

Agenda
Planning Commission
Regular Meeting
CITY AND BOROUGH OF JUNEAU
Ben Haight, Chairman
February 27, 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 7:03 p.m.

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

Commissioners absent: Dan Miller, Paul Voelckers

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

Assembly members: None

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

III. APPROVAL OF MINUTES

January 23, 2018 Draft Minutes – Regular Planning Commission Meeting

MOTION: *by Mr. LeVine, to approve the Planning Commission regular meeting minutes from the January 23, 2018 meeting with any minor modifications by staff or Commission member.*

The motion passed with no objection.

IV. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS – None

V. CONSENT AGENDA

CSP2018 0002: A consistency review for the lease of the Eagle Valley Center ropes course to Southeast Alaska Independent Living (SAIL)

Applicant: City & Borough of Juneau

Location: Eagle Valley Center, 24600 Amalga Harbor Road

Staff Recommendation

Staff finds CSP2018 0002 to be consistent with the 2013 Comprehensive Plan and Title 49 and recommends that the Planning Commission forward a recommendation of approval to the Assembly.

MOTION: *by Mr. LeVine, to approve CSP2018 0002.*

The motion passed with no objection.

VI. UNFINISHED BUSINESS

AME2016 0002: A text amendment to CBJ code 49.20 regarding variances

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. Boyce told the Commission that this is the third public hearing on this item. This hearing was preceded by a hearing conducted December 12, 2017, and also by a public hearing held January 23, 2018.

This draft ordinance regarding variances accomplishes five different objectives, said Ms. Boyce:

- ✓ Provide clarity regarding what is and what is not variable
- ✓ Remove the preliminary threshold requirement
- ✓ Require the posting of a public notice sign for those of variances requiring a public hearing
- ✓ Amend the variance criteria to reduce subjectivity
- ✓ Amend the De Minimis/administrative variance

Options

The staff have developed two options for the Commission to consider regarding this ordinance, said Ms. Boyce. One option lists what can be varied in the code and the other option leaves the code open for variances and includes some items that cannot be varied, said Ms. Boyce. The

items in the code which have been considered design or dimensional standards and for which variances have been approved include:

- | | |
|----------------------|---------------------------|
| ✓ lot width | ✓ Eagle nest tree buffers |
| ✓ lot depth | ✓ parking requirements |
| ✓ yard setbacks | ✓ access requirements |
| ✓ building height | ✓ Panhandle requirements |
| ✓ fence height | ✓ sign requirements |
| ✓ streamside buffers | ✓ design standard changes |
| ✓ vegetative cover | |

Option Two would be limited to five items that cannot be varied, said Ms. Boyce:

- ✓ Chapter 49.65 of the code regarding specified uses
- ✓ Chapter 49.35 which is the public and private improvements chapter
- ✓ No variance which applies to land use or structures
- ✓ No variance which applies to housing density
- ✓ No variance which applies to lot area

Criteria

Ms. Boyce told the Commission that the five criteria proposed for this ordinance are:

1. Enforcement of the ordinance would result in an unreasonable hardship
2. The unusual or special conditions of the property are not caused by the person seeking the variance
3. The granting of the variance will not be detrimental to public health, safety, or welfare
4. The granting of the variance is narrowly tailored to relieve the hardship
5. The granting of the variance does not result in a smaller lot size, a greater density, or greater lot coverage than allowed for the zone district

Criterion five may need to be deleted depending on which option the Commission selects, said Ms. Boyce.

Amend the De Minimis Variance

The intent of this amendment is to eliminate potential problems arising from the existing De Minimis variance standards, said Ms. Boyce. If it is called an “administrative variance” it will be clear to the public that this type of variance can be obtained with the approval of the Director, and not have to go before the Planning Commission, said Ms. Boyce.

The criteria for a De Minimis variance are less constrained than those criteria for a regular variance, said Ms. Boyce. They propose that the director can grant an administrative variance before or after the fact when projections will not encroach more than 25 percent or two feet into yard setbacks, or whichever is less. Ms. Boyce said the Director may approve an administrative variance after determination of all of the following criteria:

- ✓ Enforcement of the setback ordinance would result in an unreasonable hardship
- ✓ The granting of the variance is not detrimental to public health, safety, or welfare
- ✓ The granting of the variance is narrowly tailored to relieve the hardship

Commission Comments and Questions

Mr. LeVine asked why there are separate criteria applied.

Mr. Dye said he thought this was derived from a concern voiced by Mr. Miller that foundations could accidentally be poured over a line. He said historically a De Minimis variance was obtained after the noncompliant act. The new verbiage states that it could be before or after the fact, said Mr. Dye.

Mr. LeVine said he did not understand why there would be separate criteria for the De Minimis variance. He asked why the separate criteria for the De Minimis variance had been developed by the staff.

Ms. McKibben said the existing criteria within the De Minimis variance are for an unintentional mistake that does not negatively impact the neighborhood. This revised language was intended to be more in line with the regular variance in that an unreasonable hardship existed, which was not part of the original De Minimis variance language, explained Ms. McKibben.

Mr. LeVine said he was concerned about a situation in which the Director could determine that an individual who had already constructed their home and would be forced to tear the whole thing down, to conform with the setback because the surveyor made a mistake. That is an unreasonable hardship, he said. But it is not an unreasonable hardship if someone knowingly built into the setback, he said.

Mr. Dye asked Mr. LeVine to clarify his concern.

Mr. LeVine said he is concerned that there is a very limited distinction between constructing a home three feet into the setback and have that not perceived as an unreasonable hardship and building two feet into the setback and have that interpreted as an unreasonable hardship.

Mr. Dye said he was at the Title 49 committee meeting when this was discussed. The 25 percent or two feet distinction occurred because based upon Mr. Miller's experience, two feet was more than reasonable to not be an occurrence which happened by accident.

Mr. LeVine said he understands there should be a remedy for someone who makes an error by building a small amount over the setback by mistake. He said he has a problem with the actual language of the standards and the distinction between what would be allowed as an administrative variance and what they would not allow as a regular variance, when the language is the same.

Mr. Palmer said this is a balance which is an intersection of policy and law. Mr. Palmer said on page three and five of the draft ordinance under the administrative variance the first criterion is

identical to the same criterion under the regular variance. If the Director is to make a decision on whether an unreasonable hardship exists, presumably that could be used as persuasive evidence for a Planning Commission decision. If the Planning Commission makes a decision on unreasonable hardship, its decision would probably carry more weight than the Director's decision, said Mr. Palmer. The Director's decision could be appealed at the Planning Commission level, said Mr. Palmer. They could change the standard and make it slightly different, said Mr. Palmer, if this raises a concern of the Commission.

Mr. Steedle asked Mr. LeVine if his concerns are about criterion two in the non-administrative variance. Mr. Steedle said he thinks that is the key distinction between the two types of variance.

Mr. LeVine said that was his initial concern, but now he is more concerned about what constitutes an unreasonable hardship. Someone could construct their home and by mistake build six inches into the setback, and that could be determined by the Director as an unreasonable hardship, said Mr. LeVine. Meanwhile, he said, someone could purposely build their house 24 inches into the setback, and instead of going to the Director, go to the Planning Commission and request an after-the-fact variance. The hardship would be the same in both cases, he said. In both cases, the hardship would be that the individuals would have to reconstruct their entire home. He said if the Commission is comfortable that criterion two addresses that concern because no one could make a 25-inch mistake, then that would be the distinction between the two types of variance.

Public Notice

A notice would be mailed to adjoining neighbors, said Ms. Boyce. They would have a 14-day response period, she said. They could provide written comments and letters of support, she said.

For the variance which requires a public hearing, there would be a posting of a public notice sign on the applicant's property, with a mailed notice to neighbors residing within 500 feet of the property, said Ms. Boyce. The decision of the Planning Commission would be appealable to the Assembly, said Ms. Boyce, as it is today.

What Can Be Varied

Ms. Boyce said within the current code dimensional standards and design standards can be varied.

In Option One, a variance is required for building setbacks, lot width, lot depth, and the building height, and the standards directly related to habitat and canopies, said Ms. Boyce. Option Two prohibits a variance for any requirement or regulation of Title 49 concerning the use of land or structures, housing density, lot area, requirements in Chapter 49.65, or requirements in Chapter 49.35.

Code Review Analysis Process

The two options presented for the Commission this evening are the result of their comments on this draft amendment at the Planning Commission meeting when this was last discussed, said Ms. Boyce.

Setbacks

Ms. Boyce presented the Commission with a table indicating the types of variances considered since 1987. Setbacks were by far the most frequently occurring variance requests, noted Ms. Boyce. In the staff report there are also listed code changes in progress and those code changes the staff would like to see implemented, said Ms. Boyce.

There is the Alternative Development Overlay District (ADOD), said Ms. Boyce, which will provide flexibility until they can develop better zoning for those districts. The Planning Commission has also recommended approval to the Assembly for an energy efficiency encroachment into the setbacks, she noted. There are also a number of setback encroachments and setback reductions in code, said Ms. Boyce. The administrative variance is recommended as a before-the-fact variance, she said. That can also provide additional flexibility that is not available today, she said.

Parking

Parking is the most frequently occurring variance type after setbacks, said Ms. Boyce, with 114 variances requested since 1987. The parking waiver has been implemented, said Ms. Boyce. There are two existing areas in town now which reduce the parking requirement, said Ms. Boyce. And there also is the in lieu district in which a party can pay instead of providing the required parking, said Ms. Boyce.

Streamside Buffers

They recommend that streamside buffers remain variable within Option One, said Ms. Boyce.

The goal is to develop a more flexible code, said Ms. Boyce. The staff recommends that the Planning Commission review and consider the proposed ordinance and forward a recommendation to adopt Option One along with the ordinance for approval to the Assembly, said Ms. Boyce.

Commission Comments and Questions

Mr. Frisby asked if after adoption the ordinance criteria could be added to on a case by case basis.

Ms. Boyce clarified that the six items which can be varied are listed in Option One. She said if this list is not in line with the will of the Planning Commission, it could edit this list. This list could be deleted if the code was amended in the future to incorporate the items.

Mr. Dye asked Ms. Boyce if she could clarify the staff's concerns with Option Two. He said it is not clear to him why Option One would be more clear for the public's understanding that Option Two.

Ms. Boyce responded that the feedback from the public is that it wants increased consistency and predictability within the code. Prior to the Olmo decision, said Ms. Boyce, that predictability and consistency were not apparent. Option One provides a clear list of what is variable, she said. Option Two is more open and not as explicit, she said.

Mr. Dye said Option Two seemed clear to him that there is a need to always have the ability to grant a variance. He asked Mr. Palmer to expand upon the advantages and disadvantages of each option.

Mr. Palmer said he felt that Ms. Boyce adequately explained the staff's preference for Option One. He said both options can be made to work. He said choosing between the two options is a policy question. Option Two may be very appealing to the Planning Commission, said Mr. Palmer, because it gives the Commission incredible review power. There is a check and balance in place, because while Director decisions may be appealed to the Planning Commission, Planning Commission decisions may be appealed to the Assembly, he explained. The big caveat with Option Two is that it requires the Planning Commission to be diligent in its application of the criteria, he said. The huge potential benefit with Option Two is that there may be things in Title 49 that could possibly be varied that have not been fully anticipated by the staff.

Mr. LeVine said he had a comment about criterion two; *"The unusual or special conditions of the property are not caused by the person seeking the variance."* He said he felt that the points of criteria one and two is that enforcement of the ordinance would create an unreasonable hardship due to unusual or special conditions on the property. The unusual or special conditions show up in criterion two without being prefaced, said Mr. LeVine. He said he felt that it should perhaps be more broad, stating that, *"The hardship is not caused by the person seeking the variance"*. He said it could also be stated that, *"Enforcement of the ordinance is caused by hardship due to unusual or special conditions of the property"*.

Mr. Palmer stated that pages 50 and 51 of the staff report analyze criteria one and two. He said there is significant overlap between the two criteria. He said the nuance is what is the cause of the unreasonable hardship. The unusual or special condition of the property is not explicitly stated in criterion one. He said he did not think there is any way that criteria one and two could be read together without reaching the conclusion that the unusual or special conditions on the property are the cause of the hardship.

Mr. LeVine said he felt that his suggestion for the phraseology of criterion two made it more comprehensible, because nowhere in the criteria does it state that there are unusual or special conditions of the property. He said he thought there could just be a small change in the language for clarity's sake.

Mr. Palmer said that he felt that this would help clarify the criteria.

Mr. Dye said he felt found Option Two very appealing because it gives the Commission more latitude. He said he felt safe with Option Two with a good staff to assist the Commission in its decisions.

MOTION: *by Mr. Dye, to add Option Two into the ordinance, along with the accompanying deletions.*

(Criterion five is therefore deleted, since it would only be necessary should Option One be selected: *"The grant of the variance does not result in a smaller lot size, a greater density, or greater lot coverage than allowed for the zone district".*)

Mr. Greene said it was his impression that Option One provided more flexibility for the Planning Commission, while Option Two provided less flexibility for the Planning Commission.

Ms. Boyce clarified that Option Two only provides what cannot be varied. Everything that could be varied by the Commission is essentially everything that is not listed in that option. Option One limits the Commission's choices to what is listed within that option.

Option Two was approved by the Commission by unanimous consent.

Mr. LeVine stated that the ordinance gives the Director the authority to vary the setbacks in all directions. That could result in a home being constructed four feet wider and deeper (up to two feet on each side) than allowed by code, he stated. He said that is an awfully big encroachment into all of the setbacks. He asked if it may be better to limit the Director's authority to encroachment of one setback or two, in case a corner needed to be varied.

Mr. Frisby asked how many administrative variances are granted on an annual basis.

Ms. Boyce said the De Minimis variance was added to code in 1995, and that approximately 12 De Minimis variances have been granted since then. As they are currently written in code, she explained, they are after-the-fact variances. The administrative variance as stipulated in this ordinance gives the potential of the variance being granted before construction, she explained.

Mr. Greene asked if a De Minimis variance has ever been declined.

Ms. McKibben responded that there have been situations where the Director elected to not make a decision on a De Minimis variance and the applicant was advised to apply for a regular variance in front of the Planning Commission.

Mr. Greene said he guessed all of those after-the fact variance requests were approved. He said if the house was already constructed, when the variance was requested, who would deny it.

Chairman Haight said according to the table provided by the staff that all of those 12 De Minimis variances were approved.

Mr. LeVine said the current draft ordinance before them allows the variance to be sought prior to construction instead of just after the building had already been constructed. He said this process makes sense to him. He said the question for him is how much power does the Director have in comparison with the Planning Commission, and is the Commission comfortable with how broad the language in the draft ordinance is. He said this provision is intended for people who make a mistake. He said he may be more comfortable if the Director was limited to granting an administrative variance to no more than two setbacks.

Mr. Campbell asked about rotation. He said that would involve four sides of a building.

Mr. LeVine acknowledged that Mr. Campbell was correct.

Ms. McKibben said they have received fewer De Minimis variance requests because the CDD has changed its policies about when they require a setback verification form and when they require a surveyor. When someone applies for a building permit, if they are a certain number of feet from a setback they require a surveyor, where in the past that was not always a requirement, she explained. Following this procedure has substantially reduced the amount of error which takes place during construction, she said.

Mr. Palmer said if they evaluate the unreasonable hardship language for the first criterion, that for an after-the-fact variance depending how far along the project is, with the setback verification forms they are typically catching surveyor errors earlier in the process so that the staff has a somewhat different analysis of what constitutes an unreasonable hardship. A different analysis may be required for someone requesting a variance prior to construction, said Mr. Palmer. If someone was trying to obtain a variance prior to construction for a maximum of two feet it may difficult to find an unreasonable hardship in that circumstance, for example, said Mr. Palmer. The Director has the ability to analyze those two different types of cases by different standards because of the interests that are at stake and how far along the project is, he added.

Mr. Hickok said as he recalls the construction of his own home, once the forms and the rebars for the foundation were in, an inspection was required. He said if the distance from the setback was inspected at that point it would not be such a hardship to rebuild if the building was incorrectly sited.

Mr. Dye said they are inspecting for other things on the foundation but they are not inspecting how the house is situated in terms of adequate setbacks. The City Inspector during the building code enforcement is not doing what would amount to another survey at that time, he said.

Ms. McKibben said that the setback verification is to happen prior to the pouring of the foundation. If construction is within three feet of a setback it is now required that a surveyor verify the placement of the building, she said.

Mr. LeVine said he is very conscious that they are implementing changes so they are not bound by the precedent of the previous variances. Upon reading the staff report, Mr. LeVine said he

wondered if Mr. Palmer in particular is satisfied that the staff report is adequate in its explanation for the ordinance, since this is what will be used in the future for reference when an issue arises.

Mr. Palmer said he thinks the staff report is as close to perfect as it can be. He said if all nine Commission members were to draft the ordinance it may say something slightly different, and the minutes from the Planning Commission will affect the staff report. It is the decision of the Planning Commission which is forwarded to the Assembly, he said, not the staff's decisions.

The findings in the staff report would contribute to the body of work reviewed by the Assembly, he said, as background to the Commission's decision. The Assembly and the courts in Alaska give the Planning Commission decisions significant deference, said Mr. Palmer.

Chairman Haight said the Commission reviews and gathers as much information as it can in each case, and from that body of knowledge it makes its decisions.

MOTION: *by Mr. LeVine, to approve AME2016 0002 for submission to the Assembly subject to the motion of Mr. Dye to select Option Two, and to the language alterations discussed earlier regarding criteria two.*

Roll Call Vote:

Yeas: Greene, Campbell, LeVine, Hickok, Dye, Haight

Nays: Frisby

The motion passed.

VII. REGULAR AGENDA - None

VIII. OTHER BUSINESS

2018 Committee Assignments										
	Auke Bay Implem.	Comp. Plan	Title 49	SRC	Rules	JCOS	Lands	Wetlands	PWFC	Downtown Plan
Campbell		Member		Member				Liaison		To Be Assigned
Dye	Member	Member	Chair							To Be Assigned
Frisby				Member	Member					To Be Assigned
Greene			Member						Liaison	To Be Assigned
Hickok	Member	Member		Member	Member					To Be Assigned
LeVine		Chair	Member	Chair	Chair	Liaison				To Be Assigned
Miller	Chair	Member						Liaison		To Be Assigned
Voelckers	Member		Member				Liaison			To Be Assigned
Haight	Ex Officio	Ex Officio	Ex Officio	Ex Officio	Ex Officio					To Be Assigned

IX. STAFF REPORTS

Mr. Steedle said the planner position is still vacant and they are still in the selection process. They had offered the position to an individual who accepted a position with another community.

Ms. McKibben said the Auke Bay ad hoc committee is currently scheduled to meet on March 15. There has been another meeting scheduled for the same time in the same place, she said. She said she has sent an email out to the members asking if they can meet on another date, or at another time on March 15.

X. COMMITTEE REPORTS

Comprehensive Plan Ad Hoc Committee

Mr. LeVine reported that the Comprehensive Plan Ad Hoc committee held its first meeting this evening prior to the regular Planning Commission meeting. He reported that they will be asking for two members from the Assembly to join the committee, and that their next meeting will be held in two to three weeks.

Auke Bay Implementation Plan Committee

The Auke Bay Implementation Plan committee met last week. Mr. Hickok reported that at that meeting they decided to try to gather more members from the Auke Bay area involved on the committee. They are trying to revise a road system through the community, said Mr. Hickok.

Chairman Haight said Mr. Voelckers is going to try to meet with property owners and start a dialogue on what can be done to make this happen.

XI. LIAISON REPORTS - None

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

XIII. PLANNING COMMISSION COMMENTS AND QUESTIONS

Mr. Dye noted that the agendas were not in the correct order this evening. He said they were in the old format.

Mr. Steedle said this is part of the software problems the department has been experiencing.

XIV. EXECUTIVE SESSION

- a. Attorney update regarding the Granite Mountain Properties LLC appeal of USE2017 0006

MOTION: *by Mr. LeVine, who said based upon their discussion during executive session that he moves that the Planning Commission direct the City Attorney to move forward and proceed with settlement talk on the issue of the Granite Mountain Properties LLC appeal based on the Planning Commission having a supplemental hearing on the Conditional Use Permit.*

Mr. Campbell said he may have a potential conflict. He said he is a property owner about three doors down from the Taku property.

Mr. Palmer said if Mr. Campbell felt that he could be fair and unbiased on any supplemental hearings on this topic that he would not have to step down from the Commission to address this issue.

Mr. Greene asked if it would be possible for Mr. Campbell to be truly objective when he was a property owner just a few doors down.

Mr. Campbell said he believed that he could be unbiased, but that he leaves this decision up to the Commission.

Mr. LeVine requested that the Commission be polled on the issue of whether Mr. Campbell could remain on the Commission while dealing with this issue.

Commission Poll: *is the Commission comfortable with the participation of Mr. Campbell in an unbiased manner on this item.*

Yeas: Greene, Hickok, Frisby, Dye, LeVine, Haight

Nays:

The Commission agreed that Mr. Campbell could remain on the Commission for this item.

MAIN MOTION: *(by Mr. LeVine, who said based upon their discussion during executive session that he moves that the Planning Commission direct the City Attorney to move forward and proceed with settlement talk on the issue of the Granite Mountain Properties LLC appeal based on the Planning Commission having a supplemental hearing on the Conditional Use Permit.)*

The Commission approved the main motion by unanimous consent.

XV. ADJOURNMENT

The meeting was adjourned at 8:54 p.m.