

Agenda
Planning Commission
Regular Meeting
CITY AND BOROUGH OF JUNEAU
Ben Haight, Chairman
January 23, 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 7:05 p.m.

Commissioners present: Ben Haight, Chairman; Paul Voelckers, Vice Chairman; Michael LeVine, Nathaniel Dye, Dan Miller, Dan Hickok, Kirsten Shelton, Carl Greene

Commissioners absent: Percy Frisby

Staff present: Rob Steedle, CDD Director; Beth McKibben, Planning Manager; Teri Camery, Senior Planner; Laura Boyce, Senior Planner; Allison Eddins, Planner II; Amy Liu, Planner I; Robert Palmer, Assistant Attorney II; Dan Bleidorn, Deputy Lands Manager

Assembly members: Beth Weldon, Loren Jones, Jerry Nankervis

At the request of Mr. Steedle, the Planning Commission approved the relocation of AME2016 0002, a text amendment of CBJ code 49.20 regarding variances, to the end of the agenda.

II. APPROVAL OF MINUTES

December 12, 2017 Draft Minutes - Regular Planning Commission Meeting

MOTION: *by Mr. LeVine, to approve the December 12, 2017, Planning Commission minutes with any minor alterations by staff or Commission member.*

The motion passed with no objection.

III. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS - None

IV. PLANNING COMMISSION LIAISON REPORT

Assembly Liaison to the Planning Commission Beth Weldon reported that on January 22, (2018), the Assembly approved the filing of an annexation petition with the local Boundary Commission. The Assembly is also considering how to participate in the Hydro One AEL&P purchase, she reported. The Assembly passed an ordinance amending the Land Use Code regarding eagle nests and eagle habitats. The Assembly also approved the adoption of the Lemon Creek Area Plan, said Ms. Weldon. The next meeting of the Public Works, Lands Committee, and Committee of the Whole will be Monday, January 29, (2018). The next regular meeting of the Assembly is February 12, (2018).

V. RECONSIDERATION OF THE FOLLOWING ITEMS

AME2017 0013: A request to rezone 7.06 acres from D-10 Residential to Light Commercial

Applicant: Douglas Island Development LLC

Location: 3853 Bayview Ave, 12020 Glacier Highway, 11998 Glacier Highway, 11950 Glacier Highway

Staff Recommendation

Staff recommends that the Planning Commission concur with the Director's analysis and findings and recommend approval to the Assembly for a rezone request to change 7.06 acres located at 3853 Bayview Avenue, 12020 Glacier Highway, 11998 Glacier Highway, and 11950 Glacier Highway from D-10 to LC (Light Commercial).

MOTION: *by Mr. Miller, to reconsider AME2017 0013 for purposes of discussion.*

Mr. Miller said the Ad Hoc Auke Bay Area Plan Committee held a meeting several weeks ago during which the implementation of various actions for the Auke Bay Area Plan were discussed. Another meeting for this committee is scheduled for January 30, (2018), said Mr. Miller, to discuss the creation of a new zone for a Traditional Town Center for Auke Bay, he said. The committee also requested that Mr. Steedle communicate with the CBJ mapping department to discuss the potential for development of a grid-like road system on what is primarily private property.

Chairman Haight noted that Mr. Frisby and Ms. Shelton were absent at the last meeting when this item was discussed. Only Commission members present at the last meeting can vote on this issue at this meeting, he noted.

Roll Call Vote:

Yeas: Miller, Dye, Greene, Haight

Nays: Hickok, Voelckers, LeVine

The motion failed.

VI. CONSENT AGENDA

Mr. Dye said he has a potential conflict which he leaves up to the discretion of the Commission. He said he manages property adjacent to one of the lots being sold under CSP2017 0017.

The Commission voiced no objection to Mr. Dye voting on this item.

Mr. Miller said he has a conflict pertaining to items USE2017 0028 and USE 2017 0029. He owns those properties.

Chairman Haight said in the past he was involved with items USE2017 0028 and USE 2017 0029. His involvement was only with the properties, not the tenants, he clarified.

The Commission voiced no objection to Chairman Haight's participation with those items.

USE2017 0028: A Conditional Use Permit for a marijuana retail store.
Applicant: The Mason Jar
Location: 2771 Sherwood Lane

Staff Recommendation

It is recommended that the Planning Commission adopt the Director's analysis and findings and grant the requested Conditional Use Permit. The permit would allow the development of a 1,500 square foot marijuana retail facility in the Industrial zoning district.

The approval is subject to the following conditions:

1. Prior to Certificate of Occupancy for development on Lots 5, 7, 8, and 9 of ANDSOH Subdivision, a bioswale shall be installed between the access and utility easement for Lots 5, 7, 8, and 9 of ANDSOH Subdivision and Pederson Hill/ Casa del Sol Creek; and the applicant shall implement storm water best management practices.
2. All waste containing marijuana product shall be stored in a locked enclosure until transported to the CBJ landfill.
3. Prior to the issuance of a Certificate of Occupancy, the applicant must submit a parking plan showing the required number of parking, loading, and accessible

spaces, and circulation aisles (as applicable). The plan must show how the ADA space will be clearly marked as required by CBJ 49.40.210(e).

4. Prior to issuance of a Certificate of Occupancy a minimum of 777 square feet of live vegetative cover shall be provided, and shown on a site plan reviewed and approved by CDD.
5. Exterior lighting shall not be used in a manner that produces glare on adjacent roads or neighboring property. All exterior lighting fixtures shall be a full cut-off design.

USE2017 0029: A Conditional Use Permit for a marijuana cultivation facility

Applicant: Herb'n Legends

Location: 2771 Sherwood Lane

Staff Recommendation

It is recommended that the Planning Commission adopt the Director's analysis and findings and grant the requested Conditional Use permit. The permit would allow the development of 1,200 square foot marijuana cultivation facility in the Industrial zoning district.

The approval is subject to the following conditions:

1. Prior to Certificate of Occupancy for development on Lots 5, 7, 8, and 9 of ANDSOH Subdivision, a bioswale shall be installed between the access and utility easement for Lots 5, 7, 8, and 9 of ANDSOH Subdivision and Pederson Hill/ Casa del Sol Creek; and the applicant shall implement storm water best management practices.
2. All waste containing marijuana product shall be stored in a locked enclosure until transported to the CBJ landfill.
3. Prior to the issuance of a Certificate of Occupancy, the applicant must submit a parking plan showing the required number of parking, loading, and accessible spaces, and circulation aisles (as applicable). The plan must show how the ADA space will be clearly marked as required by CBJ 49.40.210(e).
4. Prior to issuance of a Certificate of Occupancy a minimum of 777 square feet of live vegetative cover shall be provided, and shown on a site plan reviewed and approved by CDD.
5. Exterior lighting shall not be used in a manner that produces glare on adjacent roads or neighboring property. All exterior lighting fixtures shall be a full cut-off design.

CSP2017 0017: A consistency review for purchase of one lot, and the sale of four CBJ owned lots in an Industrial (I) zone.

Applicant: City & Borough of Juneau, Division of Lands & Resources, and Department of Engineering and Public Works (RecycleWorks Program)

Location: 1721 Anka Street (lot purchase), 5436 Commercial Boulevard and 5233 Shaune Drive (lot sale)

Staff Recommendation

Staff recommends that the Planning Commission forward the subject proposal to the Assembly with a recommendation of approval.

CSP2017 0018: Renewal of a lease for an existing communications tower on CBJ land at the West Juneau reservoir site at the end of Jackson Road

Applicant: City & Borough of Juneau

Location: 3000 Jackson Road

Staff Recommendation

Staff recommends that the Planning Commission find CSP2017 0018 consistent with the 2013 Comprehensive Plan and Title 49 and forward a recommendation of approval to the Assembly.

MOTION: *by Mr. LeVine, to accept staff's findings, analysis and recommendations and approve USE2017 0028 and USE2017 0029 with any minor alterations by staff or Commission member, noting Mr. Miller's recusal from those items.*

The motion passed with no objection.

MOTION: *by Mr. LeVine, to accept staff's findings, analysis and recommendations and approve CSP2017 0017 and CSP2017 0018 with any minor alterations by staff or Commission member.*

The motion passed with no objection.

VII. CONSIDERATION OF ORDINANCES AND RESOLUTIONS - None

VIII. REGULAR AGENDA

USE2017 0027: A Conditional Use Permit to amend USE2016 0018 to include three additional units.

Applicant: Constellation Development LLC

Location: 4401 Riverside Drive

Staff Recommendation

It is recommended that the Planning Commission adopt the Director's analysis and findings and grant the requested Conditional Use Permit. The permit would allow a modification to the USE2016 0018 by allowing one additional building with 3 units.

The approval of USE2017 0027 includes the conditions below, some of which modify conditions of USE2016 0018:

1. Prior to issuance of a building permit, the applicant shall install a silt fence on the 50-foot streamside setback line along the Mendenhall River. The silt fence shall be removed when construction is complete. (COMPLETE)
2. Prior to issuance of a building permit, the applicant shall submit to Community Development Department (CDD) a plan involving how vegetation will be replanted and maintained to ensure the project meets the minimum vegetative area requirement. (COMPLETE)
3. Prior to issuance of a building permit, the applicant shall submit an approved on-site drainage management plan using Best Management Practices (BMP) to ensure drainage is directed to an approved drainage infrastructure and does not directly enter the Mendenhall River without filtration. (COMPLETE)
4. Prior to issuance of a building permit, the applicant shall submit a design for the parking lot buffers (and if needed, buffering snow storage/ garbage containers) meeting one of the following features:
 - a. Sight-obscuring fence or vegetation from grade (0 feet) up to 6 feet; or
 - b. Sight-obscuring fence or vegetation from grade (0 feet) up to 4 feet and non-sight-obscuring (porous) fence or vegetation up to 6 feet in height.(COMPLETE)
5. Parking lot buffers shall be installed according to approved plans prior to issuance of a certificate of occupancy for the final unit. (PENDING COMPLETION)
6. Prior to issuance of a building permit, the applicant shall show any exterior lighting, which must be downward-directed to minimize horizontal glare. (PENDING COMPLETION)
7. Prior to issuance of the final Certificate of Occupancy (CO), all required parking lot striping shall be in place (or wheel stops) which complies with dimensions as per 49.40, Parking and Traffic. (PENDING COMPLETION)

8. Prior to issuance of CO of last dwelling unit, the parking lot buffers meeting Condition No. 4 shall be in place. (PENDING COMPLETION)
9. Prior to issuance of CO of the first dwelling unit, the applicant shall submit the Homeowners Association documents to the CDD that indicate the maintenance of all required vegetation and on-site buffers. (COMPLETE)
10. Prior to issuance of CO of the last dwelling unit, the applicant shall coordinate with CDD staff for a site inspection to verify that the vegetative cover was installed accordingly. If CO is requested during poor planting conditions, the applicant shall submit a bond covering the costs of the remaining vegetation to be planted according to provisions of 49.55.010. (BOND POSTED, PENDING COMPLETION)

Density Bonus Conditions

11. Prior to issuance of a building permit, the applicant shall submit drawings and construction plans showing how the 3 density bonus features will be constructed in compliance with CBJ Land Use and Street standards. (COMPLETE)
12. Prior to issuance of a building permit for all 51 units, the applicant shall submit plans and narrative indicating how all conditions will continue to be met.
(NARRATIVE COMPLETE, PLANS COMPLETE FOR UNITS 1-36)
13. Prior to final CO of last dwelling unit, the applicant shall coordinate with CDD staff to ensure the density bonus features as shown on Attachment H are complete. This shall include:
 - a. The applicant to submit to CDD a recorded no-development easement that preserves the land between Mendenhall River and the buildings, matching Attachment H. (PENDING COMPLETION)
 - b. All required public improvements must be completed prior to issuance of a Temporary Certificate of Occupancy or Certificate of Occupancy for the final structure. The required public improvements include: the installation of sidewalk as previously described and the installation of the crosswalk across Riverside Drive to the existing sidewalk along Pinedale Street. (PENDING COMPLETION)

Ms. Liu told the Commission that this Conditional Use Permit request would modify the previously approved Conditional Use Permit which allowed for the development of 48 dwelling units along the north end of Riverside Drive in the Mendenhall Valley. That approval included a density bonus. The applicant is now seeking to add three more units for a total of 51 units by using the previously recommended and approved bonus.

Public comments regarding this Conditional Use Permit request focused primarily on concerns about parking, traffic and snow storage, said Ms. Liu. The proposed building will be very similar in look to the previously constructed buildings, said Ms. Liu. The building will satisfy the D-15 setback requirements of 20 feet for the front, 50 feet for the rear, and five feet to the side yard setback. Bonus points were also earned by providing additional green space between the buildings and the required 50-foot rear setback, said Ms. Liu. The site meets the minimum 30 percent vegetative cover requirement and it maintains 45 percent of the lot for vegetative cover, said Ms. Liu.

The building also meets the 35-foot height standard, said Ms. Liu. A lighting plan has not yet been submitted, but the narrative states that lighting would be recessed under carport roof's and cast down at door entries and stairs, said Ms. Liu. The applicant must show the exterior lighting plans prior to issuance of a building permit, she said.

The parking requirement for the total project is 90 spaces, and the applicant plans and providing 95 parking spaces, said Ms. Liu. The applicant also plans on providing more than the required number of van accessible parking spaces, she said.

The staff finds there will be no noticeable escalation of noise resulting from the 51-unit complex instead of the 48-unit complex, said Ms. Liu. Snow storage will take place between each building, she said. Six-foot-tall wooden fences will be used as site buffers and will also help with noise suppression, said Ms. Liu.

The project preserves habitat by complying with the 50-foot streamside buffer along the Mendenhall River, and provides additional green space adjacent to the 50 foot buffer, said Ms. Liu. The applicant has already posted a \$12,500 bond with CBJ to guarantee that landscaping and required vegetative cover will be completed, she noted.

The proposed total of 51 units is consistent with the medium density residential land use designation outlined in the Comprehensive Plan, said Ms. Liu. Medium Density Residential (MDR) is defined as urban lands for multi- family dwellings with a density of five to 20 units per acre, she said. The planned sidewalk along the west edge of Riverside Drive and the crosswalk at Pinedale Street meet the goals of the Juneau Non-Motorized Transportation Plan which recommends improvements to pedestrian and bicycle rider infrastructure in order for those commuters to have a safe and connected means of travel, said Ms. Liu.

This project does not materially endanger the public health or safety nor does it substantially decrease the value of or be out of harmony with property in the neighboring area, nor is it out of conformity with the Comprehensive Plan or other officially adopted plans, said Ms. Liu. The project meets all the necessary requirements for this development, said Ms. Liu.

The applicant must meet the 10 conditions listed above, with the three additional density bonus conditions, said Ms. Liu.

Commission Comments and Questions

Mr. LeVine asked if the scope of the Commission review is to be limited to the request for the three additional bonus units or if the Commission is to go back to the initial Conditional Use Permit request at the beginning of the process.

Ms. Liu said the scope of the review is to be limited to just the additional building.

Mr. LeVine said if the review is to be limited to just the request for the additional building of three units, why the conditions for the entire project have changed. He said it appears a lot of language has been changed and not just limited to the three additional units.

Ms. Liu said some of the modifications to the conditions include cleaning up the language. She said one notable revision was addressing the crosswalk and sidewalk. The previous conditions stipulated that the sidewalk was to be built to the church driveway, she said. It was reworded to state that the sidewalk was to be built to Pinedale Street, she said, as she felt that was a more objective description. They also removed the condition to construct the pedestrian connection to private property since the applicant and the church decided the connection was not needed.

Mr. Dye asked what changes were made regarding the sidewalk and Riverside Drive.

The only change they recommended was to clarify the language from the church to Pinedale Street, she said. That was a more descriptive location, she said.

Mr. LeVine said he did not understand why there was an extra condition number five.

This condition regarding parking lot buffers was added to ensure an appropriate timeline of completion, said Ms. Liu. It does not add anything except for a deadline for completion, said Ms. Liu.

Mr. LeVine said this did not alleviate his concern that this language is not strictly limited to the three units for which the Conditional Use Permit is sought. It goes to the entirety of the CUP, he stated.

Ms. McKibben said the language was changed in an effort to clean up the language. She said that Mr. LeVine did express a valid concern. A step was missing in the original staff report, said Ms. McKibben. She said the staff should be more mindful in the future but that in this instance the previous buildings have already been constructed.

Mr. LeVine said generally they do not go back and fix Conditional Use Permits once they have already been awarded. He said he is troubled by the notion that this can actually be done.

Mr. Palmer said he felt that Mr. LeVine raised a good point. He said the easy answer is that it is definitely within the jurisdiction of the Commission to evaluate the impacts for the additional three units requested with this Conditional Use Permit. Mr. Palmer said he believed the Commission could modify existing conditions if that modification relates to the proposed new development.

Mr. Dye said the current staff report references the old staff report's recommendation of 51 units. The Commission had recommended 48 units, said Mr. Dye.

Ms. McKibben explained that the motion the Planning Commission made was to approve 48 units, not the 51 units that were evaluated in the original staff report.

Mr. Voelckers said there was some reference in the public testimony that addressed concerns such as site drainage. He asked if it was correct that those concerns should not be addressed if they do not pertain to the current Conditional Use Permit request before the Commission this evening.

Ms. Liu said that is correct.

Mr. Voelckers said it appears that in some of the narrative a continuous fence is referenced, but that the graphic illustrates a gap in the fence exists equal to the width of the building. He said he assumed that the property owners would rather have a continuous fence rather than less privacy offered by a large gap in the fence.

Ms. Liu said that would be a good question for the applicant to answer. She said from the standpoint of the staff, the fence as well as the structure would serve the same purpose of obstructing any noise caused by the circulation of the traffic throughout the site.

Mr. Voelckers clarified that from the staff point of view the two discontinuous pieces of fence met the intent of the visual buffer.

Ms. Liu agreed with the statement of Mr. Voelckers.

Applicant

Mr. Travis Arndt said the previous staff report intended that the approval for the other three units went back to the community development director. He said he was here this evening because the evaluation was now up to the Commission instead of the CDD director. The purpose of the fence is primarily to subdue the noise from the vehicles and from the vehicle headlights, he explained.

Mr. Voelckers asked for an explanation of what the greenbelt along the river would look like.

It will predominantly be seeded with grass, said Mr. Arndt, with the addition of plantings designed and implemented by Glacier Gardens.

Mr. Voelckers asked Mr. Arndt if he had any comments to make on drainage issues.

Mr. Arndt said they are taking several measures to help with drainage on the property. There will be one to two feet of shot rock placed below a six-inch-thick pervious concrete pavement. Water will actually soak through the pavement and into the ground below, he said, instead of running off. Along the church property there is a 16-foot-wide drainage easement, said Mr. Arndt, running down the property line between the condominium property and the church property.

Mr. LeVine asked Mr. Arndt if he had reviewed the conditions on the CUP, and if so, if he had any concerns.

Mr. Arndt said he had no concerns.

Mr. Dye asked where the access easement was located.

Mr. Arndt responded that it is along the fence line.

MOTION: *by Mr. Voelckers, to approve USE2017 0027 accepting the staff's findings, analysis, and recommendations with the minor modification that the fence buffer would include a closed fence segment returning to the building as indicated by the applicant.*

Mr. LeVine said he is still troubled by the notion that the Commission is changing the language of the conditions. He said he would like to add a finding for the record that the changes to the conditions are either in the nature of ministerial wording and numbering changes that do not affect the substance and that they are intended for clarity or directly affect additional construction which will be undertaken. He said this did not need to be part of the motion but that he wanted it to be a part of the record as a basis for the Commission's decision.

The motion passed with no objection.

AME2017 0017: An ordinance amending the Land Use Code to provide for an additional setback encroachment exception for certain structural energy efficiency improvements to CBJ code 49.25 (Ord. No. 2018-06).

Applicant: City and Borough of Juneau

Location: Borough-wide

Staff Recommendation

Staff recommends that the Planning Commission forward a recommendation for approval to the Assembly.

This is an ordinance amending the land use code to provide for an additional setback encroachment exception for certain structural energy efficiency improvements, said Ms. Boyce. The proposed ordinance would allow exterior insulation to encroach up to six inches into the setbacks without the need for a variance, said Ms. Boyce.

Commission Comments and Questions

Mr. Miller said this is the system that performs the best in Juneau's climate. He said he would like to increase the projection from six inches to eight inches. The reason for this is because it takes four inches of foam on the outside so that the dew point will never be on the inside of the wall, he said. If there is only three inches of foam, said Mr. Miller, the dew point would go inside of the wall somewhere. It will turn into water inside of that wall, he said. And that is the point of insulating an extension, he said. Mr. Miller said about 50 percent of the homes will remain within the six-inch limit. However, said Mr. Miller, metal clad siding would make for a thicker wall. That would limit people to three inches of foam, when in fact four inches would be better.

Mr. Dye asked if this was intended for all structures or just for existing structures.

Ms. Boyce said this ordinance amendment is intended for existing structures.

Mr. LeVine suggested several word changes to the slide Ms. Boyce had upon the wall, and said he agreed with Mr. Miller that the projection should be greater than six inches to help more home owners with no discernable negative effects.

MOTION: *by Mr. LeVine, to accept staff's findings, analysis and recommendations, and approve AME2017 0017 subject to the wording changes proposed by Mr. Voelckers, the correction made to remove the word "except", and the projection maximum from six to eight inches.*

The motion passed with no objection.

Discussing the amendment after the vote, Mr. Dye asked why this amendment applied only to

existing construction and not new construction.

Ms. Boyce said this request comes up commonly with existing home improvements that are already built to the setbacks. For new home construction, those setbacks would already be configured, she said, as part of the design.

Mr. Dye said he felt that during this time of infill development and small lots, that he felt this tool should be available to all construction, not just remodels.

Mr. LeVine said he felt this amendment is for existing construction, and that it addresses a specific problem. If setbacks with new construction were to be addressed, he said it should be dealt with under its own merit for new construction.

Ms. McKibben said the intent of this amendment is for existing homes that are built to their setbacks that want to make energy efficiency improvements. New construction that is being built to a certain standard can plan for that as they plan their building to fit within the existing setbacks, she said. Ms. McKibben said she felt that was a separate topic which has not been addressed by the Commission, whereas this is to help existing homes that are built to their setbacks to add insulation.

Since it would be in the same section of code, Mr. Dye said he did not understand why new construction would not be dealt with at the same time.

Mr. Miller said he agreed that this should be a topic that should be revisited by the Commission.

Mr. Voelckers said he is persuaded that Mr. Dye has raised a critical point.

Mr. LeVine said it makes a lot of sense to encourage “outsulation”. He said he was reluctant to make changes to the entire setback regime without a more thorough analysis. He said he felt they should do with what is before them and revisit this issue for new construction as soon as it is feasible.

Mr. Dye said he wanted to propose an amendment to the ordinance just approved by the Commission.

Mr. Palmer suggested that the ordinance state at the end that it applies to new and existing development.

Mr. LeVine said he felt before the Commission made any decisions about new construction that an analysis was required concerning existing and proposed setbacks for new construction. He said he felt this was a good idea, but that he was not comfortable taking action on this issue

with the current lack of analysis.

Mr. Dye said he did not see how further analysis would be any more helpful in indicating that additional insulation would be beneficial for new home construction.

Mr. LeVine said they currently have five-foot side yard setbacks and that if they are going to allow new construction to be built a foot into those setbacks, then they may vote to change the five-foot side yard setbacks to a larger number.

Mr. Steedle reminded the Commission that they had already voted on this issue. If they wish to rescind that vote, it would take six votes to rescind that vote before taking the issue up again. He said he thinks that Mr. LeVine is on the right path, and that the topic they are really discussing is setbacks. That could be addressed in the setback code, said Mr. Steedle. Mr. Dye said he did not disagree with Mr. Steedle. He said it seemed to him that setbacks as a whole should be considered and not just with remodel construction.

Mr. LeVine said he had this very problem with his own home and that the action taken by the Commission tonight if approved by the Assembly would have exactly addressed that problem.

Mr. Voelckers said they have already voted on this issue and that perhaps within the next few meetings the staff could come back with analysis of this nature for new construction.

Mr. Miller said the Commission has voted on the current amendment and they should let that stand. He said this ordinance amendment addresses most of the problems that people come up with when trying to remodel their homes. This especially pertains to the Juneau town and Douglas town areas, he said. He suggested that the remaining part of this issue be hashed out at a Title 49 meeting, brought back before the Commission, and then add the sentence suggested by Mr. Palmer.

IX. Unfinished Business

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

This ordinance has been updated resulting from the last time it was before the Commission on December 12, (2017), said Ms. Boyce. It was also subsequently discussed at a Title 49 meeting, on December 20, (2017), said Ms. Boyce. The purpose of this ordinance is to:

- ✓ 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 variances requiring a public hearing
- ✓ Amend the variance criteria to reduce subjectivity
- ✓ Amend the De Minimis/Administrative variance

Mr. LeVine wanted to clarify that this amendment changes nothing about the substance but the process regarding variances. A hardship is still required, but it is wrapped into another condition, he said.

Ms. Boyce said the way the code currently reads the lead up to the variance criteria talks about there being a hardship. However, there is no criterion that actually does that analysis, she said. They have removed the hardship requirement and instead included it in the criteria so there is actually a hardship analysis, she said.

Mr. Miller said at the last meeting Mr. LeVine and himself voiced concerns that they are ratcheting down the places where variances can be used so that property owners can have a means to receive justice. The intent is to avoid the usage of variances for all the zoning issues or other ordinances that need to be fixed, said Mr. Miller. There are likely to be property owners who have issues that are not addressed by current ordinances, said Mr. Miller. For them to receive justice within the system of tightened variances, they thought of adding a sixth item to be addressed, he said. This would aide someone in an unusual situation who was not covered by the five items mentioned.

Mr. Dye said he requested at the last meeting a graphic of what has not been fixed yet in the code, and what is in the process of being fixed, and how that related to the percentage of past variances. He asked if that information is now available.

Ms. Boyce said she has a list of the code amendments currently in process, as well as another graphic which breaks up all of the variances into type. Since 1987, 50 percent of all variances deal with setbacks, said Ms. Boyce.

They have made amendments to the code with the 2015 subdivision related amendments, said Ms. Boyce. They have made a number of access-related changes, and part of it was privately maintained access roads and public rights-of-way, said Ms. Boyce. They have also approved the shared access amendment which also provides another small subdivision option that has access and frontage related aspects to it, she said. They have also just amended the panhandle ordinance, she said, which improves access to two-lot subdivisions, she said. Those were the majority of the access-related variances they have seen, she said.

Mr. Miller said the old ordinances were for all zoning districts. The new ordinances are just residential areas, he said. There still remain big holes within the ordinances, said Mr. Miller.

Ms. Boyce said the panhandle ordinance applies to all two-lot subdivisions. She said it is not just restricted to residential zones. Shared access was restricted to residential zones, she said.

Mr. LeVine said he shares Mr. Miller's concern. He said the question is how to implement these

new variance standards to ensure there is equity for all parties. He asked if the procedure would be to allow people to apply for variances using the old criteria if the underlying code has not been updated.

Mr. Voelckers said he agreed with Mr. LeVine's strategic suggestion because he felt they all have a gut feeling that every possible situation has not been covered regarding variances.

Mr. Palmer said the criteria that are listed in Attachment A are probably where the bulk of the discussion can be focused. He offered a revision to the language of the ordinance in Attachment A. Defining what a design and what a dimensional standard is has been very difficult, said Mr. Palmer. The intent for the current draft in Attachment A was to flip that around and state that only building setbacks, lot width, lot depth and building height can be varied, he said. They could use language that stated that in effect anything within Title 49 can be varied. Then the focus would be on the criteria; specifically, the last criterion which is criterion five, identifying what elements can and cannot be varied, aid Mr. Palmer. It could be amended to say that, "A variance is required to vary a requirement of this title." It would then enable the Commission to focus on the specific conditions, said Mr. Palmer.

Mr. LeVine asked the staff why they did not proceed with this direction outlined by Mr. Palmer in the first place.

The variance as it has been used has become a waiver tool and a design modification tool, said Ms. Boyce. They are trying to rein it in so that it can be used as it has meant to be used, she added. They will come up with something else to be used for waivers and design modifications, she said. They are also trying to make the line more distinct between someone needing a variance and someone wanting a variance, said Ms. Boyce.

There are a few items which were varied which should not have been varied, said Ms. Boyce, such as density and lot coverage.

Ms. McKibben said the code already stipulates that variances are not to be used for use or density. If that were to be allowed then there would need to be a significant amount of analysis to back that up, she said.

Mr. Voelckers said he thought this move to clean up the variance process was not so much that it would be more lenient but that the City Attorney's office was worried that the Commission could move into an area which would not be defensible at the Supreme Court level because it violates the basic premise of a variance, which was a unique physical hardship due to the property, said Mr. Voelckers.

Chairman Haight said if they left the introductory language as it currently stands, how much reduction in the number of variances would they see just due to the fact that they have

changed the other standards.

Mr. Steedle said he thought that was a very difficult question to answer. It becomes incumbent upon the staff and the Board of Adjustment to apply the criteria rigorously, he said. Mr. Steedle said he thinks that is where they have failed over the years, because it is very difficult to say “no” to an applicant. The thrust of this was to make it easy to say “no”, said Mr. Steedle. It becomes a question of how much discipline they think the Board of Adjustment needs, he said.

Mr. Voelckers said he would like to see definitive language that was strongly directed but at the same time left some leeway for the decision-makers for addressing dimensional standards, lot size, etc.

Mr. Palmer said he would definitely like to work to figure out some way to satisfy the intent. He said to him this seemed like an issue which could be better addressed through a Committee of the Whole or Title 49 meeting. He said he was a little hesitant at this time to propose specific language to try to address this issue.

Chairman Haight asked the Commission if it had any issue with the criteria.

Mr. LeVine said the way the criteria were explained in the staff report is confusing to him. He said he felt it would be better to simply use the language cited in the Supreme Court opinion. He said he felt just restating the rule would create confusion.

Mr. Voelckers said he had a similar issue with language on page 7 of the proposed ordinance; “The grant of the variance is reasonably tailored to relieve the hardship.” And yet the first sentence in the staff analysis of this criterion uses the language, “... is the minimum needed to provide relief”. He said he is wary of using the term “minimum needed” as it is not definitive.

Mr. LeVine agreed, stating he would also change the phrase “reasonably tailored” to “narrowly tailored.” He also noted that criteria and criterion do not analyze things. That sentence should have a different noun in it, he said.

Under 49.20.240 - *Board of Adjustment Action*, Mr. Voelckers said he felt the statement “The board of adjustment shall hear all variance requests except administrative variances” should have “and appeals of denied” be inserted before “administrative variances”.

Mr. Dye suggested that it should state who the director’s decision would be appealed to, under 49.20.240 (2). (“An administrative variance decision of the director may be appealed if a notice of appeal is filed within 20 days of the director filing a notice of decision with the municipal clerk.”)

Mr. Palmer said he felt both of those concerns with the code were addressed in the portion of

the code which states that the decision of the director may be appealed to the Planning Commission.

Criterion five states: "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." What about, for example, a small, legally nonconforming lot, said Mr. Voelckers.

Ms. Boyce said for substandard lots that already exist there are a number of setback reductions that can apply. There is a formula that can be applied to address those smaller, nonconforming lots, she said.

Ms. McKibben added that there can be a reduced front yard setback when the setbacks of the three adjacent properties are averaged. The only question that is not answered pertains to density, she said. If there was an existing building with nonconforming density it would probably be able to continue. The nonconforming code draft separates the nonconforming situations so that lots, setbacks, density and use are addressed separately, said Ms. McKibben.

Mr. LeVine said he concurred with the idea that more time should be spent thinking about the ordinance. There are several ideas that might at least be worth thinking about, said Mr. LeVine. One idea is to address the time in which the code has been updated, he said. There are provisions of the code which have not been updated, he said. He asked if there would be a way to connect the applicability of the variance requirement to the time in which the code has been updated. For example, said Mr. LeVine, variances would be inapplicable to code which has been updated within a specified period of time. The variances would be applicable until a waiver is developed within a certain period of time. That would not be to hardship, he said.

Mr. Dye said the process is so fluid that he would be concerned about cementing a time frame to it.

On page 219 of the staff report, said Mr. Miller, it is already outlined what the desired outcome is going to be. What they don't have is what to implement in terms of flexibility until the desired outcome is reached, he said. It would be helpful to have a paragraph or two in the staff report which would assist future commissions.

Chairman Haight said this item can come back to the Planning Commission for another review at its February 13, (2018) meeting.

IX. BOARD OF ADJUSTMENT - None

X. OTHER BUSINESS

Adoption of Revised Planning Commission Rules of Order

Mr. LeVine said he appreciates all the work which has gone into the rules of order before them. He asked if it needs to be clarified anywhere that this applies to the Board of Adjustment as well as the Planning Commission. He asked why there is a separate provision addressing reconsideration. He stated that it would most probably be dealt with according to *Robert's Rules of Order*.

Mr. Palmer said the reconsideration provisions that are included are different than the default rules under *Robert's Rules of Order*.

Mr. Miller asked what a privileged motion was.

Mr. Palmer said a privileged motion allowed whoever makes that motion to interrupt the speaker and to interrupt the process that is going on.

Mr. Dye asked why reconsideration did not require a supermajority vote.

Mr. Palmer said that is a discretionary question which the Commission can decide upon.

The section under "Late Written Material" may place the Chair of the Planning Commission in an awkward spot, said Mr. Voelckers, since it would be up to the chair to decide if it was accepted or not.

Chairman Haight said he liked the fact that this section did not absolutely limit the submission of the material to two pages, but that there was discretion to allow additional material.

Mr. Steedle said he concurred with the remarks of Chairman Haight. They do not want to tie the Chair's hands, said Mr. Steedle.

Mr. LeVine asked if the Commission can by vote overrule any decision the Chair makes. He said he did not see that outlined in the rules.

Mr. Voelckers said the rule is very carefully laid out about the amount of material which may be received, and when, and then at the same time an easy "out" is provided. He said he felt that could potentially put the Chair in an awkward position.

Mr. LeVine suggested they strike the sentence and let the Commission vote to suspend the rules if that is what it wanted to accomplish. If they strike the sentence "The Chair may reject..." they have the ability to accept that material if the Commission determines it is appropriate to submit, he stated.

The Commission concurred that the initial sentence regarding the chair rejecting the submission of material be struck.

These rules do also apply to the Board of Adjustment, said Mr. Palmer, in answer to Mr. LeVine's question.

Once approved by the Commission these rules will go to the Clerk, said Mr. Steedle, in answer to a question by Mr. Voelckers.

Mr. Palmer said that Rule 10 F. is a motion to rescind. If the Commission passes a motion and then immediately moves to rescind it, six votes would be necessary. The Commission could also make a notice of reconsideration if it takes place at the same meeting. Then a vote of six is required, he said. If the body wanted to require a rule of six votes at a subsequent meeting then that would need to be added to Rule 10, said Mr. Palmer.

Mr. LeVine clarified that the reason that 10 G exists right now is to prevent the Planning Commission from using a procedural mechanism to get around the requirement for a vote of six for rescission.

A policy reason for this is to give the Commission time to think about the item some more and another policy reason is to make sure that members of the community that were there to testify would have the opportunity to come back and attend a subsequent meeting, he said.

Mr. Miller said he would like to speak in favor of only requiring five votes. He said personally after having time to consider an issue his decision-making capabilities were much better. A notice of reconsideration may just be someone needing extra time to consider an issue. He said he felt the Commission should respect each other and honor another Commission member's need to reconsider an issue.

Mr. Voelckers agreed with Mr. Miller, saying he liked the slightly softer burden to at least provide the potential to reconsider an issue.

Mr. Dye said he liked the higher number required for reconsideration because it put more emphasis on the Commission getting information right the first time. Mr. Dye said he did not want it made too easy for Commission members to reconsider an item.

The permit process is a long, drawn-out process as it is. People are waiting for decisions to be made, and they should be made in the most time effective way possible, said Mr. Hickok.

Chairman Haight said he has noted that often a motion for reconsideration comes after a motion has been denied. The fact that they have probably denied an application and that someone has subsequently made a motion for reconsideration gives that applicant one more chance to have their issue voted upon by the Commission. He said he really does favor the softer approach on reconsideration.

Mr. LeVine said he would like the public to be given as much opportunity as possible and therefore would like to stick with the five votes being required for reconsideration.

Chairman Haight said when the motion of reconsideration comes up there is the opportunity to either allow or not allow additional public testimony.

Mr. Palmer said the rule is currently clear that on the motion of reconsideration there is no public testimony.

Chairman Haight said periodically a member of the public will want to testify again. This has never been allowed, he said. However, he noted, he is not finding that in the rules. He asked if there is actually a rule limiting public testimony to one opportunity per individual.

Mr. Steedle said he does not find that in these rules.

Mr. Voelckers said he felt it would be a good idea to stipulate that in the rules.

Mr. Palmer suggested that under Public Participation that it state that a person wishing to testify be given "one" opportunity instead of "an" opportunity.

The Commission concurred on the change from "an" to "one" opportunity.

Mr. Miller pointed out that under reconsideration it stipulates that the motion for reconsideration is debatable to the same extent as the underlying motion.

Mr. Palmer said that sentence had been placed under Reconsideration to clarify that it may be discussed under that circumstance.

MOTION: *by Mr. LeVine, that the Planning Commission adopt the revised Rules and Guidelines subject to two small edits which is to change the word under Section E1 from "an" opportunity to "one" opportunity under Public Participation, and to strike the sentence in 3c beginning with "may" and ending with "written material".*

The motion passed with no objection.

Answering a question by Mr. Voelckers, Mr. Palmer said that these rules do not need to go to the Assembly for approval.

X. DIRECTOR'S REPORT

Mr. Steedle said the Assembly will be meeting at a special meeting on January 30, (2018) to select three commissioners. Two of the sitting commissioners have reapplied, said Mr. Steedle. The February 13, (2018) Planning Commission meeting will be the first time the new Commission meets, he said. Mr. Steedle said he would like to have a Committee of the Whole meeting directly before the February 13, (2018) meeting for the yearly Commission training. The Commission will be able to consider the variance amendment on February 27, said Mr.

Steedle. There is a joint meeting scheduled with the Assembly for February 5, (2018), said Mr. Steedle. That meeting is currently scheduled for noon, he said. Mr. Steedle said he has tendered his resignation, and that sometime within the next few months he will be departing.

XI. REPORT OF REGULAR AND SPECIAL COMMITTEES

Mining Subcommittee

At the last meeting they defined the direction of the agenda over the next several meetings, said Chairman Haight. They will get a report from Jim Clark regarding his proposed changes to the mining ordinance at this Thursday's meeting, he said. These meetings occur every Thursday at 5:30 p.m., said Chairman Haight.

XII. PLANNING COMMISSION COMMENTS AND QUESTIONS

XIII. ADJOURNMENT

The meeting was adjourned at 10:00 p.m.