

Minutes
Planning Commission
Regular Meeting
CITY AND BOROUGH OF JUNEAU
Michael LeVine, Chairman
November 10, 2020

I. ROLL CALL

Michael LeVine, Chairman, called the Regular Meeting of the City and Borough of Juneau (CBJ) Planning Commission (PC), held via Zoom internet conferencing, to order at 7:02 p.m.

Commissioners present: All Commissioners present via video conferencing – Michael LeVine, Chairman; Nathaniel Dye, Vice Chairman; Paul Voelckers, Clerk; Travis Arndt, Assistant Clerk; Ken Alper; Dan Hickok; Weston Eiler; Josh Winchell; Erik Pedersen

Commissioners absent: None

Staff present: Jill Maclean, CDD Director
Irene Gallion, Senior Planner
Laurel Christian, Planner
Emily Wright, Assistant City Attorney

Assembly members: Loren Jones, Deputy Mayor

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

III. APPROVAL OF MINUTES

A. October 13, 2020 Draft Minutes – Planning Commission Regular Meeting

MOTION: *by Mr. Alper to approve the Planning Commission Regular Meeting October 13, 2020 minutes.*

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

V. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS – None

VI. ITEMS FOR RECONSIDERATION – None

VII. CONSENT AGENDA

SNC2016 0001: Street Name Change of Third Street in the Mendenhall Valley
Applicant: City and Borough of Juneau
Location: Third Street in the Mendenhall Valley

Staff Recommendation

Staff recommends the Planning Commission adopt the Director's analysis and APPROVE the requested street name change of Third Street in the Mendenhall Valley to Whale Tail Court.

MOTION: *by Mr. Voelckers to accept staff's findings, analysis and recommendations and APPROVE SNC2016 0001.*

The motion passed with no objection.

VIII. UNFINISHED BUSINESS – None

IX. REGULAR AGENDA

At 7:07 p.m., Chairman LeVine adjourned the Planning Commission regular meeting to reconvene as the Board of Adjustment to hear **VAR2020 0002**

X. BOARD OF ADJUSTMENT –

VAR2020 0002: Variance to minimum lot depth from 85 to 60 feet for purposes of subdivision
Applicant: Rand E. Thatcher
Location: 8497 Mendenhall Loop Road

Staff Recommendation

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

Staff Presentation

Staff Gallion presented VAR2020 0002 and made a recommendation to DENY the variance.

Mr. Voelckers asked about the timeline regarding when the original variance expired and the filing of this permit request. Ms. Gallion explained this application was filed in August of 2020. It is Staff understanding that the applicant was working on other projects which had taken precedence. The applicant had allowed the previous variance to expire. Ms. MacLean

explained the original permit was approved in 2016, the 18-month deadline expired before a building permit was approved. In 2018 the new variance code was adopted.

Mr. Pedersen disclosed a potential conflict of interest as he has worked with the applicant in the past but has no knowledge of this project other than what is provided in the packet and staff report. Pedersen feels he can remain fair and unbiased. He was allowed to remain.

Mr. Alper asked what was the zoning requirement for lot size in 1977 when the original variance was received. Ms. Gallion gave reference from the packet where the lot sizes were described.

Mr. Arndt asked where the expiration of the permit was addressed in Code. CBJ 49.20.270 states that expiration is governed under 49.15 Article II. CBJ 49.15.240 is "reserved," with a note about repealing that section August 31, 2015. Ms. MacLean answered according to 49.15.150(c) a development permit shall become void and the application be forfeited 18 months after its effective date if no associated building permit, right of way permit or similar permit for construction has been issued, and so on. As such, the NOD issued 2016 expired in November 2017. Ms. Wright added the applicant was informed of the 18-month period at the time of their original permit.

Mr. Winchell asked if there is any history of filing for permits for this property prior to or apart from the 2016 permit. Ms. Gallion said there was not and referred the members to the Minutes from the meeting of the original Variance in the packet.

Applicant Presentation

Kathy Thatcher, property owner, explained the characteristics of the property and the hardship that would be caused by the denial. Ms. Thatcher explained the subject property is distinct from nearby lots by its odd shape and large size. She continued to say that the denial creates a hardship which unduly strips the applicant of the option to subdivide and use the both pieces of the property as zoned for residential use.

Commissioner Questions for the Applicant

Mr. Hickok asked if approval would require a new entrance to the lot. Ms. Thatcher said her understanding is that a new entrance would need to be approved.

Mr. Winchell asked why the 18-month window was missed. Ms. Thatcher explained they did not realize there was a deadline and missed it while working on another project.

Mr. Arndt asked if there had been any work done on the project. Ms. Thatcher explained they had hired a surveyor who came out and drew up the plans for them. Mr. LeVine asked if that had been done during the 18 months timeframe after the variance approval. Ms. Thatcher said it was not during the 18-month window, rather it was during the application process.

Mr. Arndt asked if the second entrance was necessary or if the existing entrance could be used for both. Ms. Thatcher answered that would be problematic as it would be too tight with the bike path where it is located.

Mr. Eiler asked what portion of Land Use Code she was referring to in her presentation regarding the shape of the land. Ms. Thatcher did not have the reference.

Public Testimony -None

Additional Applicant Comments – None

Questions for Staff

Mr. Voelckers asked if Ms. Wright could clarify variance criteria regarding lot shape as hardship. Ms. Wright explained there is Alaska Supreme Court precedence stating peculiarities of a specific property sufficient to warrant the grant of a variance must arise from the physical condition of the land itself which distinguish it from other land in the general area.

Mr. Eiler asked if the applicant's referral was Code or Case precedence. Ms. Wright said the applicant was referring to 49.15.420 regarding dimensional standards but that is separate from a request for a variance.

Mr. Pedersen said it appears the lot never met depth standards and there was a variance was allowed in 1977 and asked whether the permit runs with the land. Ms. Maclean answered the current variance runs with the lot as it has existed since 1977. If it is subdivided, the variance would no longer apply.

MOTION: *by Mr. Arndt to **APPROVE** VAR2020 0002.*

MR. Arndt spoke AGAINST the motion stating while he felt for the applicant, he could not find in code anyway to allow the permit. Mr. Winchell spoke in agreement with Mr. Arndt.

Mr. Winchell asked if the Commission must develop their own findings to APPROVE the Variance. Mr. LeVine confirmed that is the case.

Mr. Dye spoke against Mr. Arndt's motion to approve saying the code is complicated but there was just no way to get to yes on this one.

Mr. Pedersen spoke in support of APPROVING the variance stating it wasn't the applicant who made the lot a substandard depth and they now bear the hardship from it.

Mr. Voelckers said he would be a vote to DENY the permit and added that even though he is sympathetic to the case, the Commission needs to be careful regarding adherence to the code and setting precedent with variances.

Ms. Maclean added CDD staff works with clients to strive to get to a YES on permit applications whenever possible. When they do recommend to DENY, it is only after extensive work.

Mr. Alper said he hears the legal arguments being made but he will be a YES vote for the variance. He also asked for the timeline in which they would need to address the requirement for new findings if they were to vote YES. Mr. LeVine explained findings would need to be addressed at this meeting and included as amendments to the original motion. Mr. LeVine added that while he disagreed with some of Staff findings, he did not see ground for finding a hardship that would warrant a variance.

Mr. Winchell asked if there could be a hardship relating to the execution or lack of execution on the prior permit based on the applicant's inability to act upon the original variance prior to it expiring. Ms. Wright explained Variance criteria is property based and not based on applicant understanding of past permit.

Mr. Dye asked for a brief at ease to allow Commissioners to formulate verbiage for amendments or findings.

AT EASE 8:12 – 8:20

Mr. Arndt asked about the previous Permit. He noted it was approved after the changes in the Code and asked whether that rendered the original NOD incorrect. Ms. Wright did not have an answer.

Mr. Winchell noticed the lines on the property were diagonal and wondered if the measurements could be extended diagonally to meet the appropriate numbers. Mr. Levine explained the measurements are perpendicular and that Staff had tried many different ways and just couldn't make it work.

MOTION: *by Mr. Pedersen to amend the analysis to finding A to state "this criterion has been met" and changing the analysis to "the existing lot does not meet depth requirement which creates unusual and special conditions for the property. Enforcement of the ordinance creates undue hardship resulting from these conditions."*

PASSED WITHOUT OBJECTION

MOTION: *by Mr. ALPER to further amend discussion on Criterion 1 to state that a hardship exists because the applicant owns a lot that is twice the size of their subdivision neighbors, are*

paying taxes based on that larger lot without the ability to enjoy the full value of their lot due to being unable to have the same number of dwellings per square foot as their neighbors.

PASSED WITHOUT OBJECTION

MOTION: *by Mr. LeVine change findings under B to read, "The unusual conditions are not caused by applicant as they are due to the size of the lot."*

PASSED WITHOUT OBJECTION

MOTION: *by Mr. LeVine change findings under D to read, "The variance is narrowly tailored because it addresses the hardship caused by the size and shape of the lot in a narrowly tailored manner."*

Mr. Eiler objected and this item went to a roll call vote.

Roll Call Vote

YEA: Pedersen, Hickok, Alper, Winchell, Voelckers, LeVine

NAY: Arndt, Dye, Eiler

PASSED ON ROLL CALL 6:3

Mr. Arndt said even with the amendments, he still cannot see a way to approve the permit. Mr. Voelckers also said he will be a NO vote on the amended motion. Mr. Dye and Mr. Winchell spoke against the amended motion stating the lot size alone does not qualify as a hardship.

Mr. Pedersen spoke in support of the amended motion saying it is an opportunity for additional dwellings without having to develop additional infrastructure, adds to the tax base revenue, and conforms with the comprehensive plan.

AMENDED MOTION: *by Mr. Arndt to APPROVE VAR2020 0002 subject to revised findings to A, B, and D.*

Roll Call Vote

YEA: Pedersen, Hickok, Alper

NAY: Arndt, Eiler, Winchell, Voelckers, Dye, LeVine

FAILED ON ROLL CALL 3:6

Mr. LeVine stated he thinks it is the sense of the Commission that this is an unfortunate result. The Commission believes the lot should be subdivided and there should be the opportunity for a second dwelling to be built there but they simply can't get there under existing Code.

At 8:40 p.m., Chairman LeVine adjourned the Board of Adjustment meeting to reconvene as the Planning Commission.

XI. OTHER BUSINESS

- A. 2021 Proposed Meeting Dates – Ms. Maclean explained the proposed meeting dates are in the members' packets.

XII. STAFF REPORTS

- Ms. Maclean expects the PC/Assembly joint meeting on December 7 but a time has not been set
- Title 49 will meet November 24 at noon to discuss parking
- Next PC meeting is 11/17 at 6:00 p.m. with COW meeting at 7p.m. to discuss Auke Bay zoning
- CIP Committee is meeting Thursday at noon
- Norwegian Cruise Lines will have a subport design kickoff meeting November 18th 6:30 p.m.
- Hurlock Property CUP appeal period has expired with no appeal filed but the Assembly will hear public testimony on December 7th on the land disposal process
- SHI – Ms. Wright explained their appeal is being stayed for 4 months until March 2021. There will be a modification request coming before then. CDD and SHI are working together on a modification for the Commission to accept or deny.
- Ms. Wright reported the Tlingit & Haida, Alaway appeal is pending. Assembly oral arguments are expected March 8, 2021.
- Ms. Maclean reported this is Ms. Wright's last meeting

Mr. Arndt asked Ms. Wright about the Alaway Appeal. Considering this is a CARES funded project with the December 30 deadline, will they be moving forward anyway with that? Ms. Wright said they are moving forward at their own risk.

Mr. LeVine mentioned that he will not be available for the meeting next week. Mr. Dye will be acting as Chair for the meetings.

XIII. COMMITTEE REPORTS

- Mr. Voelckers reported CIP committee met last week.
- Mr. Dye reported Title 49 met

XIV. LIAISON REPORTS

Mr. Jones reported

- The Assembly retreat was this past Saturday. The letter from the Planning Commission was available to the assembly but did not come up for discussion.
- Assembly Finance Committee held a special meeting tonight.
- COW meeting on November 30 to meet with Bartlett and Schools.
- December 7 will be meeting with the Planning Commission.

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

XVI. PLANNING COMMISSION COMMENTS AND QUESTIONS

Mr. Alper asked how long it will take for the street name change to actually happen now that it has been approved. Ms. Maclean was not sure how long it would take but stated that it only needed PC approval and will not need to also go before the Assembly.

XVII. EXECUTIVE SESSION – None

XVIII. ADJOURNMENT– 8:58 p.m.