

Minutes
Planning Commission
Regular Meeting
CITY AND BOROUGH OF JUNEAU
Michael LeVine, Chairman
June 8, 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; Ken Alper; Dan Hickok; Mandy Cole; Josh Winchell; Erik Pedersen

Commissioners absent:

Staff present: Jill Maclean, CDD Director; Alexandra Pierce, CDD Planning Manager; Laurel Christian, CDD Planner; Irene Gallion CDD Planner; Sherry Layne, Law; Teresa 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 – Chairman LeVine 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 – None

IX. REGULAR AGENDA

- X. BOARD OF ADJUSTMENT** – Items **USE2021 0004; PWP2021 0001; ADP2021 0001; ADP2021 0002; ADP2021 0003** were presented to a joint body of the Regular Commission and Board of Adjustment and all were presented together.

Prior to hearing items **USE2021 0004; PWP2021 0001; ADP2021 0001; ADP2021 0002; ADP2021 0003**, Mr. Voelckers disclosed a potential conflict as the architect who worked for the applicant on this project works in Mr. Voelckers' office. They have not discussed the item and Mr. Voelckers has no financial interest. He was allowed to remain.

USE2021 0004: A Conditional Use Permit for an accessory apartment on an undersized lot in a moderate landslide/avalanche area
Applicant: Larry Johansen
Location: 275 Irwin Street

Staff Recommendation

Staff recommends the Planning Commission adopt the Director's analysis and findings and APPROVE the requested Conditional Use Permit. The permit would allow the development a single-family dwelling with an accessory apartment on an undersized lot in a moderate landslide/avalanche zone.

The approval is subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a revised site plan showing the required minimum yard setbacks are met.
2. Prior to issuance of a building permit, the applicant must submit documentation to demonstrate that all applicable parking code requirements have been met, in conformity with CBJ 49.40.200.
3. **Per Title 49.70.300(a)**, the proposed single-family dwelling with accessory apartment shall be designed and constructed using mitigating measures certified as effective by a professional engineer registered to practice in the State of Alaska. Such measures may include dissipating structures or dams, special structural engineering, or other techniques designed for the site.

PWP2021 0001: Parking Waiver to waive the three required parking spaces for a proposed single-family dwelling and accessory apartment
Applicant: Larry Johansen
Location: 275 Irwin Street

Staff Recommendation

Staff recommends the Planning Commission adopt the Director's analysis and findings and

APPROVE the requested parking waiver. The permit would waive three parking spaces for a proposed single-family dwelling and accessory apartment.

ADP2021 0001: Alternative Development Permit to reduce the front yard setback from 20 feet to 9 feet 7 inches
Applicant: Larry Johansen
Location: 275 Irwin Street

Staff Recommendation

Staff recommends the Planning Commission adopt the Director's analysis and findings and **APPROVE** the requested Alternative Development Permits. These permits would allow the development of a single-family structure with the following setback reductions:

- ADP2021 0001: Alternative Development Permit to reduce the front yard setback from 20 feet to 9 feet 8 inches.
- ADP2021 0002: Alternative Development Permit to reduce the eastern side yard setback from 5 feet to 2 feet 8 inches.
- ADP2021 0003: Alternative Development Permit to reduce the western side yard setback from 5 feet to 2 feet 8 inches.

The approval is subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a revised site plan showing the required minimum yard setbacks are met.

ADP2021 0002: Alternative Development Permit to reduce the eastern side yard setback from 5 feet to 2 feet 8 inches
Applicant: Larry Johansen
Location: 275 Irwin Street

Staff Recommendation

Staff recommends the Planning Commission adopt the Director's analysis and findings and **APPROVE** the requested Alternative Development Permits. These permits would allow the development of a single-family structure with the following setback reductions:

- ADP2021 0001: Alternative Development Permit to reduce the front yard setback from 20 feet to 9 feet 8 inches.
- ADP2021 0002: Alternative Development Permit to reduce the eastern side yard setback from 5 feet to 2 feet 8 inches.
- ADP2021 0003: Alternative Development Permit to reduce the western side yard setback

from 5 feet to 2 feet 8 inches.

The approval is subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a revised site plan showing the required minimum yard setbacks are met.

ADP2021 0003: Alternative Development Permit to reduce the western side yard setback from 5 feet to 2 feet 8 inches
Applicant: Larry Johansen
Location: 275 Irwin Street

Staff Recommendation

Staff recommends the Planning Commission adopt the Director's analysis and findings and **APPROVE** the requested Alternative Development Permits. These permits would allow the development of a single-family structure with the following setback reductions:

- ADP2021 0001: Alternative Development Permit to reduce the front yard setback from 20 feet to 9 feet 8 inches.
- ADP2021 0002: Alternative Development Permit to reduce the eastern side yard setback from 5 feet to 2 feet 8 inches.
- ADP2021 0003: Alternative Development Permit to reduce the western side yard setback from 5 feet to 2 feet 8 inches.

The approval is subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a revised site plan showing the required minimum yard setbacks are met.

STAFF PRESENTATION – Ms. Christian presented all items together to the joint Planning Commission/Board of Adjustment members

QUESTIONS FOR STAFF (OF ALL 5 ITEMS PRESENTED)

Mr. Alper asked for clarification of what made the lot nonconforming. Ms. Christian said the lot is certified nonconforming for lot size, lot depth, and lot width. Mr. Alper asked if 'certified nonconforming' meant that the property had come before the PC to receive the certification. Ms. Christian explained that the nonconforming certificate review is a department review and does not come before the PC but the certificate is included in their packet.

Mr. Alper asked how CDD had come to the 9-foot 7-inch measurement for the front setback. Ms. Christian explained that the CBJ cartographer does the measurement calculations.

Mr. Alper asked how much smaller would the footprint of the building be if they had used the standard reduction rather than the ADOD. Ms. Christian did not have that calculation but said the front and side yard setbacks would each be about two feet smaller with the rear yard setback gaining about two feet.

Mr. Alper asked if we know how many of the units in the Irwin area currently already have accessory apartments. Ms. Christian did not have that information. She said they have seen several in recent years but there may also be a number of them that were established prior to zoning as well. Ms. Pierce added that a number of recent and upcoming code revisions are encouraging and supporting infill development in the area.

Mr. Dye asked if the rear setback needs an ADOD. Ms. Christian said the applicant had originally submitted an ADOD request but it turned out they did not need one and it was withdrawn.

Mr. Arndt asked if there should be a note added regarding fire codes considering the small distance between the buildings. Ms. Christian said she had checked with building code officials and there may be additional fire separation required. She did not make it a condition of approval because it would be addressed with the building permit review.

Mr. Voelckers asked if there had been other cases in which a parking waiver was approved allowing zero on-site parking based on availability of street parking. Specifically, he asked if there was any concern that this would set a precedent. Ms. Christian said they recommended approval saying there was ample on-street parking, there was not a detriment to public health and safety, Title 49 requirements are met. Mr. Voelckers said his recollection of other PWPs was that the rules were the rules and some parking must be provided on-site. Ms. Pierce said she knew of no instances where the CDD had denied a parking waiver request for an accessory apartment. The downtown lots are generally small, nonconforming lots. She felt this situation warrants investigation and approval of a parking area. If this were a lot with adequate space to provide a parking spot, then it would not have been recommended for approval.

Mr. Winchell noted that in the Staff presentation photos of the lot, there was a vehicle parked on the vacant lot. He asked how it would impact the area if that lot currently be used for parking were to be developed with no parking spaces. This would put the vehicles currently using the lot for parking and the vehicles associated with the new construction and tenants onto street parking. Ms. Christian said her review looked at whether the waiver would cause a significant impact to available on street parking. Title 49 requires three parking spaces. While there might be an impact, she did not feel three vehicles would be 'significant'. Mr. Winchell said if it is currently being used for one or two vehicles and the new owner has three vehicles then the effect would be five vehicles and not just the three in Title 49. Ms. Pierce said based on Ms. Christian's parking study, she felt very comfortable granting this parking waiver. Mr. Winchell asked how

snow removal would impact the findings of her study. Ms. Christian explained there was snow on the ground when she conducted the study and there was still plenty of on-street parking.

APPLICANT PRESENTATION – Larry Johansen, 227 Irwin Street – Mr. Johansen said his proposal would not have an effect on parking as he does not own a vehicle and several of his neighbors do not as well. The neighborhood is located within walking distance of everything.

Besides the parking, another concern he had heard was the safety issue with the home blocking drivers' views. He understands about site plans and said the home will not block any line of sight for drivers.

COMMISSIONER QUESTIONS FOR THE APPLICANT

Mr. Alper said they have received generally negative written public testimony from some of the neighbors regarding the parking. He asked if Mr. Johansen had done any outreach with the neighbors to discuss their concerns and if he had any sense that there were other neighbors who may not have submitted comments but who may be favorable to the parking waiver. Mr. Johansen had not received any comments on the Facebook page he had for this and he felt if anybody had strong feelings for or against his proposal then they had a chance to comment at this meeting and nobody has. He reiterated he does not own a vehicle and does not expect that he will have tenants with vehicles.

Ms. Cole asked Mr. Johansen if he had seen the conditions for approval and asked if they were acceptable to him. He said he had and they are.

ADDITIONAL QUESTIONS FOR STAFF

Mr. Hickok asked if the applicant has a nonconforming certificate for resale. Ms. Christian said there are several types of nonconforming certificates. This one was issued because it needed a nonconforming certificate for development. Director Maclean clarified CBJ does not require nonconforming certificates for selling a property but it may be required by financing institutions.

Referencing Condition #3 for **USE2021 0004**, Mr. Dye asked if Staff had ideas on how to change the wording so it is clear why this level of engineering is being required. Ms. Christian did not have any recommendation for that language. Mr. Dye suggested referencing the code. Ms. Pierce said this is language is consistent with the wording used when they've made this condition several times before. It is how it's been done in the past but could be improved. Mr. Dye suggested adding, "Per 49.70.300(a), " to the beginning. Staff did not object.

Mr. Winchell said, while he will not oppose this, he does foresee these actions having an impact on parking going forward.

MOTION: *by Mr. Dye to accept staff's findings, analysis and recommendations and approve **USE2021 0004** amending Condition 3 to add "Per Title 49.70.300(a)".*

The motion passed with no objection.

MOTION: *by Mr. Voelckers to accept staff's findings, analysis and recommendations and approve PWP2021 0001.*

Mr. Voelckers spoke to his motion saying this was challenging for him trying to balance the needs of downtown with being fair to other areas around the borough. He said the information from staff was compelling and convinced him there was ample parking in the area and takes into consideration the directives of the Comp plan to provide housing.

Mr. Arndt also supported the motion saying Ms. Christian's parking study convinced him. Mr. Alper spoke to support the motion saying he is looking forward to see how it develops. Mr. Dye agreed and said due to the size of the lot itself, the parking waiver makes sense.

The motion passed with no objection.

MOTION: *by Mr. Arndt to accept staff's findings, analysis and recommendations and approve ADP2021 0001, ADP2021 0002, and ADP2021 0003.*

The motion passed with no objection.

At 7:55 P.M., gavelled out as Board of Adjustment, remaining in session as Planning Commission.

At ease 7:55 P.M. – 8: 06 P.M.

Items **AME2020 0001, AME2020 0002, AME2015 0010, and AME2021 0005** are POSTPONED TO JUNE 22, 2021

~~AME2020 0001:~~ ~~A text amendment proposing new zoning districts: Neighborhood Commercial, Mixed Use 3~~

~~Applicant:~~ ~~CBJ Community Development~~

~~Location:~~ ~~Juneau 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 adopt the Neighborhood Commercial (NC) and Mixed Use 3 (MU3) zoning districts.~~

~~AME2020 0002:~~ ~~Text amendment to add landscaping and vegetative cover purpose statements to CBJ Land Use Code~~

~~Applicant:~~ ~~CBJ Community Development~~

~~Location:~~ ~~Juneau 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 add purpose statements for landscaping and vegetative cover to the CBJ Land Use Code.

AME2015 0010: — A proposal to rezone a portion of the Auke Bay Center to Neighborhood Commercial, Mixed Use 3, and revision to landscape and vegetative standards.

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 rezone proposal for the Auke Bay Center with the boundary adjustment to the NC zoning district to exclude the Tanner Terrace Subdivision and include UAS property along Glacier Highway.

AME2021 0005: — 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.

XI. OTHER BUSINESS

Prior to hearing other business, Mr. Arndt disclosed a friend of his used to live in one of the subject buildings. He no longer lives there and Mr. Arndt did not believe it was an issue but felt he should at least bring it up. Mr. Arndt further disclosed the attorney representing the party has represented Mr. Arndt on other matters in the past. He did not have any financial interest and felt he could be fair and impartial and he was allowed to stay.

Mr. Voelckers disclosed he owns the building in which the attorney for the appellant is a tenant. He has no financial interest in this case and feels he can be fair and impartial. He was allowed to stay.

Mr. Hickok disclosed JoAnn Birt is a coworker and she is a potential witness. He has no financial interest and can be fair and impartial. He was allowed to remain.

Mr. LeVine explained there is an hour set aside for this hearing. Each side will have 30 minutes to use however they see fit. The half hour time limit includes argument, witness testimony, answering questions from the PC, cross examining witnesses and rebuttal. The appellant will have the right to go first and CBJ Attorney Bowen will keep time for both sides.

Mr. Voelckers asked if there was any advice Law could provide regarding what types of questions can be asked. Mr. LeVine asked Ms. Bowen to briefly explain the rules and what duties the PC is charged with in this process.

Ms. Bowen explained the PC is reviewing a decision and will decide if there is substantial evidence to support it, if there was abuse of discretion or if it was a bad policy call. Their job is to either AFFIRM, RESCIND, or MODIFY the original decision. She said they need to be comfortable with the decision they make. To that end, if there is information the PC needs so they can make their decision, they need to ask for that.

A. APL2021 0001 – Compliance Hearing on ENF2021 0015

The appellant, Todd Araujo, chose to present second allowing Ms. Layne to present for CBJ first.

CDD Presentation

Ms. Layne opened stating this is an appeal of the compliance orders and not of the nonconforming certifications. The appellant owns three apartment buildings which have too many apartments. Two of the buildings have two too many and one building has one apartment too many for a total of five noncompliant apartment units. There are no permits on file showing the previous owner or the builder got authorization from CDD or the City to go above what was allowed in the permits and there are no certificates of occupancy for any of the three buildings. The previous owner was aware of the noncompliance issues when he sold the buildings to the appellant in February 2021. The appellant is asking CDD to not enforce the noncompliant units.

Ms. Layne added CDD cares about housing, but it has to be properly permitted housing with certificates of occupancy that has been deemed safe. However, CDD cannot look the other way now that they know about the illegal units. The appellant wants to blame CDD because he purchased noncompliant properties. However, the appellant worked with an experienced realtor and went through the loan process to obtain financing for the properties. Additionally, the appellant admits he was made aware of the appeal by the previous owner for the non-certifying situation reviews.

The appellant is aware and there is no dispute that there are no COs or that there are too many units. What is in dispute is what do we do about it now? CDD is asking the PC to affirm the

compliance orders. Even if PC rescinds them, Certificates of Occupancy cannot be for the properties unless the PC changes the zoning and the Comprehensive plan.

Mr. LeVine asked Ms. Layne to give a brief description of what it means to 'enforce' and what result would enforcement action have on the properties. Ms. Layne explained CDD is asking the property owner to come into compliance with zoning and building permits. They would have to decommission the noncompliant units. They would then have to apply for and get a certificate of occupancy for the whole buildings to be in compliance.

Mr. Winchell asked when CDD became aware of the noncompliance of the five apartments. Ms. Layne said that she believed the noncompliance letters went to the previous owner in November 2020. Mr. Winchell asked when the buildings were built. Ms. Layne said they were built about 1972 or 1973 and said it is on the permits on exhibit 1.

Ms. Layne called Director Maclean as a witness. In questioning, Ms. Layne established Ms. Maclean's position and years of experience with CDD. (Six years with the department, three of them as Director of Community Development). In her capacity as Director, Ms. Maclean reviewed the noncompliance order letters (Exhibit 3) based on the nonconforming situations reviews that Code Enforcement Officer Nate Watts sent to the appellant on March 10, 2021.

Ms. Layne asked how CDD decides whether or not to start an investigation or review of a property. Ms. Maclean explained they can come about in a variety of ways including neighbor complaints, routine inspections, or during nonconforming situation reviews. In this case, it was because the previous owner initiated a review based on advice from their realtor that a nonconforming situation review was necessary.

Ms. Layne asked how much 'digging' does CDD do when performing reviews. Ms. Maclean said it depends on the case but they do as much as they can to try to reach a nonconforming approval. The Department does what they can but the burden of proof is on the owner to provide documentation that they were legally built if CDD cannot.

Ms. Layne asked what issue CDD discovered with these three buildings. Ms. Maclean explained that while conducting the review, it was discovered that all three of the properties were originally permitted as fourplexes but were built as sixplexes. In one instance, the original owner requested a building permit for a fifth unit in one of the buildings. Ms. Maclean said this proves that the permits were needed to construct the extra units. There were no permits or applications for the sixth unit in that building or for the extra units in the other two buildings. Therefore, it was discovered that each building had noncompliant units that were illegally established.

Mr. Arndt asked why the previous owner asked for the nonconforming certificates. Ms. Layne said the previous owner asked for the certificates because his real estate agent said he needed

them. Mr. Arndt clarified he was asking what nonconforming situation was being addressed, substandard parking, lot size, or number of units. Ms. Layne and Ms. Maclean did not know.

Mr. Winchell acknowledged at some point the previous owner requested and received a waiver for units. He asked if they had, at any time, exceeded the amount approved. Ms. Layne explained at the time they were built they were allowed by zoning to build four units per building. They asked for and received a waiver for one more unit in one building. At no point has six units been allowed for any of the buildings. Four units was the maximum allowed then and three units is the maximum now.

Mr. Alper asked how a fifth unit was permitted if four units were the maximum allowed. Ms. Layne said she nor CDD knows by whom or how that permit was issued.

Mr. Voelckers said the appellant asserts that the CBJ and CDD are aware of other noncompliant situations that they do not address or have been treated inconsistently from this case. He asked for some background. Ms. Layne said CDD has addressed cases similar to this. CDD is aware of certain properties and Ms. Maclean can talk more about those cases they have addressed.

Mr. Dye asked if CDD is required to not enforce on the fifth unit or are they able to revoke the permit that was mistakenly or illegally issued. Mr. LeVine had the same question and added if the permit was illegal when it was issued, does that satisfy the criteria to be nonconforming or is it actually something else that CDD has simply decided not to enforce on? Ms. Layne's understanding is that it is certified nonconforming. CDD will not enforce on that unit because it was permitted. Mr. LeVine asked if that meant that any existing permit, legally granted or not, would satisfy the criteria to make something nonconforming. Ms. Layne confirmed that is the case.

At this point, Mr. Hickok recused himself as his level of involvement appeared to be more than he had originally thought and he was removed.

Ms. Layne asked Director Maclean to give a brief overview of the differences between nonconforming, compliant, and noncompliant. Director Maclean explained conforming means a property conforms to the current zoning. If a property owner needs a little help in the form of a permit or variance, they are considered 'compliant'. This is still legal but it is not conforming. Properties that met zoning at the time they were established but no longer meet that due to zoning changes are considered 'nonconforming'. Noncompliant means the development or situation is illegal.

Ms. Layne asked how many nonconforming situation reviews CDD has conducted over the past year and if they had found other noncompliant situations. Ms. Maclean answered that since the code was adopted in April 2020, CDD has performed approximately 140 nonconforming situation

reviews and have issued almost that many to date. There have been a handful that have also had noncompliant situations.

Mr. Winchell read from the appellant's opening brief saying they made claims that CDD will turn a blind eye if the property owner can produce a building permit and said the brief describes "don't ask don't tell" at CDD. Mr. Winchell asked if there is any evidence that CDD has ever engaged in a policy of "don't ask don't tell" or turning a blind eye on any permitting. Ms. Layne knew of no such policy and reiterated Ms. Maclean's description of the investigation process.

Mr. LeVine asked if a situation is considered legal if it is built pursuant to a permit even if that permit is determined to have been illegal after the fact. Ms. Layne said CDD honors existing permits even if they may not have been properly issued. Mr. Dye followed up asking if it matters that there were no COs issued in this situation. He asked if the project is, therefore, considered not closed. Ms. Maclean reiterated that the department has discretion over enforcement and they strive to work with property owners as much as possible within the code. If a property owner has gone through the steps to obtain a permit and staff mistakenly issues it, the department will 'own' that mistake and will allow it.

Mr. Voelckers asked about the level of communication between the City Assessor's office and CDD and asked if the fact that the property owner had paid taxes on this property as it stands for a number of years means that CDD should have known or been notified that it was noncompliant. Ms. Layne answered that the Assessor's and CDD departments have different functions and are not connected. Assessors do not enter buildings when making assessments and they assume properties are properly permitted. She added that even though the owners paid taxes based on sixplexes, they also collected income on those extra units so they have not suffered harm by those taxes.

Mr. Dye asked if the permit had been issued but had not been acted on, would it be allowed to be built now? Ms. Maclean explained if it had been issued but not built, it would have expired and would not be allowed.

Appellant Presentation

Mr. Araujo, representation for the appellant, Mr. Brown, owner A&S Rentals, opened stating that while it is true CDD has enforcement discretion, that discretion is not without limits and cannot be arbitrary or capricious. He feels the facts in this case show the decision was arbitrary and haphazard and poised to unfairly punish A&S Rentals.

Mr. Araujo called Mr. Brown to testify. Mr. Brown is the owner of the properties in question. Mr. Brown testified that Nate Watts, CDD Code Enforcement Officer, pointed out nearby properties that were similarly situated to his. In response, Mr. Brown made a public records request for those properties in December of 2020 but did not receive the documents until mid-March 2021.

He was told the request was originally denied due to an ongoing appeal by the previous owner. Mr. Brown was not sure under what Title the appeal was filed.

Mr. Araujo argued CDD does not actively conduct nonconforming situation or noncompliance investigations. He explained his use of “don’t ask don’t tell” alludes to the fact that there is no requirement by CBJ to perform the investigations. If the prior owner had not mistakenly requested the nonconforming certificate in this instance, then they would not be here now. Mr. Araujo said this demonstrates the arbitrary nature of this process. He said that the fact that CDD performs investigations as they become aware of them makes it arbitrary. Mr. Araujo said that Code Enforcement Officer Watts had informed him of several other properties that were also noncompliant. Mr. Araujo said the fact that those properties were not being enforced upon is evidence of the arbitrariness of CDD’s enforcements.

Mr. LeVine asked Mr. Araujo what he would propose as a better solution to the situation. Mr. Araujo said when CDD is aware that there are other noncompliant properties, they are duty bound to take action. By not doing so, he said, they penalize owners who properly try to get an NCC and award those who do not come forward.

Mr. Araujo said CDD gives informal, off the book exemptions in noncompliant situations if either party is able to produce a CO or a building permit. Even if that permit is illegal, Mr. Araujo said, CDD will give them a free pass. Mr. Araujo felt that supports the assertion that the process is arbitrary. He asked how to reconcile the fact that they have three sixplexes where only a fourplex is allowed but, somehow, they were able to obtain a permit for five units. He said that may be a mistake but it has the smell of impropriety.

Mr. Voelckers noted that in the appellant’s opening brief it was asserted that Mr. Brown was confused about the defects on the property and asked how this was a surprise after watching the prior owner go through the process. Mr. Araujo said Mr. Brown nor Ms. Brit were party to that action and A&S believed that the dismissal of the appeal meant the resolved any and all issues. He added A&S would not have purchased the properties had they known that the COs were not in place. He said A&S was not able to learn about the problem because he was prevented from accessing the necessary documents.

Mr. LeVine referenced Mr. Araujo’s premise that there is an illegal or arbitrary enforcement saying the lynch pin of Mr. Araujo’s assertion is that the city knows about noncompliance issues it is not enforcing. Mr. LeVine asked isn’t it the nonenforcement that is arbitrary and not the enforcement since CDD is duty bound to take action when it becomes aware of noncompliant situations. Mr. Araujo said there are at least three types of arbitrary aspects to this. The first is that only property owners who come forward with an issue are enforced upon. Those who know they are noncompliant just won’t come forward and will not come to the attention of CDD and, therefore, will not be enforced upon. The second is when CDD is aware of noncompliant

properties, they have the discretion to investigate or not. Then, if they do investigate and the property owner is able to produce a CO or permit, they are in the clear.

Mr. Arndt asked if the properties that Mr. Araujo points out in the appellant statement are noncompliant for the same reasons. Mr. Araujo said those properties are also noncompliant for too many units in a building.

Mr. Dye asked when the noncompliance orders were issued, did Mr. Brown make any attempt to see if the PC or Assembly were interested in fixing the problem. Mr. Brown said he did reach out to several assembly members and asked how this had been missed in zoning. Mr. Brown said there are up to a dozen or more properties that have too many units.

Mr. Dye asked Mr. Araujo for an estimate of how many potential dwelling units could be removed based on their knowledge of other similar properties with excess units. Mr. Araujo said they knew for sure that A&S Properties could lose five units. As for the others, he did not feel comfortable with the question. Mr. Araujo said Mr. Brown had been reluctant to even bring it up except as a means of demonstrating the arbitrary nature of the process.

Mr. Voelckers asked why several of the units in question are currently vacant. Mr. Araujo said they are under repair and will be filled as soon as they are ready.

Mr. Winchell asked if the units have been upkept in good repair since being built. Mr. Araujo confirmed they have been.

Mr. Alper recalled Ms. Layne had said that even if the appeal is successful, they department cannot issue a certificate of occupancy without fundamental legal changes because they are not compliant. He asked how they would address that. Mr. Araujo said for that was something to be dealt with at another time. Their hope with this appeal would be for the CDD to rescind the enforcement action and allow A&S to continue on with the three sixplexes.

Mr. Dye asked if the appeal was not successful today, but the compliance was altered to allow more time pursuant to a legislative fix prior to enforcement commencing, would that satisfy the appellant? Mr. Araujo said if that was the only alternative to decommissioning the five units, then they would accept it.

Mr. Araujo closed saying his client was an bona fide purchaser and should be subject to certain considerations. He was not aware of the issue when purchasing. The situation has been in existence for more than forty years. To enforce now, would be punishing Mr. Brown for something he did not create. The hope is that based the PC would rescind the enforcement actions.

Mr. Winchell asked Mr. Araujo his thoughts on CBJ having taken taxes for forty years based on the buildings being sixplexes and they now are saying they have to be fourplexes. Mr. Araujo said despite representations by CDD that there is no way to know how long the excess units have been in use, the assessor's office shows these as sixplexes for forty plus years. He sees this as a failing in record keeping and that failing was compounded when those documents were not given to this client when requested.

Mr. LeVine declared the argument portion of the appeal hearing is now closed and Mr. Hickok rejoined the meeting.

XII. STAFF REPORTS

Ms. Maclean reported

- Title 49 meets Thursday at noon. Lot depth and parking will be discussed.
- She presented to the Lands/Housing and Economic Development Committee. Lot depth and the Land Use Code were of interest. The Committee asked CDD to look at other dimensions beyond Lot Depth.

Mr. Voelckers asked if the conversation with the Lands Committee would give rise to a new Comp Plan. Ms. Maclean said if the Comp Plan came back to CDD it would be a priority but there is currently no funding in place for a major rewrite of the Land Use Code.

Mr. LeVine asked Mr. Voelckers and Ms. Maclean to schedule a Governance Committee meeting.

XIII. COMMITTEE REPORTS

Mr. Dye reported Blueprint has not met recently due to lack of quorum

XIV. LIAISON REPORTS

Mr. Jones reported

- all Assembly and Committee meetings are back to in-person or hybrid format
- HRC meetings will be held on the 23rd and 24th for board appointments and they will be held via Zoom
- Upcoming legislation includes
 - Res 2949 related to liaisons between Assembly and Committee members
 - ORD 2021-20 related to pay for boards, commissions, assembly members, and the mayor

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

XVI. PLANNING COMMISSION COMMENTS AND QUESTIONS – None

MOTION: *by Mr. Dye to enter Executive Session for the purpose of deliberating APL2021 0001 and discussion of VAR2021 0001*

The motion passed with no objection.

XVII. EXECUTIVE SESSION The PC entered into Executive Session at 9:43 P.M. saying they would adjourn the Regular meeting at the end of Executive Session. At this point, Staff and secretary were excused.

A. APL2021 0001 – Deliberation (if necessary)

B. Appeal of VAR2021 0001: Potential discussion (if necessary)

XVIII. ADJOURNMENT – 11:02 P.M.