

Minutes
Planning Commission
Regular Meeting
CITY AND BOROUGH OF JUNEAU
Michael LeVine, Chairman
May 25, 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 7:05 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; Erik Pedersen

Commissioners absent: Josh Winchell (joined Zoom at 8:30 p.m.) brought in as participating member at 9:18 p.m.)

Staff present: Jill Maclean, CDD Director, Alix Pierce, CDD Planning Manager; Irene Gallion, CDD Planner; Laurel Christian, CDD Planner; Sherri Layne, LAW;

Assembly members: Loren Jones

II. REQUEST FOR AGENDA CHANGES AND APPROVAL OF AGENDA

III. APPROVAL OF MINUTES

A. Draft Minutes April 27, 2021 Planning Commission Committee of the Whole

MOTION: *by Mr. Voelckers to approve the Planning Commission Committee of the Whole April 27, 2021 minutes.*

B. Draft Minutes April 27, 2021 Planning Commission Regular Meeting

MOTION: *by Mr. Voelckers to approve the Planning Commission Regular Meeting April 27, 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

~~USE2021 0005:~~ A Conditional Use Permit for marijuana retail, cultivation, and on-site consumption

~~Applicant:~~ Alaska On Point Properties, LLC

~~Location:~~ 10011 Glacier Highway

USE2021 0005 was moved to the Regular Agenda by request of Commissioner Dye.

~~PWP2021 0002:~~ Parking Waiver for a proposed assisted living and memory care facility (USE2021 0006)

~~Applicant:~~ TPD Riverview, LLC

~~Location:~~ 3041 Clinton Drive

PWP2021 0002 was moved to the Regular Agenda by request of Commissioner Arndt.

VIII. UNFINISHED BUSINESS – None

IX. REGULAR AGENDA

USE2021 0005: A Conditional Use Permit for marijuana retail, cultivation, and on-site consumption

Applicant: Alaska On Point Properties, LLC

Location: 10011 Glacier Highway

Staff Recommendation

Staff recommends the Planning Commission adopt the Director's analysis and findings and **APPROVE** the requested Special Use Permit. The permit would allow the development of marijuana retail, cultivation, and on-site consumption at 10011 Glacier Highway in an Industrial Zone.

The approval is subject to the following conditions:

Condition #1: Before issuance of a Building Permit, the applicant will provide CBJ Public Works' Utilities Engineer with information on anticipated wastewater flows, including quantity and quality. Written approval of the project from the Utilities Engineer is required.

Condition #2: Prior to issuance of a Temporary Certificate of Occupancy, wheel stops shall be placed in the parking lot to define the location of parking spaces.

Condition #3: Prior to issuance of a Temporary Certificate of Occupancy, CBJ-approved signage shall be posted for the accessible parking space prior to commencement of the proposed use.

Condition #4: Prior to issuance of a Temporary Certificate of Occupancy, all pavement markings, including directional arrows, parking space stripes, and other markings shown on the project site plan, shall be applied to the parking and circulation area as shown on the site plan in a medium designed for such purposes.

Condition #5: Before issuance of a Temporary Certificate of Occupancy, required signage includes:

- “Smoking in Designated Areas Only” at the entrance to the facility.
 - “No Smoking” signs in the retail and cultivation areas.
 - “Designated Smoking Area Entrance” on the entrance to the consumption area.
 - “Exiting Designated Smoking Area” on exits from the consumption area.
- Signage will be clear and legible.

Condition #6: Prior to the operation of the on-site consumption operations the applicant must receive the required state on-site endorsement. By approval of this Special Use Permit, the Planning Commission does not take a position as to whether the application to the State satisfies the requirements of the endorsement, including if the facility is housed in a freestanding building. (added on Amendment)

STAFF PRESENTATION by Ms. Gallion.

COMMISSIONER QUESTIONS FOR STAFF

Mr. Dye asked the distance from the patio to the property line and asked if there are other uses besides the grow operation and retail area. Ms. Gallion confirmed there was also an apartment to be used as caretaker housing. Ms. Maclean said the required setback in the area is zero but the setback planned for this project is four point seven (4.7) feet.

Mr. Voelckers asked about the regulations allowing on-site consumption stating concerns regarding the state versus local laws regarding odors from the business. Ms. Gallion explained the area is zoned as industrial and smells can be allowed. Other allowable industrial uses include vehicle repair, crematorium, stables, among others which all have their own distinct odors. Ms. Gallion explained the Assembly had considered the issue of on-site consumption and based on the Assembly and Committee of the Whole actions as recently as July 8 2020, the Assembly has indicated a desire to accommodate this kind of use but they had not specifically laid it out in Code yet. Mr. LeVine followed up with a question for Ms. Layne asking

if the PC can actually ‘disregard’ Code based on a belief that the Assembly meant to change it but did not. Ms. Layne answered that the PC was not being told to disregard the Code. Rather, she reminded them there is a code on the books that can be enforced if there are complaints.

Ms. Maclean added that they are not asking the PC to disregard code. Rather, she explained that the applicant is aware of what the Code is and it is up to them to comply. They may have fans or other technological solutions to the smells that CDD is currently unaware of and she felt the applicant should be given the chance to try and not just told “no”.

Mr. Dye asked CDD how the enforcement would work and how hard it would be. Ms. Maclean answered it depends on the situation and the applicants.

APPLICANT PRESENTATION

James Bibb, Northwind Architects, spoke for the applicant.

QUESTIONS FOR APPLICANT

Mr. Voelckers asked about the pet area in the plans. Mr. Bibb answered it is planned as an amenity provided for guests as an alternative to leaving them in the car.

Ms. Cole asked for a description of the security of the building. Mr. Bibb explained there is a single point of entry that will be monitored by staff. To access the consumption area, clients must present ID and will all have to go through a single point of entry.

Greg Smith spoke on behalf of the owner to address Ms. Cole’s and other commissioners’ questions explaining the state regulations require several levels of security to include rules regarding odor, tracking, record keeping, video surveillance, alarms, ID checks, and more.

Mr. Voelckers asked if the operator has any responsibility to ensure clients do not drive after consumption. Mr. Smith said the applicable regulations pertain to over-consumption. He said it is not that someone could not consume and drive, instead they cannot *over-consume* and then drive. As for liability, Mr. Smith said that, as with alcohol, if someone does over-consume and drive and there is an accident, the business could be subject to civil liability. He added there are restrictions on products and on the amounts of those products that can be purchased for on-site consumption.

Mr. Voelckers asked whether the liability for overconsumption would fall to the facility, to the CBJ for allowing it, or to the State and how it would be enforced. Ms. Layne compared it to bars’ liability for overserving patrons.

DISCUSSION WITH STAFF

Mr. Voelckers expressed his concern regarding the liability of such an establishment and explained it is important to get it right as this is the first one. Ms. Layne said the CBJ does not have any liability.

MOTION: by Mr. Dye to accept staff's findings, analysis and recommendations and approve **USE2021 0005** for retail and cultivation with no on-site consumption.

Mr. Dye spoke to his motion citing 49.65.460 ODOR as the reason for removing the on-site consumption.

Mr. Arndt spoke to say he would prefer to allow the applicant the opportunity to TRY to comply rather than just say NO from the outset. Mr. Voelckers agreed with Mr. Arndt saying he understood Mr. Dye's concerns but the applicant should be allowed to try.

ROLL CALL VOTE

YES: Dye; Pedersen; LeVine

NO: Alper; Hickok; Cole; Arndt; Voelckers

Motion failed 3-5

MOTION: by Mr. Dye to accept staff's findings, analysis and recommendations and approve **USE2021 0005** for retail and cultivation with on-site consumption of edibles only changing Condition 5 to reflect consumption of edibles rather than smoking and adding a new Condition 6 to read: "Prior to the operation of the on-site consumption operations the applicant must receive the required state on-site endorsement. By approval of this Special Use Permit, the Planning Commission does not take a position as to whether the application to the State satisfies the requirements of the endorsement, including if the facility is housed in a freestanding building.

Mr. Dye spoke to the motion saying the new Condition 6 is the same as a condition the PC has applied to another on-site consumption application. He stated he has reservations with the caretaker's apartment in the building and wanted to make very clear to the State the PC is not judging that criterion.

ROLL CALL VOTE

YES: Dye; Pedersen; LeVine

NO: Alper; Hickok; Arndt; Cole; Voelckers

Motion failed 3-5

MOTION: by Mr. Pedersen to accept staff's findings, analysis and recommendations and approve **USE2021 0005**.

MOTION TO AMEND: by Mr. Dye to add a Condition 6 to read: “Prior to the operation of the on-site consumption operations the applicant must receive the required state on-site endorsement. By approval of this Special Use Permit, the Planning Commission does not take a position as to whether the application to the State satisfies the requirements of the endorsement, including if the facility is housed in a freestanding building.”

Mr. Alper asked why Mr. Dye felt the amendment was necessary. Mr. Dye explained it is to be sure the State is aware the PC is not making the decision, but the decision is up to the State to make.

ROLL CALL VOTE to Amend

YES: Dye; Pedersen; Cole; Arndt; Voelckers; LeVine

NO: Alper; Hickok;

Motion to amend passed 6-2

ROLL CALL VOTE on Amended Motion

YES: Pedersen; Hickok; Alper; Cole; Arndt; Voelckers

NO: Dye; LeVine

Amended Motion passed 6-2

USE2021 0006:	A Conditional Use Permit for a 98-bed assisted living and memory care facility
Applicant:	TPD Riverview, LLC
Location:	3041 Clinton Drive

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 of a 98-bed assisted living and memory care facility.

The approval is subject to the following conditions:

1. 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.
2. Prior to issuance of a temporary certificate of occupancy, wheel stops or striping shall be placed in the parking lot to define the location of parking spaces, and all necessary ADA striping and signage will be installed.
3. Prior to the issuance of a temporary certificate of occupancy, all pavement markings, including directional arrows, parking space stripes, and other markings shown on the

project site plan, shall be applied to the parking and circulation area shown on the site plan in a medium designed for such purposes.

4. The Mendenhall River walking/bike path must remain open to the public at all times during the construction phase for this project.
5. Prior to the issuance of a temporary certificate of occupancy, maintenance agreement shall be submitted to the Community Development Department. The agreement shall address the on-going maintenance of the Mendenhall River walking/bike path **on the subject lot.** (added on amendment). Maintenance ~~includes~~ **including** snow removal from the path **may include provisions to work with Vintage Park Association.** (added on amendment).
6. Prior to the issuance of a temporary certificate of occupancy, a 5-foot-wide paved sidewalk must be installed providing safe public access from the Clinton Drive sidewalk to the Mendenhall River walking/bike path, per CBJ **49.35.620** (added on amendment) and 49.35.630. The maintenance agreement must address the ongoing maintenance of the sidewalk, including snow removal.
7. Prior to issuance of a building permit, the applicant shall submit a lighting plan illustrating the location and type of exterior lighting proposed for the development. Exterior lighting shall be designed and located to minimize offsite glare. Approval of the plan shall be at the discretion of the Community Development Department, according to the requirements of CBJ 49.40.230(d).
8. Prior to the issuance of a building permit, the applicant shall submit a revised site plan that shows compliance with habitat provisions of 49.70.310.
9. The developer shall design the drainage system to channel water towards the Mendenhall River. Alternatively, the developer may submit to the department a drainage report that shows the existing CBJ system can accommodate the significant increase in storm water volume; if the CBJ system cannot accommodate the additional volume, the developer shall provide upgrades to the CBJ storm water system to allow for the increase. The drainage report shall be signed and stamped by an Alaska Licensed Engineer.
10. Prior to issuance of a building permit, the developer shall submit to the CBJ Engineering Department, a detailed drainage plan which includes provisions for managing stormwater run-off during construction and which details the drainage facilities to be included as part of the development. No building permit shall be issued until such plans are deemed adequate and approved by the CBJ Engineering Department. The drainage plan shall be signed and stamped by an Alaska Licensed Engineer.
11. The developer shall utilize Best Management Practices as designed by a State of Alaska Licensed Engineer to treat or reduce any harmful particulates that may arise from the development.
12. Prior to the issuance of a building permit, the applicant shall submit to the department a revised site plan showing snow storage areas.
13. **Requirement for four (4) covered bike spaces.** (added on amendment)

PWP2021 0002: Parking Waiver for a proposed assisted living and memory care facility (USE2021 0006)
Applicant: TPD Riverview, LLC
Location: 3041 Clinton Drive

Staff Recommendation

Staff recommends the Planning Commission adopt the Director's analysis and findings and APPROVE the requested Parking Waiver. The permit would waive ~~five (5)~~ **six (6)** (changed on amendment) parking spaces for a proposed assisted living and memory care facility.

STAFF PRESENTATION Ms. Christian presented PWP2021 0002 & USE2021 0006 together.

QUESTIONS FOR STAFF

Mr. Voelckers said he was confused as to why some of the conditions were so technical and others seemed vague. Specifically, Conditions 9 and 10 are very precise but structural or electrical engineering issues were not emphasized. Ms. Christian answered this was in response to concerns expressed by Engineering and Public Works department.

Mr. Alper asked if the recommendations were in compliance with the Watershed Council recommendations. Ms. Christian answered that the council recommendations state that there should be some sort of filtration before storm water reaches the river and there are several options for filtration types and they have been allowed for in the conditions.

APPLICANT PRESENTATION

Matthew Parks spoke on behalf of the applicant and spoke to Condition #6 regarding the walking path and crosswalk on the property and asked that it be removed citing site constraints. He explained he has concerns that if they have the condition in place, members of the public would likely use the parking lot to access the walking paths and there is already limited parking on the property.

QUESTIONS FOR APPLICANT

Ms. Cole understood the sidewalk was intended for people parking on Clinton Drive to have access to the trail and asked how it would impact the parking lot. Mr. Parks answered there was a concern that people would see the access and be encouraged to use the parking lot.

Mr. Voelckers asked Mr. Parks to speak to how he envisions the parking lot being used. Mr. Parks said the industry is commonly one parking stall for every three beds in the facility. Typically, residents are not driving and rely on other forms of transportation. The parking spaces would be for staff and visitors.

Mr. Alper asked if signage would be installed stating 'Parking for Residents and Guests Only'

or something similar. Mr. Parks said they could but would prefer to not unless there is a problem with public use of the parking area.

Mr. Alper asked what would be the applicant's preferred drainage system. His understanding was that the applicant preferred to drain into the Clinton Drive storm water system rather than going towards the river. Mark Pusich, project engineer, spoke to the drainage questions saying they have created a storm water system that will discharge to the east side of the property into the river, above the Fish and Game ordinary high-water mark so they will not need a permit from them. Mr. Pusich added they have reviewed the CBJ storm water manual and have a biofiltration system in addition to an oil/water separator.

Mr. Pusich spoke to the sidewalk requirements saying he felt this was a safety hazard. As he sees it, the sidewalk encourages pedestrians to walk through an uncontrolled parking lot.

Mr. Dye asked if there was any covered bicycle parking in the plans. Mr. Parks answered there is no plan for that.

DISCUSSION WITH STAFF

Mr. Voelckers asked Staff for their take on the Condition #6. Ms. Christian answered she included the condition based on PC discussion and recommendations on a previous project on Clinton Drive.

Mr. Pedersen had concerns that this would be considered a taking for which the applicant is not being reimbursed. Ms. Cole spoke in agreement with Mr. Pedersen's concern. Mr. Alper asked if this has been litigated and settled yet. Ms. Layne confirmed it has been litigated and it would not be a taking.

Ms. Maclean spoke to direct the PC to 49.35.620 and .630 saying this is consistent with previous recent decisions. Mr. Arndt spoke in support of including Condition #6 based on recent decisions.

Mr. Dye asked why the non-motorized plan and covered bike parking was not considered in this project. Ms. Christian answered she did not include it based on the clientele of the facility but it would make sense to include it for staff and visitors.

MOTION: *by Mr. Dye to accept staff's findings, analysis and recommendations and approve USE2021 0006. Adding verbiage to Conditions 5 and 6 and adding a Condition 13 requiring four covered bike parking spaces.*

ROLL CALL VOTE

YES: *Dye; Arndt; Cole; Pedersen; Hickok; Alper; Voelckers; LeVine;*

NO: *(none)*

Motion passed unanimously

MOTION: *by Mr. Dye to accept staff's findings, analysis and recommendations and approve PWP2021 0002 with an amendment to waive six parking spaces rather than five.*

ROLL CALL VOTE

YES: *Dye; Arndt; Pedersen; Alper; Hickok; Cole; Voelckers; LeVine*

NO: *(none)*

Motion passed unanimously

At Ease 9:05 to 9:18.

Mr. Winchell joined the meeting.

AME2021 0003: Parking code revision, which includes reorganization, establishing a "town center" parking standard, revised parking district boundaries, and allowing parking waivers downtown

Applicant: City & Borough of Juneau

Location: Borough-wide

Staff Recommendation

This is an iterative product and Staff does not have a recommendation for approval or denial at this time.

Staff recommends the following modifications to the draft proposed code:

Off-street loading spaces can be reduced in the TCPD, waived, or addressed with fee-in-lieu.

Modify proposed regulation to read:

49.40.220 Reductions. Developer may apply for multiple reductions. Accessible parking spaces shall not be reduced and must be provided in accordance with subsection 49.40.210(b). ~~Loading spaces shall not be reduced and must be provided in accordance with subsection 49.40.210(c).~~

Off-site ADA parking or loading spaces can be public street spaces. Modify proposed regulation to read:

49.40.215 Modifications...

(a) Accessible parking spaces off-site: For parking areas calculated to require a total of 25 off-street parking spaces or less, the accessible space requirement may be met by a private off-site accessible parking space, or a public on-street or off-street space, if the alternate space is determined by the Director to be of adequate capacity and proximity...

(b) Loading spaces off-site. The loading space required may be met by an alternative private off-site loading parking space, or a public on-street or off-street space, if the alternate space is determined by the Director to be of adequate capacity and proximity...

Require a written and recorded agreement for any use of private space under this section.

Modify proposed regulation to move subsection (c)(3) to the introduction, and add the requirement for recording:

49.40.215 Modifications

Developer may apply for multiple modifications. Modifications can be combined with allowable reductions. The developer shall present to the Director a written instrument, executed by the parties concerned, providing for joint use of off-street parking facilities, and approved as to form by the City and Borough attorney. Upon approval by the Director, such instrument shall be recorded.

(c) Joint use...

~~(3) The developer shall present to the Director a written instrument, executed by the parties concerned, providing for joint use of off-street parking facilities, and approved as to form by the City and Borough attorney. Upon approval by the Director, such instrument shall be filed with the department.~~

Remove reference to federal regulations. Modify proposed regulations to read:

49.40.215 (a) Accessible parking spaces off-site: For parking areas calculated to require a total of 25 off-street parking spaces or less, the accessible space requirement may be met by a private off-site accessible parking space if the alternate space is determined by the Director to be of adequate capacity and proximity. ~~The Director will consider U.S. Department of Justice accessibility guidelines when determining adequate capacity.~~ In no case will the distance exceed standards established in 49.40.200(i).

Staff requests:

- Guidance on the relationship between the TCPD and the update to the Comprehensive Plan.
- The Commission provide direction on necessary modifications in light of public comment or Commission review.

- The Commission direct staff to submit the draft to Law OR bring a corrected draft back before the Commission, either at a Committee of the Whole or a regular meeting. Staff recommends another meeting.

STAFF PRESENTATION by Ms. Gallion.

QUESTIONS FOR STAFF

Mr. Voelckers expressed concern regarding apparent inflexibility with ADA space requirements. If there are only one or two spots in an area and one or both of those are required to be ADA, that can cause a situation where parking becomes nearly impossible and a barrier to development.

Mr. Hickok asked if there is a way to do away with Fee in Lieu. Mr. Dye explained the intent is to give options and allow flexibility for developers.

Mr. Voelckers noticed there were several references to variances and how they will be interpreted going forward and asked if there are a lot of variances or why this came up. Mr. Dye explained that besides setbacks, parking seems to be the next common type of variance downtown.

Mr. LeVine asked how they came to 60% reduction number. Mr. Dye said it came about because 60% was already in place for PD1 and it was equitable to use that.

PUBLIC TESTIMONY

STEVE SOENKSEN – spoke saying the parking code has been a barrier to development of housing downtown.

NORTON GREGORY – Douglas resident, said current parking requirements drive the housing and building costs up and suggested easing of parking requirements.

QUESTIONS FOR STAFF/COMMISSIONER DISCUSSION

Mr. Arndt expressed concerns with the reduction in required loading spaces as well as the addition of public on-street ADA spaces.

Ms. Cole commented that based on public comment, the changes being proposed are good but wondered if they should go farther. Mr. Voelckers commented that it depends on the audience as to whether these changes go far enough or if they go too far.

Mr. LeVine suggested the process is at a point to go back to Title 49, then to LAW, to a

COW for edits and then to the PC.

X. BOARD OF ADJUSTMENT – None

XI. OTHER BUSINESS – None

XII. STAFF REPORTS

Ms. Maclean reported:

- Title 49 meets this Thursday at Noon
- Large ordinance discussions could profit from Special meetings rather than at the end of Regular meetings

Mr. Voelckers asked for an update on Auke Bay. Ms. Maclean said Auke Bay will be presented on the June 8 meeting agenda.

XIII. COMMITTEE REPORTS

Mr. Dye reported Title 49 meets this week. Blueprint was cancelled due to lack of quorum

XIV. LIAISON REPORTS

Mr. Jones had nothing new to report but offered to answer questions.

Mr. Voelckers asked how the hybrid in-person/online Assembly meeting this week worked. Mr. Jones said overall it went well but there were technology issues.

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

XVI. PLANNING COMMISSION COMMENTS AND QUESTIONS

Mr. LeVine summarized his discussion with the Assembly regarding returning to in person meetings. He said the PC has expressed a desire to return to normal but there are concerns as not all members have been vaccinated and some members are not comfortable with expanding their social bubbles at this time.

XVII. EXECUTIVE SESSION – None

XVIII. ADJOURNMENT – 10:34 P.M.