

Agenda
Planning Commission
Regular Meeting
CITY AND BOROUGH OF JUNEAU
Ben Haight, Chairman
July 10, 2018

I. ROLL CALL

Ben Haight, Chairman, called the Regular Meeting of the City and Borough of Juneau (CBJ) Planning Commission (PC), held in the Assembly Chambers of the Municipal Building, to order at 7:11 p.m.

Commissioners present: Ben Haight, Chairman; Paul Voelckers, Vice Chairman; Michael LeVine, Nathaniel Dye, Percy Frisby, Dan Hickok, Dan Miller, Andrew Campbell, Carl Greene

Commissioners absent: None

Staff present: Jill Maclean, CDD Director; Beth McKibben, Planning Manager; Laura Boyce, Senior Planner; Tim Felstead, Planner II; Robert Palmer, Assistant Attorney II

Assembly members: Loren Jones, Beth Weldon

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

III. APPROVAL OF MINUTES

A. June 12, 2018 Draft Minutes – Regular Planning Commission Meeting

MOTION: *by Mr. LeVine, to approve the Planning Commission, June 12, 2018, regular meeting minutes, with any minor edits by Commission member or staff.*

The motion passed with no objection.

IV. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS - None

V. ITEMS FOR RECONSIDERATION - None

VI. CONSENT AGENDA - None

VII. UNFINISHED BUSINESS - None

VIII. REGULAR AGENDA

APL2018 0002: Appeal of Director's determination regarding Condition 5 of
USE2018 0001

Appellant: Ken Williamson

Mr. Palmer presented to the Commission the four different decisions it can make regarding this appeal. The appeal before the Commission stems from the June 4, 2018, Community Development Department Director's decision regarding parking requirements. The Commission has one primary decision to make, and depending upon what that decision is, there may be three subsequent decisions, said Mr. Palmer.

- *Does the Commission want to accept or reject the appeal?*
Title 49 provides fairly strong language suggesting that an appeal should be accepted unless it presents only minor or routine issues. It should be clear from the notice of appeal and any evidence offered that the decision of appeal was supported by substantial evidence and involved no policy error or abusive discretion, said Mr. Palmer. If the Commission is leaning towards rejecting the appeal, then both the Community Development Department (CDD) and Mr. Williamson have the right to influence the Commission with their opinions, said Mr. Palmer. If the Commission does decide to hear the appeal, then three other factors need to be considered, said Mr. Palmer.
- *The Commission needs to decide what exactly is entailed in the nature of the appeal.*
Mr. Palmer said this is an appeal of the June 4, 2018, decision regarding parking. The Commission needs to decide if it wants to hear the entire appeal or if it wants to hear only certain aspects of the decision that is on appeal, said Mr. Palmer.
- *Assuming the appeal is accepted, the Commission needs to decide whether it wants to review the appeal de novo (when a body decides all issues in a case, as if the case was being heard for the first time), or on the record.*
There are times when a *de novo* review is pertinent, said Mr. Palmer, such as if circumstances arise when the Planning Commission is concerned about fairness problems, such as if it detected issues between the department and the applicant. In general, appeals of land use decisions are heard on the record, noted Mr. Palmer.
- *If the Commission decides that it is hearing the appeal, than one way to address this is for the Commission to appoint a presiding officer from within its body.*
That person would work with Mr. Palmer and help resolve any preliminary issues such as questions about the record, or briefing schedules, and standards of review, he said.

Mr. Palmer said it takes between three and nine months to resolve an appeal.

Commission Comments and Questions

Mr. Voelckers asked if Mr. Palmer could elaborate more on the timeline of three to nine months.

Mr. Palmer said if an appeal is heard on the record, CDD needs time to actually compile the record. The parties then have time to communicate with each other to draft their briefs, said Mr. Palmer. Once the CDD prepared its record, which would take three to four weeks, it would then share that with Mr. Williamson, who would then have a few weeks to review that record and to draft his opening brief, said Mr. Palmer. The CDD would then have the same amount of time to draft its opposition brief. Mr. Williamson would then have a couple of weeks to draft a new response if he desired, said Mr. Palmer. Both parties would then come before the Commission and it would hold an oral argument, where both sides would present their case, he said. The Commission would then go into executive session to decide how it would like to resolve the appeal, said Mr. Palmer.

If the Commission decides to do a *de novo* review, both sides would need time to find their witnesses, compile their facts and craft the arguments, said Mr. Palmer. A hearing would then be held which would be more “trial-like”, where both sides could present their evidence, and witnesses could be called and cross examined, said Mr. Palmer.

Mr. Voelckers asked if a *de novo* case would be a shorter time length of time, such as a month compared to the three to nine months for an “on the record” appeal.

The time period would be roughly the same, said Mr. Palmer.

Chairman Haight clarified for Mr. LeVine that the first step in this process would be for the Commission to decide if it would accept or reject the appeal.

Mr. LeVine said he is struggling with exactly what is being appealed. He said when the Commission approved the Conditional Use Permit it accepted the staff’s findings. He said he is concerned about whether the Commission has already made a decision about the substance of the appeal and whether there is some possibility that by appealing the CDD determination that Mr. Williamson would in effect be determining the Conditional Use Permit decision. That would therefore undermine the Conditional Use Permit which he already has, said Mr. LeVine.

If the appeal is accepted, said Mr. Palmer, the Planning Commission and the parties all have unfettered opportunity to terminate the appeal if at any point it is determined that this is not an appeal of the Director but an appeal of the Planning Commission decision for the Conditional Use Permit, said Mr. Palmer. If that was decided, then the Commission would lack jurisdiction to hear the appeal, he added.

Mr. LeVine said if the Commission decides that this is actually an appeal of the Conditional Use Permit, with the Commission therefore lacking jurisdiction, then the next step would be for Mr. Williamson to make his appeal to the Assembly. Mr. LeVine said he wanted to clarify that throughout this process that Mr. Williamson would not lose the Conditional Use Permit which he has been granted.

That could be an outcome, said Mr. Palmer.

Mr. Miller said he recalled that one of the conditions within the CUP (Conditional Use Permit) was that the staff was going to determine parking requirements, said Mr. Miller. The Commission accepted that the department was going to do that as one of the conditions, he said. Mr. Miller clarified that Mr. Williamson is appealing the specific Director's decision related to parking requirements.

Mr. Palmer concurred with Mr. Miller.

MOTION: *by Mr. Voelckers, to accept the appellant's appeal of APL2018 0002 of the Director's determination and to go through the process of a hearing.*

Speaking in favor of his motion, Mr. Voelckers said he recalled that the parking issue was getting too specific for the Commission to decide, and that it deferred to the staff to make that determination, he said. He said there appears to be substance to this appeal, and that he felt the Commission should accept the appeal.

The motion passed with no objection.

Mr. Palmer said that the Commission now needs to decide what is being heard. Does the Commission want to decide if it wants to hear all aspects of the parking decision, or if it would like to hear only parts of the decision? He added he did not really think there was a way to break up the appeal.

Mr. LeVine asked who would be representing the CDD in this appeal.

Mr. Palmer said CDD does have the ability to consult with another attorney within the CBJ law Department if it has the need to do so. Mr. Palmer clarified that he is the advisor for the CDD on this matter.

Mr. Voelckers said it appeared to him that the Commission needs to see the full, underlying argument which has led to the requirement for parking.

MOTION: *by Mr. LeVine, to hear the appeal in its entirety.*

The motion passed with no objection.

MOTION: *by Mr. Voelckers, to hear the appeal as an open meeting on the record.*

Mr. LeVine said he concurs with this motion if it is meant that the Commission review the existing record and that it is not a fact-finding mission.

Mr. Miller said he agreed with Mr. LeVine's analysis, and that he agreed to the motion that the Commission hears the appeal on the record and not *de novo*.

The motion passed with no objection.

Mr. Dye was named as the presiding officer for this appeal.

Appellant

Mr. Williamson said he felt the Commission should consider whether the appeal be heard on the record or *de novo* with public input. He said he felt this was important because it has been somewhat misstated that the Commission's decision is being appealed. That is not the case, said Mr. Williamson. This is an appeal of the Director's determination of parking requirements, he said. There is no record of how the Director formulated that decision on parking requirements, he said. Mr. Williamson said he believed that the appeal should be heard *de novo*. Otherwise, he said, the only record is the Planning Commission's decision which removed the requirements for the parking, he said. That decision certainly did not grant broad authority to the Department to do anything that they wanted to, he said.

Mr. Palmer said if Mr. Williamson wants to make a motion for the presiding officer as to how this issue is to be heard, the next piece would be the duty of CDD to present the record of every piece of information that CDD looked at to make its decision. The presiding officer could make the decision as to how long CDD has to compile this information, said Mr. Palmer.

Mr. LeVine said there would be the opportunity for Mr. Williamson to decide if the information presented by CDD was comprehensive once it was presented and he had a chance to review it.

Mr. Williamson said he requested a basis for this decision several times. He said the ordinance indicates that prior to 2006 the PD1 zone has zero parking. He said he had asked for clarification from the Planning Department because they had some undocumented date apparently set from the original PD1 ordinance. None of that is documented and none of that is on the record, he said. And none of the questions were answered that he had presented on these issues, he said. Therefore, the record will be sparse, and it will be hard to ask for more record or to challenge it. *De novo* would appear to be the proper approach for this appeal, said

Mr. Williamson.

Mr. Voelckers said that his understanding was that whether this appeal is heard *de novo* or on the record, that there would be a healthy exchange of factual material that underpins this decision. He said his understanding was that there will be plenty of opportunity for information to be requested and presented. Even though this would be on the record, he said he did not think this would be simply limited to current information. He said he thought there would be new material for the Commission to review by the hearing officer.

Mr. Palmer agreed with Mr. Voelckers. He said as Mr. LeVine explained, regardless of the type of review, there would be opportunity for both parties to make their factual arguments.

Chairman Haight said they will proceed with an on the record appeal noting that if there would be additional evidence brought forward that it would be addressed with the hearing officer.

AME2018 0001: A text amendment to Title 49, Land Use Code
49.25.510(k), Accessory Apartments
Applicant: City & Borough of Juneau
Location: Borough-wide

Staff Recommendation

Staff recommends that the Planning Commission review and consider the proposed ordinance and forward a recommendation for approval to the Assembly.

Ms. McKibben explained that this ordinance review involves no changes to policy. She said when the Planning Commission proposed amendments to the accessory apartment code that when the Assembly adopted the ordinance it created some redundancy. This amendment to the code provides the opportunity for larger accessory apartments up to 1,000 square feet and up to two bedrooms, said Ms. McKibben.

For example, in the current code one apartment at 1,000 square feet allows both the Planning Commission and the Planning Director to have approval, she said. That was not the initial intent, she noted. One apartment is Director approval, clarified Ms. McKibben. It is the same situation for two single-family dwellings per lot, she noted. The code has been amended to state that it is Director approval, she said.

Commissioner Comments and Questions

Mr. Miller reviewed the ordinance. He noted there is a gap where the Planning Commission can approve one 600 square foot apartment on a lot less than minimum size. On a lot twice the minimum size there could be two 600 square foot apartments, said Mr. Miller. He said perhaps a 1,000 square foot accessory apartment could be made to fit along those lines within the ordinance.

Mr. Miller prefaced his next statement by saying that he does own a duplex, that he consulted with the City Attorney and that he wanted to bring this up before the Commission as a potential conflict.

The Commission found there was no conflict.

Mr. Miller said he has long been an advocate of having accessory apartments for duplexes. He said he thought he found a place on the chart where this would fit very nicely. He said it could fit into the code as a single family dwelling if it met the minimum lot size, then there could be one 600 square foot apartment with director's approval, and if it was 125 percent over the minimum lot size, then there could be a 1,000 square foot accessory apartment with Director's approval. If it was less than the minimum lot size, then the Planning Commission could approve a 600 square foot accessory apartment, said Mr. Miller.

Mr. Voelckers said Mr. Miller has made a compelling case where extra attention may need to be paid within the ordinance. He asked if Mr. Miller had a motion he would like to make or language supporting the issue which has just been raised. He said he thought it may be best to hold this tonight and put this ordinance through the Title 49 Committee to address these issues that Mr. Miller has just raised within this ordinance.

Ms. McKibben said the intent with presenting this amendment to the Commission this evening was simply as a housekeeping issue, to eliminate the inconsistency within the code. She said Mr. Miller's suggestions deserve some attention by the Commission. She said her suggestion would be that this ordinance be moved to the Assembly for approval and that Mr. Miller's suggestions be added to the Title 49 committee's list for more consideration. The staff could then bring forward a researched and polished amendment after they make sure they were no inconsistencies elsewhere in the code to be added to the ordinance.

Mr. Miller said somewhere on the chart from 125 percent 150 percent of the minimum lot size that the Commission should be able to grant a 1,000 square foot apartment.

Ms. McKibben said:

- 🏠 If there is an undersized lot Planning Commission approval is necessary for a 600 square foot accessory apartment.
- 🏠 A single family home on a lot at 125 percent of the minimum lot size can have one, 600 square foot apartment with Director's approval.
- 🏠 If the lot is more than 125 percent of the minimum lot size an accessory apartment of up to 1,000 square feet is allowed with Director's approval.
- 🏠 Two accessory apartments are allowed when there are two single-family homes on a double-sized lot. Each single-family home on this lot could have up to one accessory apartment at 600 feet.

- 🏠 If there are two single-family homes on a lot less than the minimum lot size, with Commission approval they can have one small accessory apartment. This is a quirk in the code, noted Ms. McKibben.
- 🏠 If there are two single-family homes on a double-sized lot one of those homes can have up to a 1,000 square foot accessory apartment. They could also have one small accessory apartment and one 1,000 square foot accessory apartment.
- 🏠 In a multi-family and commercial zoning district if there is a single family home on an undersized lot they could apply for a regular sized accessory apartment with Planning Commission approval. It would be the same for common wall dwellings, she noted.

Mr. Miller asked when two single-family homes detached would be allowed on a lot.

Ms. McKibben said that would be allowed when the homes were on a lot twice the minimum lot size in RR, D-1 and D-3 zones.

Mr. Miller clarified that minimum lot size for two single-family homes is actually twice the minimum lot size.

When a lot is 250 percent of the minimum lot size there could be one 600 square foot accessory apartment on one home and a 1,000 square foot accessory apartment on the other home, said Mr. Miller. He asked why two 1,000 square foot accessory apartments would not be allowed on a lot that is 250 percent of the minimum lot size. If a single-family home is on a lot that is 125 percent of the minimum lot size, a 1,000 square foot accessory apartment is allowed. Then why wouldn't two 1,000 square foot accessory apartments be allowed on a lot that is 250 percent the minimum lot size, asked Mr. Miller.

Ms. McKibben said she does not recall where the language originated as this was quite a few years ago, but this is for the language fell down, she said.

Mr. Dye noted that on page five, line six of the proposed ordinance, that if the accessory apartment was changed from 600 square feet to 1,000 square feet in this section, then it would reflect what Mr. Miller just suggested.

Mr. LeVine said his preference is to look at the entire ordinance holistically and not just make piecemeal changes. He said he would prefer to see that the staff provides them with evaluations of all proposed changes. He said he is fully confident they will end up exactly where Mr. Miller and Mr. Dye suggested, but that he would like it to be reviewed in one piece.

Mr. Dye noted that several times in the past changes by the Commission have been put off with the thought that it would be addressed more thoroughly at a later time, and that list seems to grow all the time, he commented. If one 1,000 square foot accessory apartment can be added to a home that is located on a lot with the minimum size of 125 percent, then it logically tracks that two 1,000 square foot accessory apartments should be allowed on each home located on one lot of 250 percent of the minimum lot size or larger.

Mr. Miller said section F of the ordinance tells him that when you have two residences on a lot that is 250 percent of the minimum lot size that there can be two 1,000 square foot accessory apartments, but that subsequent language within the ordinance contradicts this language. He said he felt the Commission could move forward with cleaning up this language and the current contradictions within the ordinance.

Agreeing with the previous statements, Mr. Voelckers said that he did not feel the Commission should deal with these changes at this point. He said he felt they should schedule dealing with this ordinance at the earliest possible opportunity to rectify the inconsistencies within the ordinance.

Mr. Dye asked Mr. Voelckers and Mr. LeVine if their intent was to approve the draft ordinance as it stands tonight to be sent to the Assembly and then subsequently deal with changes to the ordinance, or if their intention was to first deal with the changes and then forward the ordinance to the Assembly.

Mr. Voelckers said he did not think they should send the current draft ordinance to the Assembly. He said he felt they should first deal with the inconsistencies and then forward the ordinance to the Assembly.

Mr. Campbell asked if he could be given some idea of how many of these actual situations existed within the community. He said he is not familiar with any single lots that have two separate single-family dwellings on them where this would apply.

Ms. McKibben said she could not tell Mr. Campbell the answer to his question at this time. She said she did know when they provided the opportunity to add the larger accessory apartments up to 1,000 square feet on larger lots that there were a number of what were previously illegal accessory apartments that could then be properly permitted and could then come on the market.

Mr. LeVine said it is pretty clear to him that this is not a dire emergency since it has been in development since February. He said at this point he agrees with Mr. Voelckers that they not forward this draft ordinance to the Assembly since they know it has areas which need to be addressed. He said he felt it should first go to the Title 49 Committee as soon as possible for review.

MOTION: *by Mr. Miller that this draft ordinance be forwarded to the Title 49 Committee for housekeeping and for other possible changes.*

Mr. Campbell asked Ms. McKibben what the negative effect would be if this ordinance is delayed.

Ms. McKibben said they have been using the code as it exists and making it work. They can continue to do so, she added.

Mr. Campbell said then he speaks in favor of the motion.

The motion passed with no objection.

IX. BOARD OF ADJUSTMENT - None

X. OTHER BUSINESS - None

XI. STAFF REPORTS

Ms. MacLean said that there is a Title 49 meeting on July 16, (2018) at noon. There will also be an Auke Bay meeting on August 9, (2018). She said they will confirm that with an email to the committee members. On July 24 they would like to hold a committee of the whole meeting instead of a regular Planning Commission meeting, as there are not items which need to be addressed at a regular meeting.

The Commission agreed to a Committee of the Whole meeting at 7:00 p.m. on July 24, 2018.

XII. COMMITTEE REPORTS

Comp Plan Ad Hoc Committee Report

Mr. LeVine reported that the ad hoc Comprehensive Plan Committee met several times and reviewed comprehensive plans from other communities and compared the CBJ's existing comprehensive plan with those plans. They have crafted a draft memorandum which would go to the Assembly from the chair of the Planning Commission recommending that the Assembly proceed with a full update of the Comprehensive Plan. Direct the staff and the Commission to come up with some recommendations about how to proceed, he said. He said he had several small edits of the memorandum which he will provide to the staff.

Mr. Hickok said he thought this process of updating the Comprehensive Plan had to happen regardless.

Chairman Haight said the Comprehensive Plan needs to be reviewed every two years according to code.

MOTION: *by Mr. Voelckers, to forward the memorandum to the Assembly on the Comprehensive Plan under Chairman Haight's signature incorporating the edits proposed by Mr. LeVine.*

Mr. Campbell said he wanted to compliment Mr. LeVine and Ms. McKibben on the memorandum they crafted on the Comprehensive Plan to be forwarded to the Assembly. He said he also appreciated the well-researched and comprehensive presentation provided with all of the information from the other plans that were reviewed. He said it is evident that Juneau's

current comprehensive plan is significantly behind those of other communities.

The motion passed with no objection.

Auke Bay Plan Committee

Mr. Miller said at their recent meeting they heard public testimony, and he thought they made some good progress at the meeting. He said in the future they will try to limit public testimony and they will be ready to make substantial progress at the next meetings. The next meeting is scheduled for August 9, he said.

XIII. LIAISON REPORTS

Ms. Weldon reported that at its June 25, (2018) meeting the Assembly approved four lots to be purchased by the Alaska Brewing Company. Progress is being made on the Pederson Hill project, but they have found more organic top material than anticipated which will slow up the development somewhat. The Assembly approved an ordinance for sobering centers, and the CIP for the 2019 fiscal year, and it kept the mill rate at 10.66.

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

XV. PLANNING COMMISSION COMMENTS AND QUESTIONS

Mr. Miller said at the conclusion of the last meeting the Commission approved the Conditional Use Permit for the boat condominiums near Vintage Park. He said the requirements for parking in landscaping should have been turned into the Department prior to the Conditional Use Permit being issued. Because of the mistake made by CDD, the Commission wanted to be fair to the applicants on this issue, he said. He asked if they have received be parking and landscaping information from the applicants, and if the CDD had communicated with the applicants since the meeting.

Ms. McKibben said the applicants met with the planner yesterday to go over the details such as the vegetation. She said the applicants are working towards fulfilling those requirements.

XVI. EXECUTIVE SESSION - None

XVII. ADJOURNMENT

The meeting was adjourned at 8:25 p.m.