

Agenda

Planning Commission - Title 49 Committee City and Borough of Juneau

April 19, 2017
Marine View Building 4th Floor Conference Room
3:15 PM

- I. ROLL CALL
- II. APPROVAL OF AGENDA
- III. AGENDA TOPICS
 - A. Design Standard Variances
- IV. COMMITTEE MEMBER COMMENTS AND QUESTIONS
- V. ADJOURNMENT



Community Development

City & Borough of Juneau • Community Development

155 S. Seward Street • Juneau, AK 99801

TO: Title 49 Committee of the Planning Commission

FROM: Laura A. Boyce, AICP, Senior Planner
Community Development Department

DATE: April 18, 2017

RE: Design Standard Variances and Proposed Code Changes

Proposal

The Community Development Department (CDD) would like input from the Title 49 Committee of the Planning Commission whether the Conditional Use Permit code section should be amended to allow for the consideration of project design flexibility instead of using the variance as the tool to achieve design flexibility.

Background

The Land Use Code, Title 49, states that a variance is required to vary “*dimensions or designs standards (sic) of this title*” (CBJ 49.20.200). CBJ 49.20.250(b) further clarifies that:

“A variance may vary any requirement or regulation of this title 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.”

Lacking additional parameters regarding these categories, staff has applied these categories quite broadly. In fact, previous practice has been that almost any section of Code, other than a construction standard, use, or density, may be varied. The issue with varying design standards – those standards that result in how a project is designed – is that there usually isn’t a true hardship involved; the applicant usually wants greater flexibility than what is allowed. Allowing modifications during the project approval process might be a better way to provide greater flexibility.

Since the Land Use Code was updated in 1987 with the design and dimensional standard categories for variances, applying it broadly has resulted in the following approval of design standards:

- parking requirements -
 - allowing back out parking where it isn’t allowed
 - modifying parking space sizes and drive aisle dimensions
 - allowing greater distance of off-site parking
 - reduction in the number of required parking spaces
- access requirements –
 - allowing subdivisions not fronting on a publicly maintained right-of-way
 - allowing lot access through private easement

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- o allowing subdivision along an unbuilt platted right-of-way
 - o reduction to minimum 30 feet of frontage requirement
 - o allowing a common driveway rather than an interior access street for subdivisions along an arterial
 - o allowing lots less than 36,000 sf (D-1 lot size requirement) when subdivision is proposed along an arterial
 - o allowing subdivision for lots that won't have direct access to publicly maintained right-of-way
- Panhandle subdivision requirements –
 - o reduction in lot sizes
 - o allowing separate driveways instead of shared common driveway
 - o allowing more than two changes in direction
 - o allowing a reduction in the panhandle portion width
- Planned Unit Developments –
 - o allowing encroachment into required perimeter buffer
- Canopies –
 - o allowing increases in canopy height
 - o approving a canopy waiver when one is required to be provided
- Mobile Home Parks –
 - o reduction in size of minimum required playground area
 - o allowing setback reductions
- Cottage Housing –
 - o allow different floor area ratio than code specifies
- Accessory Apartments -
 - o allowing an increase in apartment size
- Common wall
 - o allowing reduced lot sizes
- Vegetative cover –
 - o allowing reductions to the minimum vegetative cover requirements

Variances have been used widely to vary or modify Code requirements during development and subdivision. A variance is intended to provide relief from Code requirements where *“hardship and practical difficulties result from an extraordinary situation or unique physical feature affecting only a specific parcel of property or structures ... and render it difficult to carry out the provisions of this title”* (CBJ 49.20.250(b)). Currently, the variance is the only tool available to modify Code requirements as they pertain to individual properties. Because of this, the variance process has been used often and broadly. In many land use codes, the variance is used solely to vary dimensional standards, such as lot width and depth, height, and setbacks in cases of true hardship; design standards are not generally varied.

CDD proposes to amend Title 49 to remove design standards as being variable. Instead of using the variance as a flexibility tool, CDD would like to amend the Code to allow for more design flexibility. One option to accomplish this is to amend the Conditional Use Permit (CUP) to allow for design flexibility. Larger projects, such as Planned Unit Developments (PUDs), Cottage Housing, Mobile Home Parks, and any other use that requires a CUP, goes through the conditional use permit process.

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The Conditional Use permit purpose is as follows:

CBJ 49.15.330(a) A conditional use is a use that may or may not be appropriate in a particular zoning district according to the character, intensity, or size of that or surrounding uses. The conditional use permit procedure is intended to afford the commission the flexibility necessary to make determinations appropriate to individual sites....

This existing permit process could be amended to include design modifications into the review and approval by the Planning Commission. The Conditional Use Permit section of Code is attached for review and discussion purposes.

CDD requests input from the Title 49 Committee of the Planning Commission regarding the conditional use permit process and whether it should be amended to include project design flexibility.

49.15.330 Conditional use permit.

(a) *Purpose.* A conditional use is a use that may or may not be appropriate in a particular zoning district according to the character, intensity, or size of that or surrounding uses. The conditional use permit procedure is intended to afford the commission the flexibility necessary to make determinations appropriate to individual sites. The commission may attach to the permit those conditions listed in subsection (g) of this section as well as any further conditions necessary to mitigate external adverse impacts. If the commission determines that these impacts cannot be satisfactorily overcome, the permit shall be denied.

(b) *Preapplication conference.* Prior to submission of an application, the developer shall meet with the director for the purpose of discussing the site, the proposed development activity, and the conditional use permit procedure. The director shall discuss with the developer, regulation which may limit the proposed development as well as standards or bonus regulations which may create opportunities for the developer. It is the intent of this section to provide for an exchange of general and preliminary information only and no statement by either the developer or the director shall be regarded as binding or authoritative for purposes of this code. A copy of this subsection shall be provided to the developer at the conference.

(c) *Submission.* The developer shall submit to the director one copy of the completed permit application together with all supporting materials and the permit fee.

(d) *Director's review procedure.*

- (1) The director shall endeavor to determine whether the application accurately reflects the developer intentions, shall advise the applicant whether or not the application is acceptable and, if it is not, what corrective action may be taken.
- (2) After accepting the application, the director shall schedule it for a hearing before the commission and shall give notice to the developer and the public in accordance with section 49.15.230.
- (3) The director shall forward the application to the planning commission together with a report setting forth the director's recommendation for approval or denial, with or without conditions together with the reasons therefor. The director shall make those determinations specified in subsections (1)(A)--(1)(C) of subsection (e) of this section.
- (4) Copies of the application or the relevant portions thereof shall be transmitted to interested agencies as specified on a list maintained by the director for that purpose. Referral agencies shall be invited to respond within 15 days unless an extension is requested and granted in writing for good cause by the director.
- (5) Even if the proposed development complies with all the requirements of this title and all recommended conditions of approval, the director may nonetheless recommend denial of the application if it is found that the development:
 - (A) Will materially endanger the public health or safety;
 - (B) Will substantially decrease the value of or be out of harmony with property in the

neighboring area; or

- (C) Will not be in general conformity with the land use plan, thoroughfare plan, or other officially adopted plans.

(e) *Review of director's determinations.*

(1) At the hearing on the conditional use permit, the planning commission shall review the director's report to consider:

(A) Whether the proposed use is appropriate according to the table of permissible uses;

(B) Whether the application is complete; and

(C) Whether the development as proposed will comply with the other requirements of this title.

(2) The commission shall adopt the director's determination on each item set forth in paragraph (1) of this subsection (e) unless it finds, by a preponderance of the evidence, that the director's determination was in error, and states its reasoning for each finding with particularity.

(f) *Commission determinations; standards.* Even if the commission adopts the director's determinations pursuant to subsection (e) of this section, it may nonetheless deny or condition the permit if it concludes, based upon its own independent review of the information submitted at the hearing, that the development will more probably than not:

(1) Materially endanger the public health or safety;

(2) Substantially decrease the value of or be out of harmony with property in the neighboring area; or

(3) Lack general conformity with the comprehensive plan, thoroughfare plan, or other officially adopted plans.

(g) *Specific conditions.* The commission may alter the director's proposed permit conditions, impose its own, or both. Conditions may include one or more of the following:

(1) *Development schedule.* A reasonable time limit may be imposed on construction activity associated with the development, or any portion thereof, to minimize construction-related disruption to traffic and neighborhood, to ensure that development is not used or occupied prior to substantial completion of required public or quasi-public improvements, or to implement other requirements.

(2) *Use.* Use of the development may be restricted to that indicated in the application.

(3) *Owners' association.* The formation of an association or other agreement among developers,

homeowners or merchants, or the creation of a special district may be required for the purpose of holding or maintaining common property.

- (4) *Dedications.* Conveyance of title, easements, licenses, or other property interests to government entities, public utilities, owners' associations, or other common entities may be required.
- (5) *Performance bonds.* The commission may require the posting of a bond or other surety or collateral approved as to form by the city attorney to guarantee the satisfactory completion of all improvements required by the commission. The instrument posted may provide for partial releases.
- (6) *Commitment letter.* The commission may require a letter from a public utility or public agency legally committing it to serve the development if such service is required by the commission.
- (7) *Covenants.* The commission may require the execution and recording of covenants, servitudes, or other instruments satisfactory in form to the city attorney as necessary to ensure permit compliance by future owners or occupants.
- (8) *Revocation of permits.* The permit may be automatically revoked upon the occurrence of specified events. In such case, it shall be the sole responsibility of the owner to apply for a new permit. In other cases, any order revoking a permit shall state with particularity the grounds therefor and the requirements for reissuance. Compliance with such requirements shall be the sole criterion for reissuance.
- (9) *Landslide and avalanche areas.* Development in landslide and avalanche areas, designated on the landslide and avalanche area maps dated September 9, 1987, consisting of sheets 1--8, as the same may be amended from time to time by assembly ordinance, shall minimize the risk to life and property.
- (10) *Habitat.* Development in the following areas may be required to minimize environmental impact:
 - (A) Developments within 330 feet of an eagle's nest located on private land; and
 - (B) Developments in wetlands and intertidal areas.
- (11) *Sound.* Conditions may be imposed to discourage production of more than 65 dBa at the property line during the day or 55 dBa at night.
- (12) *Traffic mitigation.* Conditions may be imposed on development to mitigate existing or potential traffic problems on arterial or collector streets.
- (13) *Water access.* Conditions may be imposed to require dedication of public access easements to streams, lake shores and tidewater.
- (14) *Screening.* The commission may require construction of fencing or plantings to screen the development or portions thereof from public view.

(15) *Lot size or development size.* Conditions may be imposed to limit lot size, the acreage to be developed or the total size of the development.

(16) *Drainage.* Conditions may be imposed to improve on and off-site drainage over and above the minimum requirements of this title.

(17) *Lighting.* Conditions may be imposed to control the type and extent of illumination.

(18) *Other conditions.* Such other conditions as may be reasonably necessary pursuant to the standards listed in subsection (f) of this section.

(Serial No. 87-49, § 2, 1987; Serial No. 2006-15, § 2, 6-5-2006)