

Minutes
Planning Commission
Regular Meeting
CITY AND BOROUGH OF JUNEAU
Michael LeVine, Chairman
May 11, 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; Erik Pedersen

Commissioners absent: Josh Winchell

Staff present: Jill Maclean, CDD Director; Joseph Myers, CDD Planner; Beth McKibben, CDD Planner; Alexandra Pierce, CDD Planner; Teresa Bowen, Law; Sherri Layne, Law

Assembly members: Loren Jones

II. REQUEST FOR AGENDA CHANGES AND APPROVAL OF AGENDA

MOTION: *by Mr. Dye to move the Joint Procedural Motion: APL2021 0001 from Other Business to Unfinished Business and to move Board of Adjustment VAR2021 0001 to be heard ahead of Regular Agenda.*

The motion passed with no objection.

III. APPROVAL OF MINUTES

A. Draft Minutes April 13, 2021 Planning Commission Committee of the Whole

MOTION: *by Mr. Voelckers to approve the Planning Commission Committee of the Whole April 13, 2021 minutes.*

B. Draft Minutes April 13, 2021 Planning Commission Regular Meeting

MOTION: *by Mr. Voelckers to approve the Planning Commission Regular Meeting April 13, 2021 minutes.*

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

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

VI. **ITEMS FOR RECONSIDERATION** – None

VII. **CONSENT AGENDA**

SMF2021 0002: Final subdivision approval for the Delta Drive subdivision, an Alternative Residential Subdivision creating 14 unit lots and 1 parent lot
Applicant: Bicknell, Inc.
Location: 4090 Delta Drive

Staff Recommendation

Staff recommends the Planning Commission adopt the Director's analysis and findings and APPROVE the requested final plat. The permit would allow the final plat approval for the Delta Drive Subdivision, an Alternative Residential Subdivision creating 14 unit-lots and 1 parent lot.

MOTION: *by Mr. Dye to accept staff's findings, analysis and recommendations and approve SMF2021 0002.*

The motion passed with no objection.

ARF2021 0001: Final subdivision approval for the Delta Drive subdivision, an Alternative Residential Subdivision creating 14 unit lots and 1 parent lot
Applicant: Bicknell, Inc.
Location: 4090 Delta Drive

Staff Recommendation

Staff recommends the Planning Commission adopt the director's analysis and findings and **APPROVE** Final plan approval for the Delta Drive Subdivision, an Alternative Residential Subdivision creating 14 unit-lots and 1 parent lot.

The approval is subject to the following conditions:

1. The applicant shall submit to the department signed HOA documents to be recorded with the final plat.

MOTION: *by Mr. Dye to accept staff's findings, analysis and recommendations and approve ARF2021 0001.*

The motion passed with no objection.

VIII. UNFINISHED BUSINESS

*Joint Procedural Motion: **APL2021 0001**, an appeal of Director's determination regarding **ENF2021 0015** – Request for Compliance Hearing Date*

Attorney Bowen briefly explained this is a motion to have an informal hearing on June 8 or soon thereafter on a regular meeting date. The appellant requests two hours for the hearing.

MOTION: *by Mr. Dye to amend the Joint Procedural Motion to one hour allowing 30 minutes per side and to delete the last three lines describing openings, brief witness testimony, and closing statements for the hearing.*

The motion passed with no objection.

Mr. LeVine adjourned the Regular Meeting to convene the Board of Adjustment at 7:22 p.m.

IX. BOARD OF ADJUSTMENT

Board of adjustment convened to hear **VAR2021 0001**, continued from two meetings ago. In the meantime, a public comment was received.

MOTION: *by Mr. Voelckers to reopen **VAR2020 0001** for public testimony in order to receive public comment.*

The motion passed with no objection.

VAR2021 0001: Variance to D18 lot depth from 80 to 78.2 feet for the purposes of a common wall subdivision – Continued public hearing from April 13, 2021 (Commission may reopen and take more public testimony)
Applicant: Natalia Golovatiuk

Location: Peters Lane

Staff Recommendation

Staff recommends that the Board of Adjustment adopt the Director's analysis and findings and DENY requested non-administrative variance.

Applicant Comments – Natalia Golovatiuk spoke to the statement in the memorandum that states, "The applicant may not file an action for damages against the City & Borough of Juneau in this situation." She explained that she had relied on the information from the preapplication conference and believe this created an issue of detrimental reliance.

Ms. Golovatiuk gave a presentation explaining without the variance, the project would not be viable. She feels both the developer and the CBJ would benefit if the variance were to be granted.

Questions for Applicant –

Mr. Voelckers asked if the depth of the lot was discussed during the preapplication conference. Ms. Golovatiuk said it was not discussed.

Mr. Dye asked how the lot (#6) near hers was developed and able to get around the eighty (80) foot depth requirement. Ms. Golovatiuk did not have that information.

Public Testimony –

Grant Rich – 2961 Simpson – Mr. Rich submitted written comments and spoke to request the variance be denied. He cited flooding, parking and erosion concerns in his request for denial.

Mr. Dye noted that a triplex is allowed on that lot without a variance and asked Mr. Rich why the variance would be an issue. Mr. Rich answered he believes the variance is financially motivated and he believes the development will be unsightly and block his views.

Additional Applicant Comments – Ms. Golovatiuk said the financial hardship of installing the sewer line would be mitigated by allowing the subdivision.

Mr. Dye asked how the creek impacts the ability to develop the lot. Ms. Golovatiuk explained the engineering plans for retaining walls, French drain, and grading for site preparation for the lot.

Additional Questions for Staff

Mr. Pedersen asked for the reason the nonconforming certificate was completed. Director Maclean explained nonconforming certifications are not always required. It is required in this situation because the nonconforming situation directly relates to the project. In this particular instance, the lot depth is the nonconforming situation.

Mr. Dye asked how or why Lot #6 came to be subdivided. Ms. McKibben said she had looked in to that and there was no variance attached to it. She did not know the history of the lot.

Mr. Dye noticed in Parcel Viewer, the lot in question is described as having sewer and water available but the applicant has testified that it does not. He asked how does the description get added to Parcel Viewer and how to be sure which lots have sewer and water. Ms. Maclean answered that typically, a lot is considered to have water and sewer if it is in the service area. It does not necessarily mean it is directly to the property and water or sewer lines often need to be installed to a particular property as part of developing it.

MOTION: *by Mr. Voelckers to accept staff's findings, analysis and recommendations and DENY VAR2021 0001.*

Mr. Voelckers spoke to his motion saying he understood the question of fairness in this case but Title 49 is clear on the minimum lot depth and they needed to be careful to avoid approving inappropriate or indefensible variances. Additionally, he said **VAR2020 0002** was a nearly identical case brought before them a year ago. He felt there was no way to get to a yes on this one.

Mr. Dye objected to the original motion saying he agreed that the criteria for a Variance is high but he did not agree that this case was similar to **VAR2020 0002**. Mr. Dye felt the lot does create a hardship. He added that the surrounding area is zero lot lines and common wall subdivisions and granting the variance would be in keeping with the area. Mr. Dye said he believed the applicant had acted in good faith based on information they were given. The property is steep and the water issue create unique and special conditions. He added it is narrowly tailored as it meets the bare minimum to be a common wall subdivision.

Mr. Pedersen, Mr. Alper, and Ms. Cole agreed with Mr. Dye and also spoke against the motion.

Roll Call Vote

Yea: Voelckers, LeVine

No: Alper, Hickok, Pedersen, Cole, Arndt, Dye

The motion failed on Roll Call 2-6

MOTION: *by Mr. Dye to APPROVE VAR2021 0001 stating the criteria have been met. He added similarly situated lots constructed in 1996 post the 1987 rezone do not meet the standards at the time and would be consistent with this variance. In reviewing public testimony, he found the concerns were about the construction of a new structure rather than about the proposed subdivision.*

Mr. Arndt asked if the PC were to approve the variance, what happens? Ms. Maclean explained that if the PC approves this variance, it would set a new lot depth measurement for the lot to be subdivided and the lot would then meet the minimum lot depth and the Director would not have grounds for denial.

Roll Call Vote

Yea: Dye, Alper, Pedersen, Arndt, Cole, Hickok

No: Voelckers, LeVine

The motion passed on Roll Call 6-2

Mr. LeVine adjourned the Board of Adjustment and reconvened the Regular Meeting at 8:11 p.m.

X. REGULAR AGENDA

Mr. Arndt was removed from the meeting due to a conflict as he is the applicant.

AME2021 0001: Amend zoning from D15 to General Commercial, General Commercial/Light Commercial, or Light Commercial

Applicant: TDLH, LLC

Location: N. Douglas Highway

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 from D15 to D15(T)LC.

The approval for completion of the transition zone subject to the following condition:

1. Prior to upgrading the zoning from D15 to LC, additional public infrastructure must be constructed. This may include the Douglas Bench Road, a second crossing in North Douglas, or improvements to the Douglas roundabout and the 10th and Egan intersection. The purpose of this infrastructure is to ensure that any additional higher density development would improve, and not aggravate, existing issues with traffic flow and pedestrian safety.
2. Prior to upgrading the zoning from D15 to LC, a Comprehensive Land Use Designation Map amendment is required from MDR to HDR.

STAFF PRESENTATION – Joseph Myers, CDD Planner, presented **AME2021 0001**

QUESTIONS FOR STAFF

Mr. Dye asked why an update of the Comprehensive Plan is necessary. Ms. Maclean explained in this case, North Douglas highway lends itself to being zoned Light Commercial (LC) within the Medium Density Residential (MDR) due to its one access point and lack of infrastructure and cited the single point of access to the island as an example.

Mr. Dye asked how precise the lines are in the Comprehensive Plan and how are commissioners supposed to interpret them compared to the actual land shapes. Specifically, he wanted to know what is unique about this parcel that would differentiate it from the example on Atlin Drive. Ms. Maclean explained the infrastructure and topography around the Atlin Drive parcel is wholly different from the parcel in question.

Mr. Hickok asked why there is a concern that fifteen and a half (15 ½) acres of general commercial (GC) or LC versus D15 would create more traffic. Ms. Maclean explained MDR land use allows for five to twenty units of housing while GC allows up to fifty units per acre and LC allows more than that. Current D15 zoning fits within the MDR designation. Mr. Meyers added the grading at the intersections at either end of the bridge are currently at capacity and any increase in density would put them over capacity resulting in a failing grade.

Mr. Voelckers asked if there are other cases where zoning has been limited to just a certain function as in this case. Ms. Maclean explained there are other areas on Douglas that have been conditioned on traffic improvements. She added rezones cannot be conditioned for development but they can be conditioned for safety or access. Mr. LeVine asked how then the lot below was conditioned on being a car dealership (Jeep). He asked if that condition was illegal then or maybe is now but was not then. Ms. Pierce explained that particular rezone is from the 1990s and predates any of current CDD staff. Today, it would be considered spot zoning and would not be allowed under current Code.

Mr. Alper asked for background on the Bench Road right of way and asked if it would be appropriate to condition the rezone on preserving the right of way or would be better addressed as part of a subdivision permit process. Ms. Maclean said it would be addressed at the latter stage when the developer was ready to build. Ms. Pierce added at this stage it would be premature because it is not known yet what the zoning would be when the lot is eventually developed.

Mr. Hickok asked if the concern regarding infrastructure meant development on Douglas needs to stop until there is more access to the island. Ms. Pierce answered the comprehensive plan land use maps do not support the up zone. Based on that, it does not seem appropriate to move to LC or GC given the traffic analysis and the restriction under the comprehensive plan maps.

Mr. Pedersen asked if staff had included changing trends or the potential effect of commercial services on Douglas reducing the traffic across the bridge as people would not have to go so far to access those services. Ms. Maclean thought the traffic impact analysis was a part of that but the overall driver was the land use map designation and they felt MDR is the cap of what the infrastructure can handle for North Douglas.

At Ease 8:50 p.m. – 9:00 P.M.

APPLICANT PRESENTATION – Travis Arndt – 10840 Lilac Drive – presented the proposed project. The project is planned as possible boat condos that would be centrally located between the Douglas and North Douglas boat ramps and is a use that is currently not offered in the area. He noted there has been very little public comment on the project so he feels there is not opposition to it. Additionally, he feels it is in conformance with Title 49.15.43 Lot Consolidation.

QUESTIONS FOR APPLICANT

Mr. Voelckers asked Mr. Arndt for his thoughts on the Bench Road. Mr. Arndt said the Bench Road and the second crossing have been in conversations since the 1970s and he does not foresee them happening.

Mr. Dye asked Mr. Arndt if he was aware of anything that is fifty units per acre built in GC or thirty units per acre in LC in Juneau. Mr. Arndt said he does not know of any and does not seem them as economically viable considering parking and other requirements.

Ms. Cole asked Mr. Arndt how it would affect his project if the PC were to approve the rezone with the transition. Mr. Arndt said he prefer GC but could live with going from GC to LC. However, the infrastructure requirements in Condition One are equivalent to a denial. The requirements are beyond anything he would have any control over.

Mr. LeVine asked Mr. Arndt for his thoughts to why Staff was suggesting the PC wait to recommend the Assembly change the Comprehensive Plan. Mr. Arndt understood that once one of the three access conditions were satisfied, then the zone would be allowed to become LC and then the map could be amended. Mr. Arndt said he would prefer both be done simultaneously now without the access conditions.

Public Testimony

Debbie Lewis – Realtor with ReMax– Ms. Lewis spoke in support of the applicant saying she has worked with him for many years on projects. She feels this rezone is similar to surrounding area and would allow residential and commercial development that would be in high demand. She asked the rezone be approved without the conditions saying the conditions would be like a denial.

Dave Hanna – 11495 Mendenhall Loop Road – Mr. Hanna explained the confusion surrounding the Mike Hatch building saying it was built by his father in the 1960s as a heavy equipment repair shop and the use has been grandfathered and handed down when the property has changed hands over the years. Mr. Hanna spoke in support of the rezone and felt it was not fair to require conditions over which the applicant had no control.

ADDITIONAL APPLICANT COMMENTS

Mr. Arndt cited the Traffic Impact study from 2009 and said by his calculations, the CBJ is well below the growth predicted. He added that he did his own observation and saw eighteen (18) trips during a time that, according to the traffic estimate calculations, he should have seen one hundred forty-five (145). Therefore, it appears there is less traffic than estimated. He said the conditions were essentially a denial or a decision could be made to deny based on not meeting the maps but the maps need to change anyway. He is asking to do it all right now. Changing the

maps could then negate the conditions and he could proceed.

ADDITIONAL QUESTIONS FOR STAFF

Mr. Dye asked if Staff was aware of any examples of fifty (50) units per acre built in GC or thirty (30) units per acre in LC in Juneau. Ms. Maclean did not know of any but this is not what they were looking at with the rezone so it was not addressed.

MOTION: *by Mr. Pedersen to accept staff's findings, analysis and recommendations and approve AME2021 0001 rezone from D15 to Light Commercial and recommend to the Assembly to update the designation on the Comprehensive Land Use Map from MDR to HDR and remove both Conditions.*

Mr. Pedersen spoke to his motion saying he does not like the idea of transitional zoning, he feels LC is not drastically different from MDR and the additional recommendation to update the map is to clean it up going forward.

Ms. Maclean asked for findings. Mr. Pedersen said his finding would be that the LC 30-unit zone is in substantial but not absolute conformance with the land use designation map.

Mr. Dye spoke to support the motion saying the traffic study is not important at this time and he agrees the LC is in substantial but not absolute conformance with MDR.

Ms. Cole spoke to support the motion adding that conditions which the applicant has no practicable control over are tantamount to a denial.

Mr. LeVine added he did not believe it was reasonable to rely on the 2009 traffic study that he felt has been disproven. He said he does not express an opinion about whether LC is in conformance with MDR but does support the motion.

The motion passed on Roll Call vote with no objection.

XI. OTHER BUSINESS – Moved to Unfinished Business

~~A. Joint Procedural Motion: APL2021 0001, an appeal of Director's determination regarding ENF2021 0015 – Request for Compliance Hearing Date~~

XII. STAFF REPORTS

Ms. Maclean reported Auke Bay and Downtown zoning ordinances will be coming before the PC again soon.

Ms. Pierce added staff are trying to schedule Title 49 and are waiting to hear back from commissioners so they can move on that.

Mr. Voelckers asked about the parking revisions. Ms. Pierce said the Parking ordinance is on the calendar for the next meeting.

Mr. Dye asked what meetings are scheduled for June. Ms. Maclean said there is one property with 6 cases coming. There is a special meeting planned for Auke Bay and Downtown zoning.

XIII. COMMITTEE REPORTS

Mr. Voelckers reported PWFC had a lunch meeting and learned two fire stations are getting ground source heating. Engineering looked at the possibility of burying powerlines in the Calhoun area and concluded it was unlikely to happen.

Mr. Dye reported the Blueprint Downtown Steering Committee met last week and has more meetings coming.

Mr. Hickok reported the Lands Committee met last night to discuss the Lena Point Communication Tower.

XIV. LIAISON REPORTS

Mr. Jones reported the Fireworks ordinance will be before the Assembly tomorrow. Ordinance 29.47 will be introduced tomorrow. May 24th will be the first in-person Assembly meeting and there will eventually be changes to Commission meetings.

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

XVI. PLANNING COMMISSION COMMENTS AND QUESTIONS

Mr. Arndt commented that there seems to be several similar issues coming before the Commission and it makes him wonder if there is a need to adjust or change code to fix it. Mr. Voelckers noted that the Commission has been advised to take extreme care from a legal perspective but he would like to have a better option.

XVII. EXECUTIVE SESSION – None

XVIII. ADJOURNMENT – 10:02 P.M.