

Minutes
Planning Commission
Regular Meeting
CITY AND BOROUGH OF JUNEAU
Michael LeVine, Chairman
September 28, 2021

I. ROLL CALL

Michael LeVine, Chairman, called the Regular Meeting of the City and Borough of Juneau (CBJ) Planning Commission (PC), held virtually via Zoom Webinar and telephonically, to order at 7:01 P.M.

Commissioners present: All Commissioners present via video conferencing – Michael LeVine, Chairman; Nathaniel Dye, Vice Chairman; Paul Voelckers, Clerk; Travis Arndt, Deputy Clerk; Ken Alper; Mandy Cole; Josh Winchell; Erik Pedersen

Commissioners absent: Dan Hickok

Staff present: Jill Maclean, CDD Director; Alexandra Pierce, CDD Planning Manager; Irene Gallion, CDD Senior Planner; Sherri Layne, Law

Assembly members: Loren Jones

II. REQUEST FOR AGENDA CHANGES AND APPROVAL OF AGENDA – None

III. APPROVAL OF MINUTES

A. Draft Minutes August 10, 2021 Planning Commission Regular Meeting

MOTION: *by Mr. Voelckers to approve the August 10, 2021 Planning Commission Regular Meeting minutes.*

B. Draft Minutes August 24, 2021 Planning Commission Regular Meeting

MOTION: *by Mr. Voelckers to approve the August 24, 2021 Planning Commission Regular Meeting minutes.*

IV. **BRIEF REVIEW OF THE RULES FOR PUBLIC PARTICIPATION** – Chairman LeVine briefly explained the procedures for participating via Zoom format.

V. **PUBLIC PARTICIPATION ON NON-AGENDA ITEMS** – None

VI. **ITEMS FOR RECONSIDERATION** – None

VII. **CONSENT AGENDA** – None

VIII. **UNFINISHED BUSINESS**

Mr. Voelckers stated he did not participate when this item was a Regular agenda item on June 22. Mr. LeVine explained to the Commission that if they were not in attendance at the original discussion then they cannot participate tonight. Mr. Alper also did not participate on June 22. Both were allowed to remain but not to participate.

Mr. Arndt disclosed that he had recused himself from the original presentation because he had similar items on the agenda that evening. He does not have similar items on tonight's agenda and would be able to be impartial. Mr. Winchell asked whether Mr. Arndt has any business that has to do with any frontage in the Lemon Creek area. He does not and he was allowed to remain.

VAR2021 0002: A Non-administrative Variance to 49.70.310(a)(2) and 49.70.310(b)(1) to allow new construction within the 50-foot, no-development and the 25-foot, no-disturbance buffer from Lemon Creek

Applicant: Northern Lights Development

Location: 1940 & 1941 Anka Street

Staff Recommendation

Staff recommends that the Board of Adjustment adopt the Director's analysis and findings and **APPROVE** the requested non-administrative variance to 49.70.310(a)(2) and 49.70.310(b)(1) to allow new construction within the 50-foot, no-development and 25-foot, no-disturbance buffer from Lemon Creek, as shown on the project site plan submitted with the application.

The approval is subject to the following conditions:

1. There shall be no disturbance or removal of vegetation below the top of the bank of Lemon Creek, including limbing of the trees that grow along the bank.

CBJ Presentation

Ms. Layne explained **VAR2021 0002** originally came before the PC on June 22 and a motion was made to approve the variance. The motion failed and Vice-Chairman Dye gave notice of reconsideration. The item was on the agenda at the July 23 meeting. At that meeting, Ms. Cole made a motion to continue until this meeting. At this point, the item is post presentation and applicant comments. The process is now at the commissioner discussion stage.

Commissioner Discussion

At the beginning of the discussion Ms. Layne informed the members that even with only six commissioners participating, they would need five votes to pass any motion. The only time that number would be reduced is if two or more members were recused. In this case, one is absent and two are ineligible to participate but none are recused.

Mr. Winchell pointed out that there are four lots which have been given similar variances and from looking at the area, he believes this would be a good fit and he supports the variance.

Ms. Cole spoke to her previous continuance saying that she had expected the assembly to have passed something regarding this issue by now and since they have not, she will not be supporting it.

Mr. Arndt felt this variance appears to be fair and similar to other properties in the area. He pointed out that even with the variance the applicant is limited by the conditions that disallow the cutting or limbing of trees and he is in support of the variance.

Mr. Dye asked if conditions on a variance would still be applicable and enforceable if the underlying code were to change. Director Maclean said it would depend on what changed and how.

MOTION: *by Mr. Pedersen to accept staff's findings, analysis and recommendations and approve VAR2021 0002.*

Mr. LeVine did not think this request satisfies the condition of unique features or unique hardship of the property. He said it is unfortunate but he cannot see a way forward.

Mr. Arndt said almost half of the lots on Anka Street do not have this as they are on the other side of the street. Mr. Arndt believes the property does meet the standard of unique and asked Mr. LeVine how it is not unique to him. Mr. LeVine understands a unique feature is one that would not allow construction; such as a hill or slope or other feature. The land may not be able to be developed in the way the property owner wants to but it can be built.

Mr. Dye also opposed the motion saying this does not meet the variance standards and he feels legislative fixes are underway that may take care of this.

Mr. Winchell spoke in support of the motion.

Mr. Arndt sees this essentially a lot depth issue with the stream causing an artificial property line and asked how other lots have been granted lot depth variances but this one is not.

Roll Call Vote

Yea – Pedersen, Arndt, Winchell

Nay – Cole, Dye, Levine

The motion failed on Roll Call Vote 3-3.

Mr. Voelckers and Mr. Alper returned as participants to the meeting.

IX. REGULAR AGENDA – None

X. BOARD OF ADJUSTMENT – None

XI. OTHER BUSINESS

A. Rules of Order

Mr. LeVine introduced the proposed updated Rules of Order saying that this is the result of work by the Governance committee and the Committee of the Whole discussions. He -proposed they go through the packet page by page.

Mr. Voelckers commented one thing COVID has taught us is the ability to participate remotely and it has increased accessibility. He felt there should be latitude in allowing members and the public to continue when appropriate.

Page 1: No change

Page 2: Mr. LeVine noted the addition of the Land Acknowledgement.

Page 3: No change

Page 4: No change

Page 5:

Mr. Voelckers noted Rule 9F: “Except in accordance with Rule 10” should read “Except in accordance with Rule 17”.

Mr. Voelckers suggested changing Rule 10A to include verbiage allowing remote participation.

Rule 10. PUBLIC PARTICIPATION ~~AT MEETINGS~~ will normally be in person or remotely if remote meeting format is used per Rule 17. Special remote participation may be allowed if coordinated with Community Development staff 'x' hours before the meeting.

Mr. Winchell asked if there should be something added to define allowable excuses for not participating in person.

Mr. LeVine felt rather than adopting Mr. Voelckers' suggestion here, it would be best to strike "in person or remotely" from Rule 10A1 and other places where it appears. Further, they could define 'present' as members of the public or the commission participating remotely and in person at Rule 17. He suggested the following for Rule 10:

Rule 10. PUBLIC PARTICIPATION AT MEETINGS

A. Public Testimony. Public participation in the form of oral testimony during hearings on permit applications, ordinances, resolutions, matters other than appeals, and on non-agenda items, will be conducted according to the following rules:

1. Subject Matter. Members of the public present, ~~in person or remotely~~, during a hearing ...

It was agreed to keep Mr. LeVine's suggestion and flag Mr. Voelckers' suggestion for use at Rule 17 and possibly to readdress at Rule 10 if it did not work at Rule 17.

Page 6: Mr. Voelckers suggested changing Rule 10B Submission of Written and/or Illustrative Material to its own number (Rule 11) saying he felt this is different from Public Participation. Mr. Arndt felt written participation is another form of public participation and he could see leaving it as is. Mr. Voelckers pointed out that 10B also addresses publication of the staff report and other items that are not related to public participation. It was decided that Rule 10B will be Rule 11 and subsequent Rules will increase in numbering by one. Rule 10C Decorum will become Rule 10B.

Page 7: Mr. Dye spoke to Rule 10B3 Late Material saying that noon the day before a meeting was not 'late' enough and suggested changing it to noon the day OF a meeting. Ms. Maclean said the day of the meeting is not enough time for staff. Mr. Dye said hearing Ms. Maclean's comments he would be willing to change his proposal to 8:00 a.m. the day of the meeting. Mr. LeVine said he would defer to Ms. Maclean and asked what she sees as reasonable. Ms. Maclean said they could try 8:00 a.m. the day of stating that the Department is incredibly short staffed but they could try and would report back if it is not manageable. Ms. Cole said this is moving the onus from the public member to CDD staff and the PC should make sure to give staff time to prepare

them. Mr. Winchell suggested a requirement that late material delivered the day of be submitted electronically which would make it easier for Staff to distribute. Mr. Dye suggested adding the pc_comments@juneau.org so commissioners could get them directly. Ms. Maclean explained that emails received at pc_comments does not go directly to commissioners but comes to CDD and is then forwarded.

The deadline was changed it to 8:00 a.m. Tuesday morning.

Page 8: Ms. Layne explained Rule 11B Renewal of Defeated Motions and asked why this is included and may not be needed. It is the same as notice of immediate reconsideration. Ms. Layne added under Robert's Rules it is not allowed at the same meeting. Mr. Voelckers suggested striking it. It will be removed.

Pages 9 & 10: Mr. LeVine suggested a change to Rule 16B regarding time frame for notification of remote participation. The rule currently requires a member give notification of remote participation by Noon on the Friday preceding a meeting. Ms. Maclean said this rule is in place because hybrid meetings are limited to three remote participants. The time frame allows for the first few to notify to take those slots.

Mr. LeVine suggested changing the verbiage as follows:

*Rule 16B. **For meetings being held in person, All members of the Commission shall strive to notify the Director and the presiding officer by Friday 12PM directly preceding no later than 72 hours prior to** the meeting which the member proposes to attend remotely. ...*

Mr. Winchell agreed with the suggested change but felt it is also important to limit the number that can participate remotely saying it is important that, for the sake of the public, at least some of the members are in attendance in person. Mr. Arndt felt this is an antiquated rule as he does not see getting away from remote participation options. Ms. Maclean agreed with Mr. Arndt saying she foresees hybrid style meetings going forward. She reminded the members that a quorum of members is required to attend in person for in person and hybrid style meetings. Mr. Jones added that the Assembly allows no more than three of its members to participate telephonically and requires a quorum of in-person attendees for in person meetings. Mr. LeVine suggested mimicking the Assembly. Ms. Maclean said CDD needs a little more time than Assembly members are allowed and asked that they not exactly mimic the assembly. Mr. Voelckers thought 72 hours should be shortened to the morning of the meeting.

Mr. LeVine suggested further changing the verbiage as follows:

*Rule 16B. **For meetings that are taking place in person, Members of the Commission commissioners shall endeavor to give staff as much notice as is reasonable of the intent to participate remotely and at all costs, the morning of** ~~notify the Director and the presiding officer by Friday 12PM directly preceding the meeting which the member proposes to attend remotely. ...~~*

Rule 16B continues to read:

For meetings taking place in person, no more than three members of the Commission may participate remotely.

It was decided that if members participating remotely count toward quorum, then that line and related verbiage will be removed from 16B. Ms. Layne will consult with Mr. Palmer to determine this.

Mr. Voelckers felt his proposed verbiage from Rule 10 regarding public participation would fit best as part of Rule 16.

Page 11: Mr. Voelckers suggested fixing the references in Rule 17Ba to match the changes made this evening.

Mr. Dye said Rule 17D is redundant and should be removed. It will be removed. Mr. LeVine added Rules 17Bc and 17Bd may also be redundant and removed.

During the discussion, Ms. Layne heard back from City Attorney Palmer and relayed to the PC that his decision was all members participating, whether in person or remote, count toward quorum. As a result, the commissioners decided to remove the requirement of a certain number of commissioners attending in person. Mr. LeVine suggested if they remove that requirement, then they should add verbiage stating, "When meetings are held in person, Commissioners are encouraged to appear in person."

Ms. Maclean suggested there might need to be a definition of 'hybrid' as well as 'remote' meetings. Mr. LeVine suggested adding hybrid as a type of 'in-person' meeting.

The commissioners decided to send this back for final wordsmithing and then pass it on motion at a later meeting.

XII. STAFF REPORTS

Ms. Maclean reported:

- The rezone for Honsinger Pond has been heard and accepted at the Lands, Housing and Economic Development Committee. It is moving to the Assembly to be adopted.
- The mayor has formed a housing and development task force. Commissioners Voelckers and Dye are on the task force. First meeting is this Thursday at noon. The intent is to look at the Land Use Code and make improvements.
- CDD has sent a memo to the assembly requesting funding for a Planner I/II position to focus on subdivision platting and building permit reviews.

XIII. COMMITTEE REPORTS – None

XIV. LIAISON REPORTS

Mr. Jones reported:

- He is a non-voting chair on the Housing and Development task force mentioned by Ms. Maclean.
- The next assembly meeting will be his last.

XV. CONTINUATION OF PUBLIC PARTICIPATION ON NON-AGENDA ITEMS – None

XVI. PLANNING COMMISSION COMMENTS AND QUESTIONS

Mr. Voelckers noted some of the text for variances had changed in Title 49 and asked if there was any Commissioner training scheduled soon. Mr. LeVine said he has discussed this with Ms. Maclean and Ms. Layne and they are looking for a time to schedule a training.

Ms. Maclean gave a heads up to members that the October 26 meeting will include the 5-year renewals for marijuana establishments.

Mr. Winchell asked about the process for Commissioner reappointments. Ms. Maclean said she believes they need to reapply to be considered.

XVII. EXECUTIVE SESSION – None

XVIII. ADJOURNMENT – 8:37 P.M.