zone? If the zone is commercial, you can have more residential use, said Ms. Boyce. Mr. Voelckers suggested maybe staff look at whether this situation is worth giving language in the document when it is not likely to have much use in our community. Ms. McKibben brought up the point of a parcel where the zoning changed after the house was built, or a duplex built before zoning changed to industrial, then should the owner be able to keep that use. Mr. Voelckers said these situations are already covered elsewhere.

(Line 260 – Nonconforming densities may not be enlarged . . .)

Mr. Voelckers pointed out that this is literally the same statement as on Line 226.

Intentional Damage, Destruction or Demolition (Line 262)

We don't want to encourage people to set fire to their homes, said Ms. McKibben. The fire department will determine if something has been intentionally set and this should not be rewarded.

Nonconforming Parking (Line 266)

The concept here is already in current code, said Ms. McKibben. She brought the committee's attention to the words "may be replaced or reconstructed". The new requirement is less, she said, now just 1 parking space is required, and she thinks this works. Mr. Voelckers asked if this is specific. Only to nonconforming situations, said Ms. McKibben.

Nonconforming Signs (Line 268)

This topic is addressed in the code that deals with signs (49.45.400).

Nonconforming Situation Review (Line 269)

Ms. McKibben said this is a new concept, and she has been thinking about what the process might look like. What does this mean, asked Mr. Steedle? Ms. McKibben said to change the use or to get density approved owners would need to go through a review regarding nonconformance. Are we talking about an administrative review and the Board of Adjustment, asked Mr. Steedle? There would need to be some sort of process for establishing this status, said Ms. McKibben. The language here asks that the owner provide evidence of a nonconforming status. Mr. Hickok asked if someone purchases a property that is in some way nonconforming, will they have to go through this review. Ms. McKibben said that right now people call the department and staff does the research, but she thinks this needs some thought. The department would have records on a property and share them with an appraiser if this review had already been done. But if not done, we haven't thought about how to handle that.

Mr. Voelckers said the process of determining a property to be nonconforming might want to be at the front end of the document because it leads to a series of active requirements.

(Line 271 - Approval criteria.)

Ms. McKibben reviewed the list of proposed criteria. She suggested thinking about Rainbow Foods, which is a nonconforming use grocery in a residential area. "With mitigation measures, there will be no net increase in overall detrimental impacts . . ." This list is borrowed language, she said. We would want to also look at on-site parking requirements for the parcel; what else for this list? Mr. Voelckers suggested public safety; he said he was thinking about AmeriGas in the Valley. Does the committee want to think about language regarding neighborhood harmony asked Ms. McKibben? Mr. Voelckers said he would, for example what about a strip club? He would like to include the opportunity to raise the question. Mr. Greene said he likes this phrase as a catch-all to for something that doesn't fit in a neighborhood.

The line about outdoor displays, etc. (Line 280) pertains to residential uses, said Ms. McKibben. This language refers to maintaining neighborhood character. To be contrary, said Mr. Voelckers, why are not all items on Lines 276-280 also relevant elsewhere? Mr. Steedle suggested that the sentence beginning on Line 282 could say "in addition". Ms. McKibben said that this section is an additional layer of review for a residential district and might not be applicable elsewhere. She suggested leaving the language for Mr. Palmer to work on, as there is structure for writing an ordinance that would make it clearer.

Definitions (Line 291)

Ms. McKibben pointed out that the draft includes a boatload of definitions. In particular, a definition for nonconforming density is important because this is a new concept. Does it seem clear to others, she asked? Mr. Voelckers asked if these were pulled from the Portland model. Some are already in our existing code, replied Ms. McKibben, some come from other communities and from the dictionary of planning concepts.

Mr. Voelckers pointed out the phrase on Line 309 about intent and said that this is hard to establish. He felt this might need some thought, and he suggested making the language more about action than intent which is hard to suss out. I don't know if there is a better way to do it, said Ms. McKibben. Mr. Voelckers asked how can one prove intent or lack thereof. Ms. McKibben said that when something is not defined, we go with a common definition.

(Line 315 -Discontinued)

Ms. McKibben said that the 365 consecutive days is used in our code. The committee liked that number.

Ms. McKibben said she is not sure if all these definitions are needed in this document. Are these definitions broader than just this piece of Title 49, asked Mr. Voelckers? Yes, nodded Mr. Steedle and Ms. Boyce.

Mr. Voelckers asked about the expectations of time on this document. Will it come back from law with baby wheels on it? Ms. McKibben said she wants to go through it and make notes on what needs more input. Ms. Boyce asked if staff should bring back the draft ordinance before it moves on to the next step. Mr. Voelckers said he would like to see it again. Once it is all written down, he would like staff and committee members to think about their own experiences and see how this would apply. Ms. McKibben said she is not sure of Mr. Palmer's schedule and when he can get together with CDD staff to discuss updating this draft.

IV) Next Meeting

Wednesday, November 15, 3:15 pm.

VI) Adjournment

The meeting adjourned at 4:25 pm.