

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

Wednesday, July 19, 2017
Community Development Department, Large Conference Room
3:15 p.m. to 4:30 p.m.

Members Present:

Dan Miller, Paul Voelckers, Kirsten Shelton, Dan Hickok (Alternate)

Members Absent:

Carl Greene

Staff Present:

Laura Boyce (CDD), Beth McKibben (CDD), Marjorie Hamburger (CDD)

Public Present: Scott Rinkenberger (Airport Superintendent)

Mr. Rinkenberger stated that it seems the airport is under different types of scrutiny regarding tree limbing on anadromous streams. Mr. Rinkenberger wanted to be sure the airport is involved and keeps an ear to the ground regarding this topic. He hopes to be present at Title 49 meetings that address the topic of streamside setbacks. Ms. Boyce assured Mr. Rinkenberger that she would keep him in the loop for when the Committee addresses the topic.

I) Call to Order

Meeting called to order at 3:18 pm.

II) Approval of Minutes

June 28, 2017 Draft Minutes

MOTION: *by Mr. Miller to approve the June 28, 2017 minutes.*

The motion passed with no objection.

III) Old business:

a) Panhandles

Ms. McKibben remembered that she had work to do on panhandles as previously requested by the committee.

Mr. Voelckers reminded her that she was going to share graphics and other adjustments for panhandles with the committee. Then the issue is expected to move on to Committee of the Whole. Ms. McKibben suggested putting this as a discussion item on the August 8th agenda, not for public hearing.

IV) New Business

a) Review of Title 49's Nonconforming Development Policies

Ms. McKibben started by reviewing the memo on nonconforming development policies that she had prepared for the committee. When analyzing non conformities, she stated, it is essential to clarify if the lot, the structure and/or the use is

non-conforming. While it is possible to have all three areas meet the definition of non-conforming, it is better for staff, commissioners and the public to understand these three dimensions as separate entities.

Mr. Voelckers said it is helpful to know if one type or another of non-conformance is of particular concern to lending institutions. Ms. McKibben said she believes that banks are mostly concerned with use. An example is Aurora Arms where the zoning doesn't support the use, at present, she said.

Mr. Voelckers said that another item that got on the community's radar was a parcel with a triplex where zoning only supports a duplex. Ms. McKibben said there are numerous examples of this type of situation in the borough.

For discussion today, Ms. McKibben said she intended to review with the committee the existing code and focus on the simpler things – lot and structure. She suggested leaving the more complicated piece – use – for a second discussion. It will take some time to parse out the question of benign and non-benign uses, she said. Perhaps the non-benign uses are on a case by case basis. Ms. McKibben asked if this was a good approach to the topic.

Mr. Voelckers asked if the whole process of determining benign use was an active or passive decision. Do we want to bring attention when there is a complaint or a problem presented, he asked? Ms. McKibben offered as an example a gas station located in a residential area. If it has been there since 1964, the business gets to continue its operations. Complaints about it would receive the response that it is legally non-conforming and gets to continue. However, she said, the gas station couldn't expand its business under current code. The issue of non-conforming comes up most often when there is a change of ownership. Another question is, can it be rebuilt if it is destroyed? Can it be expanded or moved? Zoning codes historically try to amortize out non-conforming uses to make them go away over time, said Ms. McKibben. That is the concept.

Mr. Voelckers said regarding the gas station example, if a person wants to sell the business but can't get financing from a bank, does this come to the Planning Commission? Ms. McKibben suggested deferring discussion on this question to the committee's next meeting, as it is the more difficult facet of the topic. She said she will collect a variety of tools for the committee to use while considering.

The discussion refocused regarding non-conforming properties. Ms. McKibben noted that in her June 27 memo, the final section is a discussion of work to do as follow up to the recently approved overlay districts to get the work done regarding zoning in historic districts.

Ms. McKibben suggested that the ordinance be repealed and replaced, not amended. But, she said, the committee still needs to review the policies to see what to keep, rework, etc.

Ms. McKibben said that non-conforming lots are the most simple to address. In the case of a non-conforming lot due to width or depth, current code says you can have a single family home on a non-conforming lot, meeting current setback requirements. It is pretty clear and simple except for in the industrial zone where single family homes are not allowed, she said. Ms. McKibben said she was not suggesting this be changed. Mr. Voelckers asked committee members if they agree with this suggestion.

Ms. McKibben stated that for accessory apartments there now is a process to apply with a non-conforming lot and bring the case to the Planning Commission. Mr. Miller asked if in the industrial zone, can someone build a structure with a caretaker apartment. Yes, said Ms. McKibben, if you can comply with setbacks then any use that is allowed in a district can be built provided it can meet current setbacks, parking, lot coverage, vegetative coverage, etc.

There will be challenges in older, historic districts, said Ms. McKibben. Juneau currently has some lots in these districts where the ownership has been fractured. In such situations, in the event one building is destroyed, under current code it can be replaced. Can it be subdivided further, asked a commissioner? No, said Ms. McKibben. She used as an example a lot on Sixth Street which was broken up into 3 lots, sometime in the past.

Mr. Miller wondered if a person might not want to lock themselves into a property if it is a non-conforming lot with a non-conforming use. In order to fix the mortgage problem, it is not the duplex or triplex that is non-conforming, it is the zoning, he said. Ms. McKibben said it was not quite that simple. For a 1500 square foot lot downtown, we don't want to take away usage by holding to current setbacks, etc., she said. This could make the lot unusable to build a home whereas we said "any use in the district". The zoning in that area requires a larger lot size for a duplex, so an application for this type of development would be denied. But the owner can apply for an accessory apartment in that case, said Ms. McKibben. Mr. Miller said that if he bought a duplex downtown and then discovered that more than 75% of the building needs rehabilitation when he attempts to remodel. If he went to the bank, they would not loan him money to upgrade the duplex because it is non-conforming.

Allowed use and dimensional criteria is the most important policy, said Mr. Voelckers. Ms. Shelton said she understands that for a rebuild but wonders about an initial purchase. The bank says it won't loan to purchase an already existing duplex because that type of structure would not be allowed as a new build, she said. As an example, Ms. Shelton could not get a loan on her house on Sixth Street because of the size of the lot, which has two single-family structures on it. Ms. McKibben said it was not the lot size but the use that prevented the loan.

Ms. McKibben said that non-conforming structures are ones not meeting setbacks, height requirements or parking. She said she would talk about parking later. The variance that was denied recently by the Planning Commission is a great example (VAR2017 0002 on 12th street) because the proposed structure did not have the required setbacks. If a catastrophe happened to destroy the original building, it could be rebuilt on the footprint, but since the applicants wanted to tear down the old structure and replace it, they were required to meet the setbacks. Mr. Miller noted that the house was less expensive to rebuild than to restore/remodel, since it was in such poor shape.

Mr. Voelckers said a slow-roll calamity versus a single event have two different attitudes i.e. slow rot versus an earthquake. Ms. McKibben said the 75% recovery line is for a catastrophic event and lack of maintenance is not such an event. Theoretically termites or something could have been prevented or mitigated with maintenance, she said. This is the way most non-conforming codes are written. Do you like the term in code "involuntary change", asked Mr. Voelckers? Ms. McKibben shrugged.

Ms. McKibben read from code concerning change to a building such as the one on 12th street which continued with a description of catastrophic change. What is the magic with the 75% number, asked Ms. Shelton? Ms. McKibben said it was a policy call and was hard to talk about. There is no magic number; some prior somebody came up with this, she said. Mr. Miller said he thinks the advantage is for people who are trying to rebuild their homes. He would agree with Mr. Voelckers that the intent is to not let people let their building deteriorate and then claim calamity. Mr. Miller agrees with that intent as it offers the possibility to rebuild if there truly is a calamity. Mr. Voelckers suggested the language could include some unknowable calamity that is not a one-time event like a fire. Ms. McKibben read some other examples of code with ideas of changes such as for health and safety. Mr. Voelckers suggested that staff mess around with this language. Ms. Shelton said another wording could be "involuntary change". Ms. McKibben said the code defines that as catastrophic, but staff can work on some draft language.

Mr. Miller said that on the 12th street property, there was a feeling that the bad shape of the foundation was just cause for a variance, but it turned out not to be.

Ms. Shelton said she was still confused about the purpose of having 75% as the number. Mr. Voelckers and Mr. Miller both felt the 75% number was justifiable. Here in Juneau, the cost of doing business requires being closer to the high end, they said.

Going back to the topic of non-conforming structures, you can put additions on the building if they meet setbacks, said Ms. McKibben. Now we have the Alternative Development Overlay District (ADOD) for this purpose, she noted. Also we have the process of up-fill conditional use; for example if an applicant wants to add height to a building, the conditional use process can be used. This is for a property owner who has a building already encroaching into setback but wants to add another story, for example, she said. Ms. Shelton asked, if you have a non-conforming structure with a non-conforming use, can you add to it? Mr. Voelckers drew a case on the whiteboard showing a situation where a portion of a house stuck out

into a setback and the owner wants to fill in the notch. The narrow interpretation, he said, is that this is not allowed, however other interpretation could be that it just fills in along the line that already exists. In such a case, he said, the structure does not get any closer to the property line than the portion that is already there – it is just an extension of that line. Mr. Voelckers said his own house has a similar situation that was denied by one planning commission and allowed by another.

Mr. Voelckers asked about Ms. McKibben statement on page 3 of her July 27 memo suggesting that additions to non-conforming situations should not aggravate. This was followed by a discussion about aggravated use. Ms. McKibben said that currently if the gas station from the earlier example wanted to add another bay to their business, this would be denied. What about widening the bay they already have, asked Mr. Miller?

Ms. McKibben said that the question before the group is regarding the extension of the front encroachment of the house, creating a greater encroachment. Mr. Voelckers said the code is unclear what “greater” means in this case. Mr. Miller said at some point that house was built legally. So the old setback ought to be considered legal, if it currently is considered legally non-conforming, and therefore that would be a valid reason to extend the house to fill in the notch. Mr. Hickok said he would like to be able to approve something like that. Mr. Voelckers said it is tricky when the design is fine and seems benign yet other times the proposed development seems less desirable because we don’t “like” it. “Additions to non-conforming structures that don’t add density or don’t expand non-allowed uses” could be new language here, suggested Ms. McKibben. Commissioners liked the notch infill as not further increasing the encroachment and felt this sort of infill should not be dismissed outright.

Ms. McKibben said that staff has been working for the last few years to reduce the number of applications coming to the Planning Commission because it takes longer for the applicant and is more of a gamble. For example, applications for accessory apartments used to come to before the Planning Commission. Mr. Voelckers and Ms. Shelton said they felt there needs to be some oversight. Ms. McKibben suggested that the director have some discretion to approve some of applications involving non-conforming situations while others would need to come before the Planning Commission.

Would you want this sort of non-conforming structure in any district, asked Ms. McKibben? We’ve focused on residential district so far, she said. A good example is the new bank by the Bill Ray Center which required 3 variances for that building, said Ms. McKibben - variances for parking and for the drive-through window. Today this would not have met the unique threshold. That is an example of a building built that is legally non-conforming. Mr. Voelckers asked if the variance lives with the land. Yes, said Ms. McKibben. Why would the triplex not follow, asked Mr. Hickok? Because of the use, said Ms. McKibben.

Committee members felt that a similar event in another district – filling in a notch for example – was the same difference as the residential example. Ms. McKibben said some things come to the Planning Commission, versus the director, because it then becomes a public process with 9 decision makers, and the public can participate.

What is the process to repeal the ordinance, asked Mr. Hickok? Ms. McKibben said it is a repeal and replace action and is fairly easy.

V) Next Meeting

Wednesday, August 16, 3:15 pm

At this meeting, we will dive into discussion about non-conforming uses, said Ms. McKibben, and she will suggest some language. The committee needs to discuss the issue of benign – what is and what is not. Ms. Shelton asked for some examples. Ms. McKibben said she would bring examples from the finance world.

Mr. Voelckers said he felt that we are dancing around the big issue, which is the sudden, instantaneous change of ownership. This is when the bank suddenly refuses to loan and owners did not even know they had an issue. When the appraiser pulls up info on a property which says it is non-conforming, said Mr. Miller, there needs to be a way to say that it is legally non-conforming or have some sort of a process to make it legal and satisfy the lender.

Ms. McKibben used the example of Homer where the burden of proof is on the owner to show that the non-conforming use is rooted in history. Mr. Voelckers said it is more than just the owner proving it was legal back in the day; they also have to prove it continues to be in the public interest to remain so. Mr. Miller said once the designation is set, he thinks it should be done. The bank loans for 30 years. Mr. Voelckers said that there are tons of properties in Juneau that are non-conforming but that get loans all the time. The bank asks can this building be rebuilt, said Ms. McKibben. Yes, we say, a single family can be rebuilt, but not the triplex as it stands today.

Ms. McKibben said that conversation needs to be had concerning Aurora Arms. Is it OK to have such a building here for 50 years but now is not conforming to zoning, remain in place as such, asked Ms. McKibben?

VII. Adjournment

The meeting adjourned at 4: 35pm.