

Agenda
Planning Commission
Regular Meeting
CITY AND BOROUGH OF JUNEAU
Ben Haight, Chairman
December 12, 2017

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 7:04 p.m.

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

Commissioners absent: Kirsten Shelton, Percy Frisby

Staff present: Rob Steedle, CDD Director; Laura Boyce, Senior Planner; Teri Camery, Senior Planner; Robert Palmer, Assistant Attorney II

Assembly members: Beth Weldon

II. APPROVAL OF MINUTES - None

III. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS - None

IV. PLANNING COMMISSION LIAISON REPORT

Assembly Liaison to the Planning Commission Beth Weldon reported that the Lands Committee reviewed the application from White Oak Towers of Alaska for a new lease for an existing communication tower located at the end of Jackson Road in West Juneau. They continued their discussion on Indian Point. They discussed purchasing property from Aurora Arms to gain access to a parcel of City land behind Glacier Avenue. At the Committee of the Whole meeting they had a presentation from Docks and Harbors and the Morris communication group discussing their plan with the archipelago property. They allowed Docks and Harbors to move forward with a timeline. They have moved the Lemon Creek Area Plan to the full Assembly with a few minor revisions. Coogan Construction was awarded the bid for Phase 1 of the Pederson Hill Subdivision. The next Lands and Assembly Committee of the Whole (COW) meetings are

scheduled for January 29, 2018, at 5:00 and 6:00 respectively.

V. RECONSIDERATION OF THE FOLLOWING ITEMS – None

VI. CONSENT AGENDA - None

VII. UNFINISHED BUSINESS - None

VIII. REGULAR AGENDA

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).

The Auke Bay area plan aspirational designation for this property is for Traditional Town Center, reported Ms. Camery. The existing uses for these four separate properties include an eight plex, a triplex, a camp office and the Auke Bay Bible Church, said Ms. Camery. These parcels of land are adjacent to properties already zoned Light Commercial, noted Ms. Camery. On the other side of Glacier Highway, the land is zoned Waterfront Commercial, she noted.

Rezoning must be for property over two acres or an expansion of an existing zone, said Ms. Camery. This rezone request meets both prerequisites, she said. Rezoning should only be approved upon a finding that the proposed zoning is in substantial conformance with the Land Use Maps of the Comprehensive Plan, said Ms. Camery. While the Auke Bay Area Plan is a part of the Comprehensive Plan, land use designations of the Comprehensive Plan take precedence over the Auke Bay Area Plan land use designations, she said, because at this point they are only aspirational. The staff has found that the Light Commercial designation is in substantial conformance with both the subsidiary and the primary plans, she said.

The staff held two neighborhood meetings; one on September 27, 2017, and one on October 17, 2017, said Ms. Camery. For both meetings, notice was mailed to property owners within 500 feet of the proposed zone change, and in addition notice was given to the Juneau Empire's "your municipality" section, said Ms. Camery.

Ms. Camery read that the CBJ Land Use Code defines the proposed Light Commercial zoning district as:

The LC, light commercial district, is intended to accommodate commercial development that is less extensive than that permitted in the general commercial district. Light commercial districts are primarily located adjacent to existing residential areas. Although many of the uses allowed in this district are also allowed in the general commercial district, they are listed as conditional uses in this district and therefore require commission review to determine compatibility with surrounding land uses. A lower level of intensity of development is also achieved by stringent height and setback restrictions. Residential development is allowed in mixed and single use developments in the light commercial district.

Ms. Camery read that Mixed-Use zoning is defined as:

The MU, mixed use district, reflects the existing downtown development pattern and is intended to maintain the stability of the downtown area. Multi-family residential uses are allowed and encouraged.

The MU2, mixed use 2 district, is intended to place a greater emphasis on residential development than is the case in the MU district. A range of residential development types is allowed. Multi-family residential uses are allowed at a density of up to 80 units per acre.

Subarea guidelines for Auke Bay call for development of an area plan with the goal of creating a transit and pedestrian oriented village, said Ms. Camery. Guideline three also states that it is to encourage high density transit-oriented residential and/or mixed use developments in the Auke Bay village area and around the University, particularly for student and faculty affordable housing, she read. Guideline 12 states that it is to allow development of an infill residential development, such as apartments, condominiums, efficiency or single room occupancy units, and lifestyle housing within new and existing shopping centers, she read.

Lower to mid-rise structures are generally attached to Light Commercial zoning, noted Ms. Camery, or to Mixed-Use 2 zoning, she noted. Light Commercial zoning carries with it a 45-foot height limitation, said Ms. Camery. Mixed-Use 2 zoning focuses more on residential development, she noted. That carries a density of 80 units per acre, she said. Light Commercial zoning carries with it a limit of 30 units per acre, she noted.

The proposed zone change to Light Commercial substantially conforms with the Comprehensive Land Use designation of Medium Density Residential, and is further supported by several Comprehensive Plan policies, said Ms. Camery. Staff also concludes that the Mixed-Use and Mixed-Use 2 zoning districts may not substantially conform, due to high residential densities and the unlimited height allowance in mixed-use zones, she said.

The policies were adopted when the Auke Bay Area Plan was adopted, explained Ms. Camery. The intention of the land use designations on the map for Auke Bay is that they will be developed into new zoning districts, she said. The CDD intends to develop a zoning district that matches Traditional Town Center (TCC), she said. This has not yet been accomplished, she said. Light Commercial zoning is the closest and most compatible zoning district that they currently possess to TCC at this time, said Ms. Camery. Traditional Town Center applies to the Auke Bay town center, said Ms. Camery. This would attract a mix of shopping, dining, arts and music, marine and educational related services, she said.

The proposed zone change to Light Commercial substantially conforms with the Comprehensive Plan Land Use designation of Medium Density Residential, and is further supported by several Comprehensive Plan policies, noted Ms. Camery. The staff also concludes that the Mixed-Use and Mixed-Use 2 zoning districts may not substantially conform, due to high residential densities and the unlimited height allowance in mixed-use zoning, said Ms. Camery.

Ms. Camery outlined that the relevant goals and policies in the Auke Bay Area Plan include the following:

- ✓ Goal 4: Ensure zoning changes in the Auke Bay area conform to the goals and policies of the Auke Bay Area Plan
- ✓ Goal 5, Policy 5.1: Review the Auke Bay Area Plan when considering zone changes in the area
- ✓ Goal 5, Policy 5.2: Promote zone changes that conform to the plan and further advance the goals and policies of the plan
- ✓ Goal 8: Preserve unique views that make the Auke Bay area a truly special place
- ✓ Goal 8, Policy 8.1: Identify, map, and preserve key viewpoints in the Auke Bay area, as depicted in Appendix C
- ✓ Goal 8, Policy 8.3: New development should be evaluated for its impact on the viewpoints shown on the map

The view of the harbor is the essential viewpoint that is to be protected, noted Ms. Camery. CDD cannot evaluate the view shed for a rezone request, noted Ms. Camery. When CDD is presented with a new development proposal, at that time it would be appropriate to consider its effect on the view shed, she said.

In general, said Ms. Camery, the Light Commercial zoning district allows some higher impact commercial uses with the Conditional Use Permit process and allows a broader variety of commercial uses, consistent with the land use code definition of commercial development near residential areas. Mixed-Use and Mixed-Use 2 zones focus more on housing, but still allow for many commercial uses, she said.

There are not any substantial comments from public agency review on this zone request, said Ms. Camery. The Alaska Department of Public Transportation stated that if any new development is proposed, that a Traffic Impact Analysis may be required, she said.

CDD received a total of nine public written comments, said Ms. Camery. CDD heard a lot of concerns regarding the preservation of the character of the adjacent residential area, said Ms. Camery. The concerns in these comments referenced traffic and pedestrian safety, she said. Since the creation of the Auke Bay Area Plan there been many requests for the Department of Transportation to lower the speed limit through Auke Bay, said Ms. Camery. Those requests have not been recognized, she said. There are other concerns expressed about potential noise and congestion which would occur in the area with further development, she said. Specific development plans for the property were requested by some of the commenters; however specific development plans are not a part of a rezone, said Ms. Camery.

The options before the Commission are to approve the application as submitted, deny the request, or recommend an alternative to the Assembly, said Ms. Camery.

Commission Comments and Questions

Commissioner Hickok disclosed that he resides within the Auke Bay area and that he also owns a piece of Mixed-Use property in the area. He said that he felt that he could be fair and impartial when considering this rezone request, but that he wanted to present this information to the Commission and to the public in case it felt that it could create a conflict.

The other Commission members and the public expressed no concern over Mr. Hickok remaining on the Commission to deliberate this issue.

Mr. Voelckers asked if the Atlin Drive rezoning truly established a blanket precedent that all cases of MDR zoning essentially equals Light Commercial zoning, or if it was just applicable to that one specific case.

Mr. Palmer said that the Assembly just looked at the facts of that specific rezone, and found in that instance that Light Commercial zoning substantially conformed with the MDR plan designation. It does not prohibit the Commission from reaching an opposite conclusion, added Mr. Palmer.

Mr. Voelckers asked if the view planes referenced in the Auke Bay Area Plan are established, codified and actionable, or aspirational.

Ms. Camery said the Auke Bay Area Plan policies were specifically adopted by the Assembly. It does include protection for a series of viewpoints, she said. The viewpoint relevant to this rezone application is the view of the harbor, said Ms. Camery. They do not yet have a clearly defined process as to how those reviews would be accomplished, she said. The key point is that the City is legally obligated to implement the policies in the Auke Bay Area Plan, said Ms. Camery.

Mr. Voelckers said the height of 45 feet is enough to obstruct a view. He asked if there was clear language to designate what was or was not allowed regarding development and its impact on the view sheds.

Ms. Camery said she did not have a thorough answer to that question.

Mr. Palmer said that the Auke Bay policies were adopted. However, he said, the staff has not presented and the Assembly has not enacted an ordinance codifying those policies. Therefore, if this rezone request were to be approved by the Assembly, then Light Commercial would govern the building heights, for example. That would be in effect until a new zoning district was created, said Mr. Palmer. This rezone puts the Commission in an awkward position of having knowledge of the Auke Bay policies but without those standards being yet codified, said Mr. Palmer.

Mr. Hickok asked if it was common for a group of various property owners to come together to request a rezone of their property.

Ms. Camery said this has occurred before. She said since a two-acre minimum must be met, that a property owner with less than two acres could try to obtain a rezone with like-minded, adjacent property owners.

Mr. LeVine asked about the consequences should the Commission rezone this parcel to Light Commercial, and one of the property owners subsequently decided to implement a business which was in alignment with Light Commercial. He asked what would happen to that property if it's particular use was not in alignment with the new zoning once it was put in place.

Mr. Steedle said the department plans to create that new zoning district this coming year. Any development that is permissible under Light Commercial zoning that is not permissible in the new zoning district would become legally nonconforming, he said. They will be informing individuals that their projects could potentially be at risk under the new zoning once it is enacted, he said.

Mr. Palmer said this is one of the really vague areas of law. He said in general a property owner has a vested right after a permit is given and there has been substantial investment made. Prior to that the law is very unclear, he said.

Mr. Dye asked for clarification on what major and minor development would look like in this particular area.

Mr. Steedle said that varies by zoning district. In a commercial district minor development is a residential development with 12 or fewer dwelling units, he said, or for a nonresidential building less than 10,000 square feet, and using less than half an acre of land.

Mr. Dye said he assumed that going through the conditional use process would allow the Commission to review some of this.

Mr. Palmer said this is a speculative area. If someone proposed a project consistent with the current zoning district, the Commission is free to evaluate that request and impose conditions or approve or deny the permit, he said. Since the Auke Bay Plan has been adopted with its

inherent policies, the Commission could consider those policies as a factor in its consideration of that Conditional Use Permit, he said. Conditional Use Permits are discretionary and can be denied even if all of the elements have been met, said Mr. Palmer.

In answer to Mr. Dye's question about what would be considered a front yard setback and a side yard setback using the Seaview complex for an example, Ms. Camery said that the front yard setback is determined by the point of access which is off of Seaview, and the street side setback would be off of Glacier Highway. That results in a 25-foot setback off of Seaview and 17 feet off of Glacier Highway, she clarified.

Mr. LeVine asked if over the course of the year when the new zoning districts are developed for Auke Bay, if there would be the opportunities for public input during that process.

Ms. Camery said there definitely would be a public process during this period of zoning district creation for Auke Bay. She said the zoning would be based upon a Traditional Town Center as outlined in the Auke Bay Area plan.

Mr. Hickok asked if the RV (Recreational Vehicle) park in Auke Bay is one of the participating parcels in the rezone request.

Ms. Camery said the RV Park is outside of the area of the parcels requesting the rezone.

Applicant

Property developer Joanne Schmidt said she is the owner of Douglas Island Development and one of the parcel owners requesting the rezone. She said she felt the Auke Bay Area Plan captures what Juneau could be. She said she felt the concepts in the plan were innovative allowing property developers to "achieve something in an absolute gem of an area". The Auke Bay area has a multimillion dollar harbor with a seasonal business, with mining and fishing providing a pretty powerful resource economy, she said.

Ms. Schmidt said development for the Auke Bay area should be encouraged. She said she did recognize there were concerns by some residents about what type of development might take place. She said that any development which she would undertake for the area would be absolutely consistent with the Auke Bay Area Plan.

Commission Comments and Questions

Mr. Voelckers asked Ms. Schmidt how she felt about the fact that the zoning for the Traditional Town Center would not take effect until after she had possibly begun her development project.

Ms. Schmidt said in her opinion the Auke Bay Area Plan was already mature since it has already been adopted. She said as a developer she wants to achieve the highest and best use of her property. She said she did not understand why she would need to wait on her development until the Traditional Town Center zoning had been established. She said there were more constraints for Light Commercial zoning than for land zoned for a Traditional Town Center. There are zero setbacks recommended for a Traditional Town Center, she commented. She said

some members of the community are not pleased about additional development adjacent to their homes. She asked the Commission to consider communities which are very walkable between residences and businesses, and where a car does not need to be used for transportation.

Mr. Dye asked the applicant what the urgency was to rezone the property now rather than wait until the area is properly rezoned for Traditional Town Center.

Ms. Schmidt said she has owned the property for two years and that she would like to commence work on repositioning it. She said she is not sure if the City will complete its rezone of the district within a year, and that she cannot base her business decisions upon a “maybe”. She asked Mr. Dye to keep in mind that it was only after a great deal of research on the part of the CDD staff that it was determined that Light Commercial zoning substantially conforms to that of a Traditional Town Center within the Auke Bay Area Plan and with the Comprehensive Plan.

Mr. Dye said that at this point the highest and best use of that land is not yet defined because it has not yet been determined what the zoning for that area would be once the Auke Bay Area Plan has been implemented.

Ms. Schmidt said the answer to Mr. Dye’s question can be found within the staff report where it states that Mixed-Use development is an avenue to develop several Comprehensive Plan policies. This language is basically carried over into the Auke Bay Area Plan, she noted.

Public Comments

Auke Bay area resident David Massey said they bought a home in the Auke Bay area because for them it was the best area in which to purchase a home. He said the proposed rezone would result in a substantial change to their adjacent residential subdivision. He said as far as the neighbors are concerned, they already have the highest and best use for their property. The Auke Bay Area Plan addresses views specifically, he said. Going from a 35-foot to a 45-foot height limit would add a substantial constraint to their views, he said. He said he felt it would be inappropriate to rezone land before the final zoning for the area had been accomplished.

Auke Bay area resident Gerry Quigg told the Commission that he has lived in this area since 1973. He said Tanner Terrace subdivision held covenants, which it now appears are not worth the paper that they are written on. The home owners approved the request for a rezone to allow an eight plex in the area, he said. He asked if the existing covenants are now worthless.

Mr. Palmer said he did not know the answer to that question.

They have an old subdivision with a sub-standard road, said Mr. Quigg. He said the road is not big enough to handle the current development in the area. Mr. Quigg said Ms. Schmidt was the only individual who wanted the zone change and that she convinced other parcel owners to join.

Mr. Voelckers asked if Mr. Quigg was involved in the planning process during the creation of the Auke Bay Area Plan. Mr. Quigg said he had no idea that the plan would have direct effects upon their neighborhood.

Auke Bay area resident Julie Flint said this proposed rezone is literally in the neighborhood's front yard. She said they have concerns that their neighborhood will no longer be a livable residential area if further business developments take place right next to them. They have only been told that there would be development, but they have no idea what that development might be, she said. She said she did not understand that the Auke Bay Area Plan would have a direct effect upon their neighborhood. She said she did attend an Auke Bay Area Plan meeting and that her feeling was that the plan had already been developed, and that residents in her immediate area were not affected.

Auke Bay resident Rick Currier told the Commission that he has lived in the area since 1993. He said like all of his neighbors, he selected this location because he liked the quiet, residential neighborhood and the views. He said he owns a sailboat in Statter harbor and that he likes to wake up every morning and look out over his sailboat. He said that he and his wife have spent thousands of dollars cutting down trees so that their view would not be obstructed. He said the streets are very narrow and it is difficult for two vehicles to traverse the street at the same time. Mr. Currier said that he did not understand that the Auke Bay plan would affect their neighborhood.

Area resident Ron Flint said that he has lived in the Auke Bay residential area for 24 years. Mr. Flint read a letter to the Commission submitted by area resident and neighbor Andi Story. In her letter she asked for height limits to be restricted in the proposed development area. She said in her letter when they purchased their home the existing covenants stated that they are not allowed to build in a height which would prevent the view of neighbors on the uphill side of the residential development. In her letter she stated that she anticipated there would be a drop in property values should their views be negatively affected.

Mr. Flint said the Auke Bay Area Plan has taken many of his neighbors and himself by surprise. He said to him it seems that the plan for a city town center has been overlaid on top of the community, not taking into consideration the existing development such as their residential neighborhood.

Area resident Debbie Ballam told the Commission that they strongly objected to the proposed rezone and that they believe that it would impart a very negative impact upon their residential neighborhood. The quiet and views from their home are something that she and her husband cherish, she said. They strongly object to turning their residential neighborhood into an area with light commercial zoning, she said. She said they did attend the first meeting but they did not feel that their opinions were heard. She said they are a very small neighborhood with very small voices. They want their neighborhood to remain a low density neighborhood and not light commercial zoning, said Ms. Ballam.

Auke Bay area resident Mike Allan said that there is a good reason that people moved to the Auke Bay area, out the road, and to North Douglas. There is not the hustle and bustle of town and the Valley, he said, and those residents experience a somewhat rural feeling. Mr. Allan said quality of life is an important consideration, and that decisions the Commission makes this evening could affect the Auke Bay area resident's quality of life significantly. Mr. Allan said he did attend a few meetings of the Auke Bay Area Plan Committee and that he did not feel it was the intention of the plan to give a strip mall look from the roundabout to the Legion club.

Mr. Miller asked Mr. Allan if he could show the Commission on the map where he wanted the Light Commercial zone to halt. He said that would be at the two lots consisting of the church property.

Applicant

Ms. Schmidt said she had heard the comments that auto repair shops were allowed in a Light Commercial zone and that she did not believe that was the case. She said it appeared from reviewing the materials that an auto mechanic shop was only allowed in a General Commercial zone. She said she felt another important point was that there was no way that construction of her building to 45 feet would interfere with the views of the residences on the hill behind it. There is a public process in place so that people have time to impart their input. The Auke Bay Area Plan was a process which took over two years, she noted. Ms. Schmidt said there had been ample opportunity provided during that plan process for area residents to weigh in on the formulation of the Auke Bay Area Plan. She said she did not feel that the community would be well served should the Planning Commission decide that her project was not possible because the adjacent neighborhood did not like it.

Commission Comments and Questions

Mr. Hickok asked what would constitute a total of two acres including Ms. Schmidt's property. He asked if it was necessary for the Commission to rezone all seven acres when only two acres were required for the rezone request. He asked the applicant why she wanted to incorporate all of the properties that are listed in the rezone request when only two acres were necessary for the rezone.

Ms. Schmidt responded that she spoke with all of the property owners included in this application and that they were all interested in participating in the rezone request.

Mr. Dye said he has noticed that a lot of public testimony has been focused on view sheds. He said the key Auke Bay view sheds were outlined in the Auke Bay Area Plan. He asked how preservation of the view shed would be interpreted in actual building practices.

Ms. Camery said she felt that was an excellent question. She said that she was not aware that a specific interpretation of this mandate within the plan was outlined.

Mr. Palmer said the Auke Bay Area plan is perhaps the only plan of which he is aware that defines and describes a view shed or a view plane. Other scenic corridors are protected in

policy language, but the Auke Bay Area Plan is unique, he said. The community which participated in the Auke Bay planning process wanted specific areas protected. This puts the Commission in the difficult position of dealing with a policy which has been adopted, but the implementation of that policy has not yet happened, he said.

Mr. Dye asked if a development was proposed which did not require approval by the Commission, if there would be no safeguards in place to protect the view shed.

Mr. Palmer said this was correct.

Mr. LeVine asked Mr. Palmer what the Commission's options were in regard to making its recommendation on this rezone request to the Assembly.

The Planning Commission could approve the request, it could deny the rezone request, and procedurally there are a wide spectrum of options between those two avenues, said Mr. Palmer. It could table the rezone request to a time certain if it wanted to give the staff time to work out a zoning ordinance. The Commission could also probably figure out a way to parse the rezone request to a parcel less than the over seven acres being requested, said Mr. Palmer. The Commission could also ask for more analysis from the staff on the bifurcation of the land parcels if it was interested in that possibility, he added.

Mr. LeVine asked if the Commission could grant a rezone subject to conditions that are not inherent in that zoning district.

Mr. Palmer said technically, this could be done, but that it was highly disfavored. Rezones are to be evaluated as a whole with all of the uses considered, and the goal is to treat all properties within the same zoning district the equally.

MOTION: *by Mr. Voelckers, to table the rezone request for a period not to exceed four months.*

Speaking in favor of his motion, Mr. Voelckers said he found this to be a very complex issue. He said he felt both the Planning Commission and the staff felt some burden due to the fact that they seem to be stuck between the aspirational aspects of the Auke Bay Area Plan and how that plan should be specifically implemented. Mr. Voelckers said he felt that four months would be enough time if Commission members and the staff worked together in a concerted effort towards implementation of the plan in terms of zoning and protection of the view shed, to name a few examples. What constitutes a Traditional Town Center can be interpreted in different ways in terms of how it is zoned, said Mr. Voelckers. It could perhaps proceed in a gradation of density working from less density in the residential areas and increased density as it moved towards the center of the Auke Bay commercial district. They have not yet done the work to define exactly where those lines of demarcation would be, said Mr. Voelckers.

Speaking against the motion, Mr. Miller said that the applicant has presented the Commission with a good rezone application following the zoning rules which are already in place. If the applicant would have to wait four months until the issue was revisited, that could feasibly delay

a project through another winter, said Mr. Miller. The ideas within the Auke Bay Plan could be used as tools considering a Conditional Use Permit, said Mr. Miller. There are still safeguards for the plan in place moving forward with this zoning request, he said.

Mr. Dye said that he shared many of the views of Mr. Miller. However, he said, he struggled with the lack of specifics about protecting the view shed that currently exist. He said he did like the idea of Mr. Voelckers to give the CDD the time to come back to the Commission with an outline of what the zoning district actually should be.

Mr. LeVine asked the staff if they could give the Commission their opinion about what could be accomplished in a four-month timeframe in terms of coming up with specific zoning for the area.

Mr. Steedle responded that he did not feel that four months was sufficient to accomplish that task. In addition to the staff work, they also have to adhere to a public process, he said, in order to define what uses would be allowed in the new zoning district and to take into account the difficult question of the protection of the views. Height would be one consideration, but Mr. Steedle said he felt there was more to it than that.

Work has been completed to come up with zoning districts to match Auke Bay, said Mr. Steedle. This work came to a halt when the planner who was working on that project departed, said Mr. Steedle. After the public process has been completed, then the rezone districts would come to the Commission for its input, said Mr. Steedle. It would then go to the Assembly which in turn had to follow its process, said Mr. Steedle. The new zoning district as approved by the Assembly would not be adopted until a month after that approval, said Mr. Steedle. A four-month process is not enough time, he said.

Mr. Dye asked Mr. Steedle if he felt the Auke Bay Plan was adopted prematurely into the Comprehensive Plan.

Mr. Steedle said he did not feel it was adopted too early into the Comprehensive Plan. He said the Comprehensive Plan itself is aspirational. What they have failed to achieve is to develop the implementation in terms of developing that zoning district, he said. The plan is clear as to what the vision is for the Auke Bay community, said Mr. Steedle.

Mr. Dye asked if Mr. Steedle felt there was enough specific information within the Auke Bay Area Plan to protect the view shed areas if these parcels were rezoned to Light Commercial.

Mr. Palmer said at this point he did not think the plan was specific enough to describe what land use regulations should be implemented to protect that view shed. Building height and locations are factors which need to be considered for view sheds which are currently not codified, said Mr. Palmer. One idea which had been considered is floating setbacks, which would provide bigger corridors on the sides of the property for more access to the view sheds, he said. Those are still nascent ideas and are not ready to be presented to the public, said Mr. Palmer. The concept of the view sheds is outlined in the Auke Bay Area plan, said Mr. Palmer,

but how to protect and preserve those view sheds is difficult. One way to give the body some control over the view sheds at this point is to require each development proposed in those view planes to obtain a Conditional Use Permit, he said. There is a strong balancing act between requiring conditional use permits to protect the view sheds and at the same time assuring that property owners are assured of their property rights, said Mr. Palmer.

Mr. LeVine asked Mr. Steedle if he could give some idea about how much time the staff would require to provide some concrete information for the Commission as to how and where they were proceeding regarding rezoning the Auke Bay Traditional Town Center, so the Commission could weigh the options before it regarding the rezone request before them this evening.

Mr. Steedle said it would be sheer speculation as to what the staff could deliver to the Commission within 4 to 6 months. The Assembly made clear at its retreat that reviewing the Comprehensive Plan was a priority, as it is the downtown area plan, as well as an update to the Housing Needs Assessment, said Mr. Steedle. The staff has a lot of priorities which it is currently juggling, he said.

Mr. Miller commented that they were going to have a noise ordinance at one time. It may prove too difficult to figure out how to protect a view plane, said Mr. Miller. How much roof can someone see from their home and have that still not considered as an intrusion on the view shed, said Mr. Miller. Tonight they have a rezone request which is within the ordinance and which is in place, said Mr. Miller.

Speaking against the motion, Mr. Greene said that they have a reasonable request from the applicant, and that while he can appreciate that the neighbors do not want to give up any view or have other intrusions upon their neighborhood, that the rights of the other property owners exist as well. The tools they currently have available are the Auke Bay Area Plan and the Comprehensive Plan, said Mr. Greene. Mr. Greene said it appears that Light Commercial zoning is the best match for that area at this time.

Mr. Hickok said he did not think it was the intent of the Auke Bay Area Plan to break up neighborhoods. He said he would not have approved the Auke Bay Area Plan if the result would be the destruction of neighborhoods. He said he felt the intent of the plan was to revitalize the area, but not to take apart a great neighborhood which has existed within the community for many years.

In answer to a question by Mr. Dye, Mr. Steedle said that the applicant would not be prohibited from getting their property rezoned within a two-year period because it would be the Department itself which would be applying for the subsequent rezone.

Mr. Palmer added that should the department initiate the rezone within a year, it would be a different zone than the one currently recommended, so the applicant would not be applying for the same type of rezone regardless.

Mr. LeVine said he remained troubled about the prospect of rezoning a property which would be up for yet another rezone within a few years' time. Mr. LeVine said he would support Mr. Voelckers because he would like the staff to have some extra time to look at this issue, and that he was very sensitive to the concerns of the neighborhood. The process will work better if they are all working on it together, said Mr. LeVine. They all want affordable housing, they all want successful businesses and they want people to be able to pursue development interests, said Mr. LeVine.

Mr. Dye presented a friendly amendment to the motion of Mr. Voelckers, that the four-month time period be reduced to 30 days for the staff to come up with a schedule as to what effort and time a rezone would take, and the possibilities of conditioning the rezone based upon the view shed.

Mr. Voelckers did not accept the friendly amendment of Mr. Dye. He said he was going to suggest later in the meeting that the Commission form a committee to work in conjunction with the staff on Auke Bay rezone issues. He said he would rather work towards identifying a solution rather than a list of the items that they did not yet know how to complete.

Roll Call Vote on the Amendment:

Yeas: Dye

Nays: Green, Voelckers, LeVine, Hickok, Miller, Haight

Motion Failed

Mr. Miller said he did feel the best possible outcome was to make this all work for all the parties involved. His concern with any delay is that they were putting a development corporation's business plans on hold over what is at this point conjecture. What was the Commission looking to get from the staff in four months that would sway its opinion on the rezone that it does not have now, asked Mr. Miller.

Chairman Haight said he felt the Commission had the desire to settle the need for neighborhood harmony, which is typically reviewed during a Conditional Use Permit but that sometimes needed to be considered at the time of rezoning as well. He said perhaps those interested in waiting four months for more information could outline for the staff exactly what they needed to help them with their determination.

Perhaps the demarcation line for the Traditional Town Center zone is not yet in the correct place for example, said Mr. Voelckers. A committee working with the staff should be able to come up with some clear guidelines, said Mr. Voelckers.

Mr. LeVine said he felt given some time and the cooperation between a committee and the staff, that in four months' time they could get closer to a rezone better suited to the neighborhood that they could approve.

Mr. Dye said it seemed to him that the viewpoint and how it is defined in the Auke Bay Plan seems to be the major issue. He said he would like to obtain more information from the staff in a shorter period of time instead of postponing this issue for four more months resulting in the loss of a possible building season for the developers.

Mr. Miller asked Mr. Dye if he was referencing 30 calendar days or 30 working days.

Mr. Dye said he would reconsider a new amendment to state the new date of January 23, (2018) which is the fourth Tuesday of that month.

Mr. LeVine said he did not think that January 23, (2018) was enough time to develop a new plan from which to move forward on the Auke Bay zoning issue. He said that is why he voted against the amendment before and why he would vote against it again.

Mr. Dye said maybe there is a way to condition this rezone that allows it to happen in a more expeditious manner for the property owners to be able to enjoy the rezone in a fashion that alleviates the concerns that are raised by the multiple rezones and what the end product might look like.

Mr. Voelckers said he would like enough time to actually accomplish some work on this matter. He said he had not heard the applicant state that they had any plans to accomplish anything this building season.

Mr. Dye said he did not make another amendment to the main motion.

Roll Call Vote on the Main Motion:

Yeas: Hickok, LeVine, Voelckers, Haight

Nays: Dye, Greene, Miller

The motion failed.

MOTION: *by Mr. Miller, to approve AME2017 0013 and approve staff's findings, analysis and recommendations, and to forward the recommended zone change to the Assembly.*

Speaking against the motion, Mr. Miller said on one hand it could be said that the Auke Bay Area Plan supports the requested rezone, and on the other hand it really does not support the rezone request. There are too many ambiguities with the plan to approve this motion, said Mr. Miller. He added that he also agrees with the assessments that if there is a new zone that is brought forward that does address all of the Auke Bay plan issues, that it should not be substantially similar to this rezone request.

Roll Call Vote:

Yeas:

Nays: Greene, Dye, Hickok, Miller, LeVine, Voelckers, Haight

The motion failed.

Chairman Haight said this has been a struggle, and it will drive the staff and the Commission to work on implementation of the Auke Bay Area Plan rezones.

Mr. Miller interjected to say that he is contemplating a reconsideration of the rezone just turned down by the Commission. He asked when the appropriate time would be to pursue this reconsideration.

Mr. Steedle said this item could be revisited at the end of the meeting.

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.

The intent of this ordinance is to make the code more flexible, said Ms. Boyce. There are four key parts to the draft ordinance, said Ms. Boyce:

- ✓ Provide clarity regarding what is and is not variable
- ✓ Remove the variance threshold requirement
- ✓ Amends the variance criteria to provide clarity and reduce subjectivity
- ✓ Deletes the De Minimis variance

Since the land use code was updated in 1987, the following types of design and dimensional standard variances have been approved, noted Ms. Boyce:

- ✓ Lot width
- ✓ Lot depth
- ✓ Yard setbacks
- ✓ Building height
- ✓ Anadromous stream/water body buffer setbacks
- ✓ Vegetative cover
- ✓ Flood zones
- ✓ Eagle nest tree buffers
- ✓ Parking requirements

- ✓ Access requirements
- ✓ Panhandle subdivision requirements
- ✓ Sign requirements
- ✓ Design standard changes, including planned unit developments, canopies, mobile home parks, cottage housing, accessory apartments, common walls and historic district requirements

The draft ordinance eliminates the current threshold criteria which is currently required to be met, said Ms. Boyce. For the new draft ordinance, the staff recommends that six criteria be met:

1. *The unusual or special conditions identified in the application are not caused by the person seeking the variance.*
2. *The variance is necessary so that the applicant can enjoy their property consistent with other property owners in the same area.*
3. *The grant of the variance will not be detrimental to public, health, safety, or welfare, and will not be injurious to nearby property.*
4. *Enforcement of the ordinance would result in an unreasonable hardship.*
5. *The grant of the variance is no more than is necessary to relieve the hardship.*
6. *The grant of the variance does not result in a density, lot size, or lot coverage less than the minimums for the zone district.*

They have reviewed this draft ordinance thoroughly with the Title 49 Committee as well as reviewed it in two separate Planning Commission COW meetings, noted Ms. Boyce.

The first proposed criterion was not discussed with Title 49 Committee. Ms. Boyce said she suspects that it may be the most debatable criterion before the Commission.

Commission Comments and Questions

1. *The unusual or special conditions identified in the application are not caused by the person seeking the variance.*

Mr. Miller said he liked the way that Criterion 1 is written, but that the explanation of that criterion in the staff report is unsatisfactory. Mr. Miller said he objected to the following sentence within the criterion: *"A self-created hardship will exist if the applicant knew or should have known of any restrictions at the time the site was purchased."* For example, said Mr. Miller, when they created the Walter Sobeloff Building, they knew going into the project that variances were needed to build this spectacular building. Those variances were granted, and Mr. Miller said he felt this was for the benefit of the entire Juneau community. It could be argued that hardship requiring the variance was self-imposed, said Mr. Miller. Most variances are going to be self-created, said Mr. Miller.

Mr. LeVine said he could not think of a variance the Commission has considered that would satisfy this threshold explanation the way that it is written. However, he said, they do not want individuals proceeding far along with the project to which a variance would be required. There should be some restriction on variances, said Mr. LeVine.

Mr. Voelckers said this threshold did address the issue of willful noncompliance. He said Mr. Miller raised a good point in that a lot of times really nice results can be created on severely challenged lots. There needs to be an adequate balance between public benefit and relaxation of the code, he said. This is a nuanced judgment that the Commission needs to make, noted Mr. Voelckers.

Mr. Dye said he had similar thoughts on this topic. If a party asked for a variance on a lot that is too small, they are then creating the hardship, said Mr. Dye. He said he did not feel this portion of the criteria language reflected the will of the Commission.

Mr. LeVine said by applying for the variance they are bringing up the variance debate. Is the threshold language trying to decipher if the applicant has taken unreasonable action or has unreasonable expectations of their property?

Mr. Dye asked if this statement was within the first criterion because otherwise the granting of variances would be too broad in scope.

Mr. Palmer said if this criterion language does not reflect the feelings of the Commission that the language needs to be changed. If the criterion states what the Commission would like to state but that the explanation is not on point, then that needs to be changed, said Mr. Palmer. Mr. Palmer said he thought that they need explanatory language that can be used so that the Commission can evaluate whether or not this is truly an unusual or special situation which warrants a variance.

This draft ordinance language provides an escape hatch for individuals applying for a variance, said Mr. Palmer. The staff report needs to reflect the will of the Commission because it will be used as context for every contentious variance which comes before the Commission, said Mr. Palmer.

Ms. Boyce said the principle incorporated in this criterion is in reference to self-created hardship.

Mr. LeVine asked Ms. Boyce if she could provide an example in which the first criterion would prevent the Commission from granting a variance.

Mr. Hickok asked if this first criterion would serve to eliminate the possibility of individuals building against the code and then asking for a variance after the fact.

In that situation, said Mr. LeVine, they could simply state that retroactive variances are not allowed.

Mr. Palmer suggested that he and the staff do some case analysis with similar cases in courts throughout the United States in which it was decided that there was or was not a self-imposed hardship.

Chairman Haight said he felt that would be most helpful. He said he felt what the Commission was searching for is the demarcation between what is a self-imposed hardship and what is a unique circumstance warranting a variance.

Mr. Voelckers asked Mr. Palmer if he was of the opinion that a variance could at times be used to obtain a higher utilization for a piece of property.

Mr. Palmer said if he had to argue a denial of a variance, that would be a valid argument before the Alaska Supreme Court. If he was a neighbor arguing that a variance should have been denied because it was self-created, it would be very difficult to defend. That is because the entire underlying concept is that the variance tool is really there to prevent an unconstitutional taking of someone's property. If someone is using a variance to get around a height limitation, for example, or a setback limitation, those are circumstances in which a variance is probably not the right tool, said Mr. Palmer. The core problem would be the height or setback requirements of the code, he added.

Mr. Miller said in spite of trying to fix all of the things which are broken within the code, the Commission still needs a tool to be able to accomplish projects. Variances are still a great tool for that, he said. ADOD was an amazing short-term fix, said Mr. Miller. However, he said he wondered if they would actually be able to enact the work they need to do before it lapsed. Mr. Miller said he also had issues with a sentence further down in the staff explanation: "To grant such a variance would reward or excuse the owner's lack of due diligence or poor project planning." Mr. Miller said he did not think asking for a variance was poor planning. He said he felt that it was good planning if it is being requested prior to construction. An example of poor planning is when property owners may either intentionally or unknowingly construct a building that violates the zoning regulations and then later request a variance. Mr. Miller said that is an example of poor planning. Mr. Miller said he just wanted assurance that the mere act of requesting a variance did not automatically place an individual in the situation of a "self-created hardship".

Mr. LeVine said he suspects that the Commission is going to want to retain some variant of this criterion. He said he felt it just needed some rephrasing within the staff report so that the Commission could get behind it.

Mr. Miller said that noncompliant situations can be created which are initially not the fault of the property owner.

3. The grant of the variance will not be detrimental to public, health, safety, or welfare, and will not be injurious to nearby property.

Mr. LeVine said he wondered if on the side of caution if the word “it and the grant of the variance” should be added after the word “and” in Criterion 3. Mr. LeVine said he just wanted it to be very clear that there were two separate items which needed to be met within that criterion.

4. Enforcement of the ordinance would result in an unreasonable hardship.

In answer to a question posed by Mr. Hickok, Mr. Palmer said in general financial hardship is not considered an unreasonable hardship. He said at some point though, as financial hardship escalates, it could be considered as a hardship.

Mr. LeVine said it was not clear to him reading the staff report regarding this criterion that the threshold hardship requirement was being removed, but that it was still required that there be a hardship.

5. The grant of the variance is no more than is necessary to relieve the hardship.

Mr. LeVine said it is more the variance that is of concern here, not the act of granting the variance. He suggested that it read instead: “The variance is no more than is necessary to relieve hardship and maintain neighborhood harmony.” This would be to allow some consideration as to what is going on in the neighborhood, he said.

Mr. Voelckers agreed that some sort of balancing statement makes sense. He said he was not sure if it would be limited just to neighborhood harmony, however.

Mr. Dye said he liked the addition of the concept of neighborhood harmony to this criterion. It would help cap what could become unreasonable requests on the part of the applicant, he noted.

Mr. Steedle said he understood the comments of Mr. LeVine on this criterion but that he did not think it belonged here. He said he felt it made this criterion less clear. Criterion three contains the concept of neighborhood harmony, said Mr. Steedle. He said he felt it would be duplicative to attach that onto number five as well.

Mr. Voelckers suggested the following language for number five: “The grant of the variance is appropriate to relieve the hardship.”

Mr. LeVine suggested: “The variance is narrowly tailored to relieve the hardship.”

Mr. LeVine and Mr. Voelckers both stated they were seeking some limits within the criterion while at the same time providing some flexibility for the Commission in rendering its decisions.

6. The grant of the variance does not result in a density, lot size, or lot coverage less than the minimums for the zone district.

Mr. Voelckers said there may be occasions when the Commission may need to resort to a variance for issues such as lot density or coverage.

Mr. Palmer said he felt that Mr. Voelckers had raised an interesting question that he and the staff could analyze. He said he felt the concept in criterion six is good. He said he felt perhaps the explanation in the staff report accompanying Criterion 6 could be revised. There may be a very small lot in which the setbacks left only about 200 square feet of buildable space, said Mr. Palmer. It would be good for the staff to revisit its analysis of this criterion so something such as that would be addressed, he said.

Mr. Dye asked if there is any way to build into the criteria those extra items which may need to be varied such as for land which was developed prior to the development of modern zoning districts and code.

Mr. Palmer said on the one hand they have a variance tool and on the other hand they have a nonconforming code. In the variance staff report they should outline that there is relief somewhere in the code before this ordinance is enacted.

Mr. Voelckers said basically they are trying to get out of the variance business for design issues. He said he had seen mention of the expansion of the possibilities for conditional use so that it could become an alternate vehicle for items such as a roof which would not work.

Ms. Boyce said her position is that the way the conditional use process is written in the code it already allows for design modification.

Ms. Boyce said they had looked at all the types of variances which have been applied for in the past 30 years. They are trying to build the flexibility into the code to cover those types of situations, she said. It is the larger projects which would be coming before the Commission for modifications anyway, she said, which would be addressed.

De Minimis Variance

Ms. Boyce said they are proposing that the de minimis variance be deleted. Only 16 de minimis applications have been filed, and 12 of those were approved, said Ms. Boyce. The other four were not denied, but the staff is not certain what happened to them, she said. They would like to rename this as an "administrative variance", she said. They would like this to be a variance granted before the fact and not after the fact, she said.

Mr. Miller said he moved to Juneau in 1995 and that he has probably constructed 400 homes in Juneau. One of those 16 de minimis variances which were approved, one was his, said Mr. Miller. When he first started constructing in Juneau, the lots were much larger and it was much easier to meet all of the setback requirements, he said. The last five to seven years, said Mr. Miller, more and more lots are infill, and they are smaller lots. Every foundation he has done in the last three years has had to fit the lots like a glove, he said. The margin for making mistakes is extremely small now, he said.

Mr. Palmer said one of the ideas the staff had regarding this draft ordinance and getting it to the Commission quickly was so that the Commission could consider it and make its decision. However, since they have to do more work on Criterion number 1, and the next meeting is in late January, perhaps the staff should work on some language for an administrative variance, and have a Title 49 Committee meeting prior to the September 23, (2018) meeting, so that at that meeting the staff could hopefully present administrative variance language to the Commission in addition to the regular variance language. They could then consider both options at the same time, he added.

Mr. Palmer asked if the Commission liked that the trigger or scope of the current de minimis variance is such that it is only applicable for setbacks, and it is up to 25 percent of the setback for that specific zone district.

Mr. Voelckers said he has seen de minimis applied to items such as rise, and run of stairs.

Mr. Steedle said that is a different subject. He said that is a determination by the building official. That is what is called a code modification, he added.

This currently does not apply to height, said Mr. Palmer.

Mr. LeVine noted that 25 percent setback is a significant amount. He asked Mr. Miller for his opinion on this.

Mr. Miller said the de minimis variance to which he applied was because a rebar stake had been inaccurately set. Twenty-five percent may be too generous, he added.

There have only been 16 of these de minimis variances granted, said Mr. Miller.

Mr. Palmer said it appeared to him the general consensus of the Commission is that 25 percent is a good starting point from which the staff can work. They will work on a draft for this, he said. It will be limited in scope solely to setbacks, he said. The staff's intent is that the administrative variance would apply to both before and after the fact, he said.

Ms. Boyce noted that the following code changes have occurred that provide additional flexibility regarding these items:

- ✓ Vegetative cover requirement for mixed use zoning districts reduced
- ✓ Accessory apartment code changes regarding design and an increase in apartment size
- ✓ Parking; the parking waiver is now in effect
- ✓ Shared Access; allows four or fewer lots to share access, and frontage on a publicly maintained right-of-way is not required
- ✓ Alternative Development Overlay Districts (ADOD's); the downtown Juneau and in the downtown Douglas overlay districts can provide flexibility regarding lot coverage, vegetative cover, and setbacks until zoning that "fits" the downtown residential areas is proposed

- ✓ Panhandle subdivision requirements; would be in effect

They are currently working on stream buffers, privately maintained access roads, sign standards, and vegetative cover, said Ms. Boyce, as well as other changes in code to provide all the flexibility they have experienced from the variance work, she said.

When the variance language comes back to the Commission, Mr. Dye requested that the upcoming code changes be listed against the percentages of previous variances applied for and that an estimated date of completion be provided. He said this would help with providing information as to when these changes would be coming into effect and it would be balanced against how many times these have occurred in the past with previous variances.

They also have a proposed set back exception to add to the code regarding energy efficiency efforts which should be before the Commission at its January 23, (2018) meeting, said Ms. Boyce. That would amend the section of code that would allow up to six inches to encroach into the setback, she said.

Mr. LeVine said there will be a period of years during which people will not be able to obtain variances according to rules that they know need more flexibility. He said no doubt the very first variance application they get will be for something that people used to be able to obtain a variance for, which can no longer be varied, and for which they know needs more flexibility. Mr. LeVine said this strikes him as unfair. He said he did not know how to address this basic question of fairness.

Mr. Miller said maybe they could do that with a seventh criterion. They could ask if this is on the list of upcoming code changes that need more flexibility, he said.

When the draft ordinance comes back before the Commission, Mr. LeVine asked if the staff could make an attempt to address that foreseeable issue.

VIII. BOARD OF ADJUSTMENT - None

IX. OTHER BUSINESS - None

X. DIRECTOR'S REPORT

Mr. Steedle said the next regular Planning Commission meeting will be January 23, (2018).

Mr. Palmer said the Supreme Court affirmed the Assembly's rejection of the Yankee appeal. The case presents a very unique description of what enforcement powers the director has over land use questions, and the Supreme Court did an incredible favor to the citizens of the state and to local governments in explaining what that scope of enforcement power encompasses, said Mr. Palmer.

XI. REPORT OF REGULAR AND SPECIAL COMMITTEES - None

XII. PLANNING COMMISSION COMMENTS AND QUESTIONS

Mr. Miller asked if the AME2017 0013 rezone request was for D-10 transitioning to LC.

Mr. Palmer suggested that they make a notice of reconsideration, and have a conversation with the staff about this in between, so perhaps that could be reviewed and brought up at the next meeting. That would preserve the opportunity for the Commission to revisit this issue, he said.

Mr. LeVine said he understands that if Mr. Miller makes a motion to reconsider, the Commission would then have until the end of its next meeting to vote on a motion for reconsideration should it be made. If the motion for reconsideration is made and it is approved, the current vote would be stricken and it would be taken back up again, he said.

Mr. Greene asked what a D-10 transitioning to a Light Commercial zone would be.

There currently exist transition zones said Mr. Miller, that are in place for example, when sewer and water arrive to an area that it would automatically transition to the named transition zone, he said.

MOTION: *by Mr. LeVine, to extend the meeting to 11:05 p.m.*

The motion passed with no objection.

Mr. Dye asked how much conversation the commissioners could have before they voted on the motion of reconsideration at the next meeting should it be made.

The commissioners cannot discuss it at all, said Mr. Palmer.

NOTICE: *by Mr. Voelckers, that AME2017 0013 be reconsidered at the next regular meeting.*

Mr. Voelckers said this is a good opportunity to form a special committee to work with the staff on the Auke Bay rezone planning issue. He said he felt a very specific, focused committee working with the staff would be very beneficial to accelerate this process.

Mr. Steedle said he has concerns about the staff workload and that he thinks it would be beneficial to form a working group comprised of staff and Commission members.

Chairman Haight appointed Commissioners Miller, Hickok, Dye and Voelckers to the ad hoc Auke Bay Plan Implementation Committee.

XIII. ADJOURNMENT

The meeting was adjourned at 11:04 p.m.