

Minutes
Planning Commission
Regular Meeting
CITY AND BOROUGH OF JUNEAU
Nathaniel Dye, Acting Chairman
July 13, 2021

I. ROLL CALL

Nathaniel Dye, Acting 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 7:03 p.m.

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

Commissioners absent: Michael LeVine, Chairman;

Staff present: Jill Maclean, CDD Director; Laurel Christian, CDD Planner; Alexandra Pierce, CDD Planning Manager; Irene Gallion, CDD Planner; Sherri Layne, Law; Theresa Bowen, Law

Assembly members: Loren Jones

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

III. APPROVAL OF MINUTES – None

IV. BRIEF REVIEW OF THE RULES FOR PUBLIC PARTICIPATION – Acting Chair Dye gave a description of procedures for public participation via Zoom format

V. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS – None

VI. ITEMS FOR RECONSIDERATION

Mr. Voelckers, Mr. Alper and Mr. Hickok were removed from the meeting as they were not present at the original hearing.

Mr. Arndt declared a conflict with hearing this item at this meeting as he has a similar case on tonight's agenda and was removed.

AT EASE 7:09 p.m. to 7:15 p.m.

MOTION: *by Ms. Cole to reconsider VAR2021 0002.*

Ms. Cole spoke to her motion saying the Title 49 Committee has put a lot of time into this and would like to reconsider the variance at this time.

The motion passed on Roll Call with no objection.

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 25-foot, no-disturbance buffer from Lemon Creek – Notice of reconsideration given at the June 22, 2021 Planning Commission meeting

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** requested Non-Administrative Variance. The Non-Administrative Variance would allow for pedestrian trail relocation and revegetation within 50 feet of an anadromous stream.

MOTION: *by Ms. Cole to continue VAR2021 0002 until September 28, 2021.*

Ms. Cole spoke to her motion saying the Title 49 committee has been working on a legislative fix that would change the need for the variance and it is the hope that they will have it completed by then.

The motion passed with no objection.

Commissioners Voelckers, Alper, Hickok and Arndt were returned to the meeting.

VII. CONSENT AGENDA – None

VIII. UNFINISHED BUSINESS

- A. July 13, 2021 Special Planning Commission Meeting ordinance continued, if needed – Not Needed

IX. REGULAR AGENDA

Adjourned Regular Meeting and Reconvened Board of Adjustment at 7:25 p.m.

X. BOARD OF ADJUSTMENT

Mr. Arndt declared a conflict as he is the applicant and he was removed

VAR2021 0004: A Non-administrative Variance to 49.70.310(a)(2) and 49.70.310(b)(1) to allow stream bank and stream restoration within the 50-foot, no-development and 25-foot, no-disturbance buffer from Duck Creek

Applicant: TDLH, LLC

Location: 3101 Mendenhall Loop Road (reassigned to 3221 Mendenhall Loop Road per CBJ GIS Analyst) & 9090 Cinema Drive

Staff Recommendation

Staff recommends that the Board of Adjustment adopt the Director's analysis and findings and **APPROVE** Elements 1 and 2 of the requested Non-Administrative Variance with one condition. The Non-Administrative Variance to 49.70.310(a)(2) and 49.70.310(b)(1) would allow:

- Element 1: The installation of a culvert for a stream crossing.
- ~~Element 2: Stream channelization where the applicant owns both sides of the creek to improve habitat conditions.~~ (Removed on Amendment)

This approval is subject to the following condition:

1. Prior to the issuance of a grading permit for the proposed work, the applicant shall submit to the Department a revegetation plan for disturbed areas. The plan must be approved by ADF&G. The developer shall plant all exposed soil in grass or other soil-retaining vegetation and shall maintain the vegetation after planting.

Staff recommends that the Board of Adjustment adopt the Director's analysis and findings and **DENY** Element 3 of the requested Non-Administrative Variance:

- Element 3: Stream bank stabilization where the applicant only owns one side of the creek.

STAFF PRESENTATION – by Planner Christian

QUESTIONS FOR STAFF

Mr. Voelckers asked for clarification for the finding on element #2. Ms. Christian cited Alaska Department of Fish & Game (DFG) comments saying “narrowing the channel will be beneficial for fish habitat at the proposed location”. Mr. Voelckers noted another entity had a differing opinion and asked how staff chooses to rely on one entity over another. Director Maclean explained the comments from the DFG were considered agency comments whereas the Southeast Alaska Watershed Coalition (SEAWK) is not a government agency and their comments are considered public comments. Public comment is taken into account but when there is a difference, CDD tends to rely on the expertise from a local, state, or federal agency.

APPLICANT PRESENTATION – Travis Arndt, Backloop resident, said the variance was needed to make the land developable. Without it, there would be flooding problems. They are not looking to cut any more trees, only looking to grade the slope to make it less steep and more accessible. The proposals in the variance request resulted from his meetings with DFG and these are their suggestions on how to improve the creek.

QUESTIONS FOR APPLICANT

Mr. Voelckers asked for clarification on element #3. Mr. Voelckers' understanding was DFG liked the area as it is now. Mr. Arndt answered that DFG would like it one way and Mr. Arndt would like it a different way. However, their jurisdiction ends outside of the area in question.

Ms. Cole asked if the steep grade would be a safety hazard if the variance was not approved. Mr. Arndt answered that it would definitely be safer with the 10:1 grade he is proposing.

Mr. Dye asked Mr. Arndt to clarify how DFG was commenting outside of their jurisdiction. Mr. Arndt explained DFG jurisdiction is within the ordinary high-water mark and this would be outside of that.

PUBLIC COMMENT

Kathryn Cohen - 3241 Nowell Ave – Ms. Cohen is a managing member of Kodzoff Acres. She spoke against the variance saying this is coming through prior to the development plan. Ms. Cohen was concerned with the possibility of changing the path of the creek saying it could result in erosion and flooding.

Mr. Winchell asked Ms. Cohen if she felt this project was creeping into a larger development plan without proper permitting. Ms. Cohen answered saying the project is not being looked at as a whole development. Rather, only a small piece of it is before the PC this evening. She said they do not know how many homes will be built, how much area will be paved, or what the final plan will look like.

Mark Barnhill – 3040 Glacier Wood Dr – Mr. Barnhill owns land joining the property in question. Mr. Barnhill spoke against the variance saying they do not know what the plan is and there has been no communication regarding the property.

Dave Hanna – 11495 Mendenhall Loop Road – Mr. Barnhill said Duck Creek is not thriving and will never be good fish habitat. He spoke to say he feels the applicant is doing the right thing in this case.

Mr. Winchell asked if the channeling of the stream would be of benefit to the area. Mr. Hanna felt that was the case.

Chuck Cohen – 3241 Nowell Ave – Managing Director Kodzoff Acres – Mr. Cohen spoke against the proposed variance stating he saw multiple problems with the project and the processes so far in developing the project.

ADDITIONAL APPLICANT COMMENTS - Mr. Arndt spoke to public comments saying they want to do a good job and are trying to improve the area and the creek habitat for fish. He added they would prefer to have all three elements approved.

COMMISSIONER QUESTIONS

Mr. Alper said he was surprised to hear testimony that the trees were removed right up to the stream bed and wondered if the permit had been improperly granted or improperly interpreted. Mr. Arndt answered that he had consulted with CDD staff before applying for the permit and did not proceed with cutting the trees until the permit was granted and followed the permit.

Referring to public comment that the whole project was not yet known, Mr. Alper asked how important it is to get the variances now rather than at a later point in development. Mr. Arndt said the culvert (element 1) is needed now to access the site from the public right of way. The work for element number 2 will be time consuming and they cannot get started on that without a variance. As for element number 3, he said, he has an abundance of root wad that could be recycled and used as fill in the grading project. If that is put off, they will no longer have that for fill.

Mr. Pedersen asked why the permit was necessary. Mr. Arndt said the permit was needed because the streamside ordinance has not been revised and the State coastal management ordinance sunsetted in 2011 and is being removed from Title 49, they needed the variance until the new streamside ordinance is adopted.

Ms. Cole asked Mr. Arndt if he foresees coming before the PC again with more variance requests with the project. Mr. Arndt said the project would definitely need more variances as they began developing.

Mr. Voelckers asked for the limits of the work he is proposing. Mr. Arndt said the variance only applies to the 50 feet section. Grading outside of the limit would go on with or without the variance.

ADDITIONAL QUESTIONS FOR STAFF

Ms. Maclean said she takes responsibility for the clearing permit being granted and explained at the time, it was the practice of CDD to allow the exception criteria from the coastal management section of code. When they became aware that it had been sunset, it was at leadership's discretion to keep using the exception criteria. Once they saw it could be problematic, they brought it before the Law department. In looking into it, they became aware it was being applied improperly and issued a stop order. Ms. Maclean added Mr. Arndt had proceeded in good faith based on the information given to him at the time. Ms. Pierce added the exception criteria are for things like stream crossings and it is moving through the Assembly but likely will not be passed and enacted in time for this summer building season.

Mr. Dye asked if permits would be granted during the 30-day period between Assembly adoption and enactment since permits were granted during that 30-day period. Ms. Maclean and Ms. Pierce explained that was not the case explaining that in the interim between Assembly passage and the 30-day period, the ordinance does not exist. Therefore, there is no permit or other legal avenue available to them.

Mr. Winchell asked Ms. Layne if the Assembly is able to address the issue without a PC decision. Ms. Layne said the presumption of the Assembly is the decision is to be made at the PC level. She reminded him that the decision of the PC would be appealable to the Assembly.

Mr. Alper said he was surprised to see the partial approval recommendation from staff and asked if Ms. Maclean had any concerns this would set an unintended precedent. Ms. Maclean said they have consulted with the Law department and are following the guidance given. Ms. Pierce explained that, in this case, the stream qualifies as a unique and special feature of the site allowing the variance.

Mr. Dye asked Ms. Pierce if the culvert would still be recommended if DFG did not recommend the channelization. Ms. Pierce said they relied on the expert comments like those of DFG and those of the Law department in this permit as well as others on the agenda tonight.

MOTION: *by Mr. Voelckers to continue **VAR2021 0004** to August 24 to allow the applicant to bring information regarding the location and the alignment of the culvert with detail of the proposed property lines and the proposed fill for items 2 and 3.*

Ms. Cole said she does not support Mr. Voelckers' motion saying she thinks they have enough information to make a decision.

Mr. Winchell supported the motion.

Roll Call Vote

Yea: Voelckers, Winchell, Alper

No: Hickok, Pedersen, Cole, Dye

The motion failed on Roll Call 3-4

MOTION: *by Mr. Pederson to accept staff's findings, analysis and recommendations and approve VAR2021 0004.*

Mr. Pedersen said he feels Items #1 and #2 are supported but Item #3 seemed ambiguous.

MOTION TO AMEND: *by Mr. Dye to accept staff's findings, analysis and recommendations except to approve Item #1 and remove #2 from VAR2021 0004*

Mr. Dye agreed with Item #1 but felt the ordinary water mark definitions are changing and he felt the Southeast Watershed Coalition opinion should be considered.

Mr. Voelckers, Mr. Alper, and Mr. Winchell spoke in support of the amendment.

Ms. Cole said she is torn on this amendment as she felt the applicant's intentions were to enrich the environment.

Roll Call Vote on the Motion to Amend

Yea: Dye, Voelckers, Winchell, Alper, Hickok, Pedersen

No: Cole

The motion passed on Roll Call 6-1

Roll Call Vote on the Amended Motion

Yea: Pedersen, Cole, Hickok, Alper, Winchell, Voelckers, Dye

No: (none)

The amended motion passed on Roll Call with no objection

At Ease 9:02 – 9:12 p.m.

Mr. Arndt disclosed a conflict with hearing **VAR2021 0005, VAR2021 0003, VAR2021 0007** at this meeting as he has a similar case on tonight's agenda.

Mr. Voelckers disclosed a potential conflict as his firm is involved with the lodge but can be impartial and has no monetary connection with the variance.

VAR2021 0005: Pedestrian trail relocation and revegetation within 50 feet of an anadromous stream in Amalga Meadows

Applicant: City & Borough of Juneau

Location: Amalga Meadows

Staff Recommendation

Staff recommends that the Board of Adjustment adopt the Director's analysis and findings and **APPROVE** requested Non-Administrative Variance. The Non-Administrative Variance would allow for pedestrian trail relocation and revegetation within 50 feet of an anadromous stream.

STAFF PRESENTATION – by Planner Gallion

APPLICANT PRESENTATION – Michele Elfers, CBJ Parks & Rec Deputy Director explained the variance is needed to allow replacement and relocation of the elevated walkway accessing the trail system and new cabin. Without the variance, the existing boardwalk trail is in danger of becoming a safety hazard.

MOTION: *by Mr. Winchell to accept staff's findings, analysis and recommendations and approve VAR2021 0005.*

Mr. Dye asked why this variance is needed when it was not needed for other similar projects. Ms. Maclean said the projects he was asking about met exception criteria that this does not. Mr. Dye asked if the Ordinance coming before the Assembly were to pass as written, would it allow this to go forward without a variance. Ms. Gallion said it would.

Mr. Dye asked if the trail was accessible by another parking lot. Ms. Pierce said the nearest parking lot was significantly further away and not ADA accessible.

Ms. Cole noticed DFG was consulted and she asked if they had any comment on the structure. Ms. Gallion said the only thing DFG has said was there would be a fish habitat permit required for this structure to be approved.

The motion passed with no objection.

VAR2021 0003: Pedestrian trail relocation and revegetation within 50 feet of an anadromous stream in Switzer Creek
Applicant: City & Borough of Juneau
Location: Switzer Creek

Staff Recommendation

Staff recommends that the Board of Adjustment adopt the Director's analysis and findings and **APPROVE** requested Non-Administrative Variance. The Non-Administrative Variance would allow for pedestrian trail relocation **between 25 feet to 50 feet on an anadromous stream** and revegetation within 50 feet of an anadromous stream.

STAFF PRESENTATION – by Planner Gallion

APPLICANT PRESENTATION – Michele Elfers, CBJ Parks & Rec Deputy Director explained the variance is necessary to move portions of Switzer Marriott Trail away from the creek. This creek is active salmon spawning area. Moving the trail would protect that habitat.

QUESTIONS FOR APPLICANT

Mr. Winchell asked if there are any vista points closer than twenty-five feet from the stream. Ms. Elfers said there is a portion of trail with a boardwalk that goes above the pond providing an opportunity to view the fish.

Mr. Alper asked the process for restoring the land if the trail is abandoned and relocated. Ms. Elfers explained this project includes a partnership with CBJ, Trail Mix and SEAWK. If this project goes forward, they would close off the section to pedestrian access and would revegetate the area.

MOTION: *by Voelckers to accept staff's findings, analysis and recommendations and approve VAR2021 0003 with an amendment adding the phrase "between 25 feet to 50 feet of an anadromous stream."*

Mr. Dye spoke to the motion saying he would prefer to avoid variances in favor of a legislative fix but in this case, he sees the safety concern and does support the variance.

The motion passed with no objection.

*Prior to hearing **VAR2021 0007**, Mr. Voelckers declared a conflict saying his firm is involved and they have a small direct contract assisting on the landscape and planning and recused himself.*

VAR2021 0007:	Pedestrian trail reconstruction and revegetation within 50 feet of an anadromous stream in Duck Creek
Applicant:	City & Borough of Juneau
Location:	Duck Creek

Staff Recommendation

Staff recommends that the Board of Adjustment adopt the Director's analysis and findings and **APPROVE** requested Non-Administrative Variance. The Non-Administrative Variance would allow for pedestrian trail reconstruction and revegetation within 50 feet of an anadromous stream.

STAFF PRESENTATION – by Ms. Gallion

APPLICANT PRESENTATION – Michele Elfers, CBJ Parks & Rec Deputy Director explained the variance is needed because the current trail has crumbling asphalt and invasive weeds and there is a lack of riparian vegetation in the streamside.

QUESTIONS FOR APPLICANT

Mr. Dye asked if any part of the trail would be relocated or if there was a public safety urgency that would require this. Ms. Elfers said the urgency is caused by the extremely invasive Bohemian knotweed in the area.

PUBLIC COMMENT

Ryan O'Shaughnessy – 157 Gastineau Ave – Mr. O'Shaughnessy, Trail Mix Executive Director, spoke to add that there is an urgency to protect the newly created wetland in the area.

Mr. Winchell asked for Mr. O'Shaughnessy's input regarding the invasive plants. Mr. O'Shaughnessy said it is very important to control invasive species.

Dave Hanna - 11495 Mendenhall Loop Road – Spoke in support of the variance and stressed the importance of eradicating knotweed saying it is highly invasive and displaces native species then it dies back in winter allowing erosion to take place.

COMMISSIONER DISCUSSION

Mr. Dye said the variance does not mention the invasive species. Ms. Gallion said that is because the main purpose of this variance is to rehabilitate and revegetate the area where the old trail was.

Ms. Cole said she feels these issues are important but she said the criteria seem to have been 'stretched' to fit these variances. Ms. Pierce explained the variance methodology is the only option to the CDD for getting these issues addressed. Ms. Gallion added the difference with these variances from the two earlier ones are these are projects in progress and the two private variances are 'to be developed'. The fact that these are ongoing projects make them time sensitive.

MOTION: *by Mr. Winchell to accept staff's findings, analysis and recommendations and amend it to include "removal of invasive plant species" and approve **VAR2021 0007**.*

Mr. Dye spoke against the motion saying he felt there were good causes for the other variance requests this evening but for this variance there is already access and the wetlands has been created and can be maintained without the variance.

Mr. Winchell spoke to his motion saying this is within 25 to 50 feet of an anadromous stream. He cited the need to filter storm water and for eradication of the invasive plants during the growing season and the nearness of the trail to the anadromous stream as reasons he thinks this should be approved.

Ms. Cole said because habitat enrichment was not considered for the other variances this evening, she did not think it should be considered for this one.

Mr. Pedersen said he was conflicted as there is no relocation or change of use of the trail but he may support the variance.

At Ease 1023 – 1028

Roll Call Vote

Yea: Winchell, Alper, Hickok, Pedersen

No: Cole, Dye,

The motion failed on Roll Call with less than 5 votes

Board of Adjustment Adjourned; Reconvened Regular Meeting at 10:33 p.m.

MOTION: *by Mr. Winchell to accept as a new item of business **APL2021 0003***

The motion passed with no objection.

OTHER BUSINESS

Prior to hearing **APL2021 0003** Mr. Arndt declared a conflict as the appeal is about him.

A. **APL2021 0003: An appeal related to **VAR2021 0004****

Attorney Bowen advised the Commissioners that they cannot hear this appeal because they acted on the affected variance so they cannot act on the appeal as they cannot review their own decision as an appeal body. According to Title 49.20.120 it can now only be heard by the Assembly.

Mr. Alper felt since the Commission will not be hearing the appeal the \$400 filing fee should be returned to the applicant to be used on their appeal to the Assembly.

Appellant Statement - Chuck Cohen spoke to say if the PC had heard the appeal prior to Board of Adjustment, then they could have heard the appeal. As it stands now, he feels he was denied due process.

Mr. Winchell commented that during the variance hearing, he had asked if they could put forward the variance without making a decision and this situation is why he had asked that.

MOTION: *by Mr. Winchell to accept **APL2021 0003***

Mr. Winchell spoke to say he is sympathetic to the appellant but will be voting against his motion.

Roll Call Vote

Yea: Alper

No: Winchell, Hickok, Pedersen, Cole, Dye,

The motion failed on Roll Call 1-5

XI. **STAFF REPORTS** – None

XII. **COMMITTEE REPORTS** – None

XIII. **LIAISON REPORT** – None

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

XV. **PLANNING COMMISSION COMMENTS AND QUESTIONS** – None

XVI. **EXECUTIVE SESSION** – None

XVII. **ADJOURNMENT** - 10:54 P.M.