

Minutes
Planning Commission
Regular Meeting
CITY AND BOROUGH OF JUNEAU
Michael LeVine, Chairman
June 22, 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 7:03 p.m.

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

Commissioners absent: Ken Alper; Dan Hickok

Staff present: Jill Maclean, CDD Director; Allison Eddins, CDD Planner; Laurel Christian, CDD Planner; Teri Camery, CDD Planner; Sherri Layne, Law

Assembly members: Loren Jones

II. REQUEST FOR AGENDA CHANGES AND APPROVAL OF AGENDA –

MOTION: *by Mr. Dye to move **APL2020 0001** from Other Business to Unfinished Business as item A.*

III. APPROVAL OF MINUTES

A. Draft Minutes May 25, 2021 Planning Commission Regular Meeting

MOTION: *by Mr. Voelckers to approve the Planning Commission Regular Meeting May 25, 2021 minutes.*

IV. BRIEF REVIEW OF THE RULES FOR PUBLIC PARTICIPATION – Chairman LeVine briefly explained the rules for conducting the meeting via Zoom

V. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS – None

VI. ITEMS FOR RECONSIDERATION – None

VII. CONSENT AGENDA

Prior to presentation of Consent Agenda items, Mr. Arndt declared a potential conflict as the engineering company doing the work for this permit is also doing work for him on an unrelated project. He said he can be fair and impartial and was allowed to remain.

CSP2021 0002: A City Project Review for Early Access to Cope Park for a slope stabilization project
Applicant: City & Borough of Juneau
Location: 1001 Calhoun Avenue

Staff Recommendation

Staff recommends the Planning Commission adopt the Director's analysis and findings and forward a recommendation of APPROVAL to the CBJ Assembly for the City Project Review for early access to Cope Park for a slope stabilization project.

MOTION: *by Mr. Voelckers to accept staff's findings, analysis and recommendations and approve CSP2021 0002.*

The motion passed with no objection.

VIII. UNFINISHED BUSINESS

A. **APL2021 0001:** Compliance Hearing Decision on **ENF2021 0015**

MOTION: *by Mr. Dye to adopt the decision and affirm the compliance order dated March 10, 2021 regarding APL2021 0001.*

The motion passed unanimously on Roll Call vote.

B. June 22, 2021 Special Planning Commission Meeting ordinances continued, if needed

AME2015 0010 Commissioner questions continued

Mr. Arndt noted the proposed new zoning districts have a thirty-five (35) foot height limit with option to build higher within the overlay district. He understood these height limits were tied to the residential height limits for other residential districts. Since single-family homes are not allowed in the proposed areas, he asked why they are tying a height limit to a use not allowed in these districts. Ms. Eddins explained the 35-foot height limit applies to multi-family use as well as single-family use areas and it protects views for neighborhoods.

Ms. Cole asked about the Tanner Terrace exclusion and asked if staff had any concerns with this. Ms. Eddins said they would like to see Tanner Terrace included but there were concerns with existing structures becoming non-conforming. Staff decided it would be in the best interest of the project to go forward without Tanner Terrace. Ms. Cole asked if there was concern with this setting a precedent. Director Maclean explained that there was strong opposition from the Tanner Terrace residents and while it may look a bit odd within the scope of the presentation, if the area is viewed from out the road coming inbound, it actually blends well as an extension of the zoning of the surrounding area. Because of this, it is acceptable to exclude Tanner Terrace.

Mr. Dye asked if carving out that portion of the zone would create a spot zoning issue. Ms. Maclean reiterated the excluded area blends well as it is an extension of the zoning from the other side so there would not be a spot zone issue.

Mr. Arndt asked about moving the Neighborhood Commercial zone nearby to Tanner Terrace as it currently looks like a portion was missed. Ms. Eddins explained the reason that zoning line appears this way is because this is in accordance with the neighborhood wishes.

Mr. Voelckers asked about the University process and the zoning there. Ms. Eddins explained she consulted with the UAS and they did not express any concerns.

Mr. Pedersen asked if CBJ Lands had any comments or had expressed support for the proposal. Ms. Eddins answered CBJ Lands department is also in support of the proposed upzone.

AME2021 0006:	A text amendment to revise Title 49 to create the Auke Bay Overlay District.
Applicant:	CBJ Community Development
Location:	Auke Bay

Staff Recommendation

Staff recommends the Planning Commission ADOPT the Director's analysis and findings and forward a recommendation of APPROVAL to the Assembly for a text amend the CBJ Land Use Code to create the Auke Bay Overlay District with an amended boundary map that includes properties east of Auke Bay along the uphill side of Glacier Highway and removes the Tanner Terrace Subdivision.

Note that CBJ will not use a density bonus until water and waste water utilities can be upgraded.

COMMISSIONER QUESTIONS

Mr. Arndt asked for clarification of how a developer could use earned points. Specifically, if a developer earns a number of points, he wanted to know if those points can be used for everything that has a point value less than the number earned or if the points would have to be added together and the total used once. He saw an opportunity for misinterpretation of that section. Ms. Eddins said that would be addressed during edits.

Mr. Arndt noted the slide that says CBJ will not use a density bonus but he does not see that clearly written anywhere. He thought it should be written into the Ordinance to limit that in case there is staff turnover and an incoming Lands officer wants to do that. Ms. Eddins said they would take that into consideration in edits.

PUBLIC PARTICIPATION

Rick Currier – 12020 Cross St (Tanner Terrace) – Mr. Currier spoke against the rezone saying it is not necessary and does not benefit Auke Bay.

Mr. Dye asked if Mr. Currier's opposition was with all of Auke Bay. Mr. Currier said his concern is with having their views and property values damaged by high rises.

Erin Howell – co-owner of Squire's building – Ms. Howell said the comments from local business owners have been overwhelmingly negative and she felt what the public wants is not reflected in this plan. She also said she does not support the proposed points system.

Mr. Winchell asked Ms. Howell to elaborate on negative items with the proposal that the commission should focus on. She answered the decreasing parking option is a negative. Mr. Winchell asked if she finds some of the proposals appealing. Ms. Howell did say there are several positive aspects to the plan but feels like the city is trying to control what happens when that should be up to the property owners.

Mr. Voelckers asked if she had looked at using the points system for their property and if any of them would negatively affect them. She said she has looked at it and her business could accumulate a number of points but that is not the point of her opposition. She emphasized that she is not against the plan but felt it should be up to private companies rather than the government to implement.

Michelle Denton – 3869 Bayview Ave (Tanner Terrace) – She said 13 of the 15 properties in Tanner Terrace were included in the carve out. However, the two excluded properties are directly in her line of sight and if they are allowed to build to forty-five feet tall, they would block her view. She asked if some of Tanner Terrace is carved out; please carve out all of the subdivision.

Anna & Nico Ambrose – 12065 Cross St (Tanner Terrace) – Spoke in support of the exclusion of Tanner Terrace and asked that it include the two residences not currently included in the exclusion zone.

Julie Flint – 12070 Cross St (Tanner Terrace) – Spoke to say it would destroy the neighborhood and home values if they allow high-rise condos and apartment buildings in their neighborhood

Ron Flint – 12070 Cross St (Tanner Terrace) – Spoke against the increase of commercial zoning in Auke Bay saying with the area property costs, decreasing population, and increasing online shopping, it is not viable to expect businesses to move in to the area. He urged the ordinance not be passed.

Dave Klein – 12410 Glacier Hwy – Spoke to say he feels the existing neighborhoods need to be preserved and the proposed increase in density would make the area less safe. Mr. Klein is an employee of the University of Alaska (UAS).

Mr. Voelckers asked if Mr. Klein had been involved in the meetings with UAS. Mr. Klein said he had not been involved in those meetings.

Debi Ballam – 12090 Cross St – Spoke in support of excluding all of Tanner Terrace from the proposed NC zoning stating that the increases in traffic would be very dangerous and would increase the risk of automobile accidents.

Mark Schwan – 12090 Cross St – Spoke in agreement with Ms. Ballam.

Mike Story – 12069 Cross St – Mr. Story would like to see all of Tanner Terrace to be removed from the ordinance saying under the point system, it would be very easy for developers to earn points and be allowed to build up to 45 feet high and block neighborhood views.

Mr. Winchell asked Mr. Story which he considered more important between density or view. Mr. Story said the view. Mr. Winchell asked if a cap on the height limit in the Tanner Terrace area would alleviate his concerns. Mr. Story said that would help for him.

Garrett Schoenberger – owns a parcel in the town center area – Spoke to say the rezone from general commercial (GC) to multi-use (MU) zoning in the town center will devalue his property. Moving from GC to MU zoning removes many of the options for development. He added the amount of rent that a developer would have to charge in the MU area would be so expensive that it would not be profitable for the users. Mr. Schoenberger said changing zoning from GC to MU would be a downzoning and would devalue the properties automatically.

Recess 8:43 until 8:55

AME 2020 0001

QUESTIONS FOR STAFF

Mr. Arndt asked if CDD anticipates other areas moving to MU3 beyond what was shown in the presentation. Ms. Eddins said she does. She sees potential for this in Downtown Douglas and the Aak'w Kwaan Village (Willoughby) area.

Mr. Pedersen referred to the presentation where structures were described and asked how a patio would be considered a structure. Ms. Eddins referred to Title 49 for definition of structure and said an outdoor patio would be a structure whether or not it was covered.

MOTION: *by Mr. Dye to accept staff's findings, analysis and recommendations and recommend to the Assembly to approve **AME2020 0001**.*

Mr. LeVine and Mr. Pedersen spoke to support the motion.

The motion passed with no objection.

AME 2020 0002

MOTION: *by Mr. Dye to accept staff's findings, analysis and recommendations and recommend to the Assembly to approve **AME2020 0002** using the verbiage in the staff report rather than that in the proposed ordinance.*

The motion passed with no objection.

AME 2015 0010

QUESTIONS FOR STAFF

Mr. Voelckers asked for some background as to why the two properties were removed from the Tanner Terrace exclusion zone. Ms. Maclean said it was by request of the landowners at that time.

Mr. Arndt said some of the public comment came from people outside of Tanner Terrace and asked if they would be given the same consideration as those in Tanner Terrace. Ms. Maclean said general commercial and light commercial zoning uses do not fit the vision of the Auke Bay Area plan so it would not apply.

Mr. Winchell asked if it is possible to limit the heights in the cut-out area. Ms. Maclean said the Commission has the option to make different recommendations so long as they also have findings.

Mr. Arndt expressed concerns that there was zero public testimony in support of the Auke Bay plan. Ms. Cole agreed with Mr. Arndt's concerns.

MOTION: *by Mr. Arndt to accept staff's findings, analysis and recommendations and recommend to the Assembly to approve **AME2015 0010**.*

Mr. Arndt spoke against his motion saying it would be interesting to have the area developed according to the plan but the people subject to the plan do not seem to be in support of it.

Mr. Dye also spoke against the motion saying he could not support it.

Roll Call Vote

Yea: Voelckers

No: Arndt, Cole, Pedersen, Winchell, Dye, LeVine
The motion failed on Roll Call 6-1

AME 2021 0006

MOTION: *by Mr. Dye to accept staff's findings, analysis and recommendations and approve AME2021 0006.*

Mr. Dye spoke against the motion because of the failure of the previous motion.

Roll Call Vote

Yea: *(none)*

No: Dye, Winchell, Pedersen, Cole, Arndt, Voelckers, LeVine
The motion failed on Roll Call 7-0

Mr. Voelckers left the meeting at 9:27 p.m.

RECESS 9:27-9:34

IX. REGULAR AGENDA

AME2021 0005: A text amendment to Title 49 Land Use Code to repeal and replace the Board of Adjustment with the Planning Commission
Applicant: City & Borough of Juneau
Location: Borough-wide

Staff Recommendation

Staff recommends the Planning Commission adopt the Director's analysis and findings and make a recommendation to the Assembly to **APPROVE** the proposed text amendment to repeal the Board of Adjustment.

STAFF PRESENTATION – Planner Christian presented **AME2021 0005**

MOTION: *by Mr. Dye to accept staff's findings, analysis and recommendations and approve AME2021 0005.*

The motion passed with no objection.

Prior to presentation of **AME2021 0004**, Mr. Arndt declared a potential conflict as he has an ongoing appeal and variance application. He felt he could be fair and impartial on the issue.

Mr. Dye asked if he had sought advice on this from LAW. Mr. Arndt said he has and he is following the advice he received by disclosing it. Ms. Cole asked if the result of this AME could affect his appeal. Ms. Layne answered saying this proposal could have an effect borough-wide and it is unclear that Mr. Arndt would benefit directly no matter the outcome of the matter.

Mr. Arndt was allowed to remain.

AME2021 0004: An ordinance to repeal CBJ Article IX 49.70 Coastal Management, amend CBJ 49.70.310 Habitat, and amend CBJ 49.05.200 Comprehensive Plan
Applicant: City & Borough of Juneau
Location: Borough-wide

Staff Recommendation

Staff recommends the Planning Commission adopt the Director's analysis and findings and recommend the Assembly APPROVE the proposed text amendment to repeal CBJ Article IX Title 49.70 Coastal Management, amend CBJ 49.70.310 Habitat, and amend CBJ 49.05.200 Comprehensive Plan to delete the Coastal Management Program reference.

STAFF PRESENTATION – Planner Camery presented **AME2021 0004**

Questions for Staff

Mr. Arndt asked if this would result in reducing the number of waiver requests. Mr. Arndt noted several items that were not addressed in the proposed amendments. Ms. Maclean agreed with Mr. Arndt that several watershed projects would not be covered under the criteria presented in **AME2021 0004**. They would more likely be covered under the stream ordinance that CDD is currently working on and will be presented in the future.

Mr. Dye asked if there is a significance in changing from 'ordinary high-water mark' to 'bank'. Ms. Camery explained 'ordinary high-water mark' is more precise as an accurate measurement that is defined in code and matches what the Alaska Department of Fish & Game uses.

MOTION: *by Mr. Dye. to accept staff's findings, analysis and recommendations and approve **AME2021 0004** striking part of 17 & all of 18 reading "a variance is required for any other development or disturbance in the setback portions of the section."*

The motion passed with no objection.

MOTION: *by Ms. Cole to postpone **AME2018 0001** to the July 27 meeting*

Mr. Dye spoke against the motion stating he thinks **AME2018 0001** would be finished quickly
Mr. Winchell spoke to say that there is an applicant waiting to hear the next permit

Roll Call Vote

Yea: Cole, Arndt, Pedersen, Winchell, LeVine

No: Dye

The motion passed on Roll Call 5-1

AME2018 0001: ~~A text amendment to revise and update Title 49 Section 49.25.510(k) Accessory Apartments and other related sections of the Land Use Code~~

Applicant: ~~City & Borough of Juneau~~

Location: ~~Borough-wide~~

Staff Recommendation

~~Staff recommends the Planning Commission ADOPT the Director's analysis and findings and make a recommendation to the Assembly to APPROVE the proposed text amendment to amend CBJ 49.25.300, Table of Permissible Uses; CBJ 49.25.400, Table of Dimensional Standards; CBJ 49.25.510(k) Special Density considerations – Accessory Apartments; and CBJ 49.80.120, Definitions in regard to accessory apartments.~~

Adjourned as Planning Commission and Reconvened as Board of Adjustment at 10:01pm

X. BOARD OF ADJUSTMENT

Prior to hearing **VAR2021 0002** Mr. Arndt declared a potential conflict. He and the applicant have multiple on-going construction and business deals but he is not involved in this project at all. He was able to be impartial and 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.

Staff Presentation – by Planner Christian

Questions for Staff –

Mr. Arndt asked if CDD has staked the bank so the applicant would know exactly where the 'no cut' line is located. Ms. Christian was not sure but said it could be done before issuance of a

building permit. Mr. Dye asked if we are not sure of the location of the bank, how can we issue a variance? Ms. Christian explained CDD staff has been on-site and determined the top of bank and ordinary high-water mark and the applicant has hired a surveyor to create a drawing showing those lines.

Mr. LeVine asked what effect the **AME** passed tonight would have on this variance. Ms. Christian said the variance would still be needed in this case. With the **AME**, the variance would be for less area. Additionally, with this variance, they could start construction right away rather than waiting for the Assembly to approve the **AME**.

Applicant Presentation –

Troy Mayer spoke on behalf of the applicant to request the variance.

Questions for the Applicant –

Mr. Dye asked if the variance was granted how soon could they start construction. Mr. Mayer said he could start almost immediately.

Mr. LeVine asked if the ordinary high water mark measurement were used, would he be able to go forward without the variance. Mr. Mayer said it would not work without the variance.

Public Comment –

Karen Wright – owner of the subject property. Ms. Wright said without the variance, the property will not be developable and she will not be able to sell it.

Jeff Wright – owner of the subject property. Mr. Wright said the property is not usable without the variance.

Additional Applicant Comments – Mr. Mayer reiterated the need for the variance.

MOTION: *by Mr. Dye to continue **VAR2021 0002** to the September 14 meeting to allow time for the Assembly to hear and approve the AME passed earlier this meeting.*

Mr. Winchell spoke against the motion saying if it is postponed until September the contractor will lose valuable time in the summer. He added the variance has been recommended for approval and he felt it should go to a vote tonight.

Ms. Cole asked Mr. Dye why he thought it would not be appropriate to vote on the variance at this meeting. Mr. Dye cited language from the CBJ vs Thibodeau case that says “the remedy is to change the code rather than grant a variance.”

Mr. Arndt spoke against the motion saying the variance meets the requirement of being narrowly tailored. He added that a variance would be required under the proposed amendment just as it

is now and it seems that delaying to wait for the new legislation is not worth it.

Mr. LeVine spoke to support Mr. Dye's motion.

Roll Call Vote

Yea: Dye, Cole, LeVine

No: Winchell, Pedersen, Arndt

The Motion failed 3-3 on Roll Call Vote

Questions for Staff

Mr. Dye asked if the other variances in the area were granted under the old criteria. Ms. Christian replied they were under the old criteria but they all cited Lemon Creek as the naturally occurring feature that warranted the granting of the variance.

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

Mr. Dye spoke against the motion citing his earlier comments and the pending legislation.

Roll Call Vote

Yea: Arndt, Winchell

No: Pedersen, Cole, Dye, LeVine

The Motion failed 2-4 on Roll Call Vote

XI. OTHER BUSINESS – None

XII. STAFF REPORTS

Ms. Maclean reported

- Lands Committee meets again on July 19th

XIII. COMMITTEE REPORTS

Mr. Dye reported

- Title 49 Committee meets this Thursday

Mr. LeVine reported

- The Governance Committee met last week

XIV. LIAISON REPORTS

Mr. Jones reported the Systemic Racism Committee has formed and will review all proposals that come before the Assembly.

Mr. Arndt asked how in-person meetings are working for the Assembly and how does it look for commissions getting back in person. Mr. Jones said the Assembly has been

meeting in person for most meetings lately but still have some via zoom. Mr. Winchell asked if members wear masks to meetings and how is that working. Mr. Jones explained the Assembly and staff are all fully vaccinated which means they do not need to wear masks. They ask unvaccinated members of the public to wear a mask if they attend in person.

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

XVI. PLANNING COMMISSION COMMENTS AND QUESTIONS

Mr. Dye gave notice of reconsideration of **VAR2021 0002** for the next meeting.

XVII. EXECUTIVE SESSION – None

XVIII. ADJOURNMENT – 10:57 P.M.