

Agenda
Planning Commission
Regular Meeting
CITY AND BOROUGH OF JUNEAU
Ben Haight, Chairman
September 26, 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 7:02 p.m.

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

Commissioners absent: Michael LeVine, Percy Frisby, Kirsten Shelton

Staff present: Rob Steedle, CDD Director; Beth McKibben, Planning Manager; Jill Maclean, Senior Planner

Assembly members: Debbie White, Loren Jones

II. APPROVAL OF MINUTES

August 8, 2017 Draft Minutes - Committee of the Whole Meeting

August 8, 2017 Draft Minutes - Regular Planning Commission Meeting

MOTION: *by Mr. Dye, to approve the August 8, 2017, Committee of the Whole and Regular Planning Commission meeting 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 Debbie White reported that the Assembly has only met once since the last Planning Commission meeting. Their last meeting was opened by a musical group called Juneau Alaska Music Matters. They have opened lot four and five of the Renninger subdivision with the idea of putting it out to bid first, followed by over-the-counter

sale if bids were not made on the lots, reported Ms. White. The ordinance was also introduced to sell Lot 2 of Renninger subdivision to the Alaska Housing Development Corporation, she reported. They also received correspondence from a former Planning Commission member regarding a resolution supporting enforcement of the boundary water stream of the Southeast Alaska Northwest British Columbia Transboundary Region. A new master plan is being developed for Rotary Park with a check in the amount of \$9,939 presented by the Juneau Rotary Club. There was a bid award for replacing cast iron water mains and other infrastructure down Sitka Street to the side of Cordova Street in Douglas, said Ms. White.

V. **RECONSIDERATION OF THE FOLLOWING ITEMS** - None

VI. **CONSENT AGENDA** - None

VII. **CONSIDERATION OF ORDINANCES AND RESOLUTIONS** - None

VIII. **UNFINISHED BUSINESS** - None

IX. **REGULAR AGENDA**

Item AME2017 0012 was withdrawn from the agenda.

AME2017 0012: A Rezone Request from D5 to D10 at 8485 Forest Lane

Applicant: Errol Champion

Location: 8485 Forest Lane

X. **BOARD OF ADJUSTMENT**

Chairman Haight adjourned the Planning Commission and convened the Board of Adjustment.

ADP2017 0001: An Alternative Development Permit for a reduced side yard setback to accommodate additional living space at the second- and third-story levels. This property is located within the downtown Juneau Alternative Development Overlay District (ADOD).

Applicant: Pagan Hill & Rob Roys

Location: 315 W. 11th Street

Staff Recommendation

It is recommended that the Board of Adjustment adopt the Director's analysis and findings and deny the requested Alternative Development Permit for a reduction to the side yard setback.

Background

Ms. Maclean told the Commission that this is the first Alternative Development Permit request to come before the Planning Commission under the recently created Alternative Development Overlay District (ADOD).

This is for a reduced side yard setback to accommodate additional living space for the second and third story levels, she said. The property is located at 315 West 11th Street. This property is located near Cope Park, she said. The site is approximately 3,600 square feet and the comprehensive land use designation is for Medium Density Residential (MDR), said Ms. Maclean. It is zoned D-5 single family duplex. It is currently a single family dwelling with an accessory apartment, said Ms. Maclean. This property is surrounded by single and multi-family dwellings, she said. There is also an alley on the southern side of the property, she noted.

Title 49 currently has some exceptions written into it to accommodate certain encroachments into the setback, said Ms. Maclean, such as bay windows, garden windows and chimneys, and other similar structures which do not increase the floor area of the building, she noted. There are also exceptions for substandard lots, she said.

The property owners received a building permit on October 11, 2016, said Ms. Maclean. This was for a new, single-family residence, she noted. The building permit was accompanied by two conditions, said Ms. Maclean:

1. They were to receive a conditional use permit for the accessory apartment and
2. The second and third story structure bump outs were not approved

The property owner and architect were informed of these conditions on September 28, (2016). The note indicates that any design of the bump out had to raise the base of the window above floor height, said Ms. Maclean. The permit was approved for zoning compliance on September 28, (2016). The zoning compliance assured that the proposed location height met zoning requirements and the foundation setback verification form was issued on that day as well, said Ms. Maclean.

On November 10, 2016, the property owners received a Conditional Use Permit for an accessory apartment on an undersized lot, said Ms. Maclean. On November 14, 2016, CDD staff reminded the architect and applicants of the need to submit revised plans for the bump out. On December 12, 2016, the architect emailed a proposal for a plan showing a revised bump out which had an exterior face that extended the full height of the second and third stories. This significantly differed from the guidance previously provided regarding bay windows. The architect explained that significant construction had already occurred on the unpermitted bump out and revising the exterior face would require costly structural revisions, said Ms. Maclean.

On December 14, 2016, CDD agreed to the proposed revision of the plans if there was a condition on the building permit that the bay windows are never able to provide usable space, and also if someone were motivated to use that space in the future, then they would be in violation of the approved building permit, said Ms. Maclean. The agreed-upon plan removed the cabinets for the wet bar and studio desk from the bump out area. Furthermore, it was decided that an agreement would be signed stating that if the desk or wet bar were removed and the bump was accessible, a window seat would be added to ensure the space in the bump out did not become usable floor space, she said.

Subsequently, an additional modification to the agreed-upon plan was requested. For various reasons, the nature of this request was not clear to CDD until February. The proposed modification would allow a refrigerated piece of equipment to use the floor space in the bump out which previously was agreed to not be usable floor space, she said. The storage of the kegerator would increase this space and eliminate the void. This negates the previously agreed-to modifications, which allow the bump out to remain in the setback, said Ms. Maclean.

The owners were informed that information would be made available to them should they wish to seek a variance, and that CDD would keep them apprised of the progress of the new alternative development permit, which at the time had not been drafted or adopted.

The application does not meet the requirements for a de minimis variance, said Ms. Maclean. The de minimis variance states that the infraction was not the result of a deliberate effort to evade the dimensional requirement, said Ms. Maclean.

Commission Comments and Questions

Mr. Hickok asked how the CDD discovered that the bump out was inappropriately constructed.

Ms. McKibben said her understanding is that the plans were submitted prior to construction. There were notes very clearly notated by the reviewer that the bump out needed to be revised because it encroached into the setback, she said. Through one of the inspections it was discovered that it had been constructed without being revised, she added.

Mr. Greene asked if there was a window seat under the space that it would not count as usable space, but if a kegerator was installed then it would count as usable space?

Typically, even the window seat would not be allowed, said Ms. Maclean. It would typically be considered usable space, she said. However, since it had already been constructed without the appropriate permit, they tried to work with the applicant and filling in the space with a window seat would be filling in that void, she said.

Ms. McKibben said it is her understanding that a kegerator has not been installed in the space. If the ADOD were to be approved, then the applicant could seek to amend the plans to install the kegerator, she said.

Alternative Development Overlay District (ADOD)

Under the ADOD, the Board of Adjustment has the authority to reduce the side yard setbacks by averaging the corresponding side yard setbacks of residential buildings within a 150 foot radius as determined by the Director, said Ms. Maclean. In this instance, the applicant is seeking a reduction of the side yard setback of five feet to 4.475 feet, explained Ms. Maclean. Based on the average of residences within a 150-foot radius, a side yard setback of 3.8 feet may be granted through the Alternative Development Permit, she said.

The stated purpose of the ADOD is to:

Provide adequate minimum standards and procedures for the construction of new residential buildings and the expansion, restoration, or repair of existing residential buildings, while providing time to implement new zoning regulations. This article is intended to provide for the development of housing, preserve the character of the neighborhood and promote the restoration of blighted buildings.

Per the Commission's deliberations, the knowledge gained through ADOD applications is intended to guide new zoning standards for the downtown neighborhoods. The subject parcel is located within this historic neighborhood, which has been surveyed and documented in the report of the *Casey-Shattuck Neighborhood Historic Building Survey* completed in 2004. Casey-Shattuck subdivision was platted in 1913. The subdivision targeted working-class miners and fishermen of the region, and the dwellings are predominantly one and two stories in height, said Ms. Maclean.

Currently, residential development has a height of 35 feet, noted Ms. Maclean. ADOD permits will guide revisions in the downtown area for the remaining months that it is in effect, said Ms. Maclean.

The ADOD was developed and adopted with the intent to provide the Board of Adjustment flexibility when reviewing residential development in downtown Juneau and Douglas until new zoning regulations are adopted. Ms. Maclean said there had been concern expressed from the public during public testimony that the overlay would allow property owners to construct "McMansions" that would be out of character to the Casey-Shattuck flats neighborhood, that would be higher than existing structures, and would change the existing flavor of the neighborhood, said Ms. Maclean.

The CBJ Assessor had no opinion regarding whether the construction has an impact on the neighborhood at this time, said Ms. Maclean. The CBJ Building Department had no issues with this project, and they did receive one phone call from an abutter who is opposed to this project, said Ms. Maclean. In addition, four comments were received from the public, three of which live within 500 feet of the dwelling, all in favor of the development, said Ms. Maclean.

This application is for a residential development that has been constructed without the necessary approvals, said Ms. Maclean. Should the alternative development application be accepted for after-the-fact construction and per the discussion that spurred the adoption of the overlay districts the permit applications are intended to guide and direct new zoning for downtown neighborhoods while maintaining the existing character, she said.

Existing residential zoned buildings have a maximum height of 35 feet, said Ms. Maclean. Does the height represent the built environment of the flats neighborhood in this instance, she asked. There are different neighborhoods within the overlay district itself, said Ms. Maclean. While one height may be appropriate for the flats, it may not be appropriate for other neighborhoods, she said. For example, she said, Gastineau Avenue has three-story buildings, where other neighborhood areas do not. The character in this area is composed of one and two story single-family residences, said Ms. Maclean.

Was it the intent of the Commission when it approved the ADOD to “max out” the existing D-5 zoning while at the same time benefiting from the overlay district, said Ms. Maclean.

The Board of Adjustment is to consider:

1. Whether the proposed development is appropriate according to the alternative development overlay district;
2. Whether the application is complete; and,
3. Whether the development as proposed will comply with the other requirements of this title.

Of the six findings for this ADOD permit request, the staff could not support number five; *“Will the proposed development substantially decrease the value of or be out of harmony with property in the neighboring area?”* The staff found the development is not in harmony with the neighboring properties.

The staff also could not find compliance with number six; *“Will the proposed development be in general conformity with the land use plan, thoroughfare plan, or other officially adopted plans?”* The staff found that the development is in general conformity with Title 49, but the requested encroachment does not conform to the 2013 Comprehensive Plan.

The staff could find compliance with findings one through four.

Commission Comments and Questions

With the recent ADOD adoption, the Commission focused on setbacks, lot coverage and vegetative cover, said Mr. Dye. He said they did not deal with height at all. He said he was curious why the height of the structure was continuously mentioned.

Ms. Maclean answered this is because the purpose of the ADOD is to preserve the character. The overlay covers all of downtown Juneau where the heights vary from neighborhood to neighborhood, she said. What may apply on the flats may not be applicable to Gastineau Avenue for example, she said. The Commission wanted flexibility when addressing these permits, and the key was that they wanted to preserve the qualities of each neighborhood, said Ms. Maclean. In this case the maximum story of the surrounding residences are one or two stories in height, she answered. The applicants would be getting the maximum benefit from the D-5 zoning while benefitting from the ADOD as well, said Ms. Maclean.

Mr. Dye said the Commission did not put anything in code that stipulates that only one or the other could be used. He said the ADOD rests on top of the underlying zoning. He said he assumed that character was being based upon criteria other than those defined by the ADOD, which is lot coverage, setbacks and vegetative cover.

Ms. Maclean said the ADOD states that its intent is to preserve and maintain the existing historic character. It was not more specific than that to give the Commission maximum flexibility, she added.

Chairman Haight said this home was constructed based upon a permit issued last fall prior to the ADOD adoption. At that time the permit was within the zoning allowances, other than the bump out, he said. Chairman Haight said it appears they are talking specifically about the bump outs.

Applicant

Home owner Rob Roys told the Commission that it is confusing to them that the CDD staff finds the home not in character with the neighborhood since the overlay report states it is to suit a "variety in house styles and size." Everything about this new home was designed to fit right there on that block, next to those mountains and among those neighbors, said Mr. Roys. They spent two years in the design phase, and a big factor was not to block the views or light of the immediate neighbors, he said. It was because of those choices that they ended up going up in height, he said. To be told that their home design would bring down property values and destroy the character of the neighborhood is very distressing to them, he said.

The report shows a poor understanding of the project and timeline, and includes numerous items that simply do not make sense, said Mr. Roys. The plans were reviewed twice before construction commenced and only after irreversible building had been done were they told

there would be an issue, said Mr. Roys. The only reason they applied for this ADOD permit is because they had been threatened with withheld occupancy, he said. They will be happy if this permit is approved so they can move on with their project, he said. However, said Mr. Roys, they should not even need a variance, because it is completely allowed under CBJ code.

The report stated that they had made a deliberate effort to evade dimensional requirements, said Mr. Roys. This is completely untrue, he said. They put a bay window on their house based upon their understanding of CBJ code, and with confirmation from two, separate city planners, he said. Bay windows are allowed to project into the over-air setbacks, said Mr. Roys. Their bay window projects less than the allowable projection, he said. They planned for built-ins based upon their understanding, which was later reinforced by a CDD planner, that a bay window may not have usable floor space or standing space, said Mr. Roys. If a window seat can be installed, which is a typical use for a bay window, then there is no reason why built-in cabinetry would not be allowed as well, he said. They both prevent usable floor space while at the same time making themselves useful, he said. If they had any idea that their structure would have been out of compliance, then they would have constructed it differently, said Mr. Roys. All of the sleepless nights and all of the stress over this house construction have been due to working with the CDD planners which should not have been an issue, he said.

Commission Comments and Questions

Mr. Voelckers confirmed with Mr. Roys that his point was that the original plans were approved and that it was only subsequently that the bay window became a concern.

Architect for the project Travis Miller said that he and his wife were hired over two years ago for this project. To build compactly on this small lot including an apartment required them to go up vertically, said Mr. Miller. This zoning ordinance allowed them to go under 35 feet in height, he said. They presented their plans to the City on August 28, (2016) for the first time, he said. They requested to build closer to the alley way, he said. The planner at the time said this would not be possible, and that it had to be constructed within the setback, said Mr. Miller. He pointed out the bay window in the design as an architectural feature and according to code a bay window can project up to four inches a foot into the setback, he said. They said that would not be a problem.

When they met with the department again to obtain an early start building permit they again raised the issue of the bay window as an architectural feature, said Mr. Miller. He said they misread the code, but that no one had told them that they were incorrect. In these two meetings with CDD staff, they were never told anything about the height of the building, or that it was out of character with the neighborhood, said Mr. Miller. There are no design standards in place, said Mr. Miller. How can they design for something for which there are no standards, he queried. The first time they heard anything about the character of the neighborhood was on Friday, September 22, 2017, he said. None of these points were raised with them prior to this, he said. It is like the City moves the goal post on them every time, he said.

They got an early start permit and began pouring concrete in September, (2016) he said. They were notified by a planner on September 28, (2016) that the bay window did not meet their interpretation of the standards, said Mr. Miller. Mr. Miller said he moved ahead thinking that he could solve the problem. He finally submitted the proposal on December 14, basically after the house was already framed up and all of the structure was in place, he said.

The ADOD came along in early spring, and the planner they were working with thought it was a reasonable approach, said Mr. Miller. At the ADOD meeting they discussed the bay window, said Mr. Miller, and what was originally a 15-inch intrusion into the setback, became a 7.5 inch intrusion, he said.

The kegerator is inside a cabinet, said Mr. Miller. He added he is a little perplexed as to why they are focusing on the bay window, when the reason for not approving their permit was because of the character of the neighborhood, said Mr. Miller. This is something they had never even heard about until this past Friday, he said. Mr. Miller pointed to pictures of homes in the neighborhood that are as tall as the home they are constructing.

They question the findings of the CDD, said Mr. Miller. This has been a frustrating experience for their client and it has been difficult for them to pin down, he said. The communication problems were compounded because all communication was via email with various planners at different times, said Mrs. Miller. Face to face meetings would have been a lot more productive, she said. People wanted a variety of housing styles and sizes, said Mr. Miller, quoting a letter from a CDD staff member in May.

They also disagree with the CDD staff's negative findings for five and six, said Mr. Miller. It says the house is not in conformance with the 2013 Comprehensive Plan, he said. They believe it is in conformance, he said. It is a small footprint and they maximized green space, he said. They make sure that all the parking fit on the property so that it would not have a negative impact on the neighborhood, he said.

They never should have reached this point, said Mr. Miller. To modify the bay window 7.2 inches would result in thousands of dollars' expense to the owners, he said. There was never any attempt to deliberately evade the dimensional standards, said Mr. Miller. They believe this home is consistent with the ADOD plan, said Mr. Miller.

Commission Comments and Questions

Commissioner Miller asked Mr. Miller about the thickness of the wall of the structure.

Mr. Miller said it is about nine inches thick.

Commissioner Miller asked for clarification on the encroachment request.

They are asking for an encroachment of 7.2 inches, said Mr. Miller. Mr. Miller confirmed that the 7.2-inch measurement is from the exterior face of the siding.

Public Comment

Neighborhood resident Caleb Stewart said he is happy his neighbor is building his home and following his dream. The structure is in place, and he said he did not see where a six-inch extension over a story off the ground would cause any problems.

Ms. Maclean said she has never referred to this structure as an “eyesore”. She said she thinks it is a cool looking house. She said she has referred to housing as a mix, but that she was referring to the entire downtown Juneau area, with a mix between the different neighborhoods. This was to allow for the mix downtown within each neighborhood to which she was referring, she said. Ms. Maclean said the applicant was correct that before them this evening is not the staff report. This is the presentation which is given to the Commission, she said, not the staff report. The information in this presentation came either from the staff report or from the application, noted Ms. Maclean. The applicant applied in the fall of 2016, and the ADOD was not even a possibility until spring of this year, noted Ms. Maclean.

The Commission had a variance application before it for a dwelling on 12th Street which was difficult to deny, because the dwelling did meet the character of the neighborhood, said Ms. Maclean. It was the denial of that application which spurred the creation of the overlay district, said Ms. Maclean. The applicant did not have the opportunity for an ADOD permit during its application because the ADOD did not exist at that time, said Ms. Maclean.

Commission Comments and Questions

Mr. Hickok asked if there were any negative comments about this item.

None that were submitted for the record, said Ms. Maclean.

MOTION: *by Mr. Voelckers, to move ADP2017 0001 with several alternate findings. That “yes” is changed to a “no” on Finding Five and that “no” is changed to a “yes” on Finding Six.*

(Finding Five: Will the proposed development substantially decrease the value of or be out of harmony with property in the neighboring area?)

In support of his motion, Mr. Voelckers said that he did not think the proposed bay window issue that is being discussed would substantially decrease the value or be out of harmony with the neighborhood.

(Finding Six: Will the proposed development be in general conformity with the land use plan, thoroughfare plan, or other officially adopted plans?)

Mr. Voelckers said he believed the answer to finding six is “yes”.

Mr. Voelckers said he is troubled and a little depressed that this issue has gotten to this point which really should or could have been resolved months ago. Mr. Voelckers said when the Commission developed the ADOD that it was to create flexibility and simplicity for working with these existing neighborhoods. The focus was on lot and vegetative cover as well as setbacks, he said. It is a little problematic that the height of the structure was inserted late in the process when it was actually a non sequitur, said Mr. Voelckers. He added he felt it was very difficult to legislate what is good design or “in character”. The community has specific zoning laws, and if you follow them, you follow them, he added.

Speaking in favor of the motion, Mr. Dye said he agreed with the comments of Mr. Voelckers. The purpose statement when it talks about the neighborhood character, said Mr. Dye, in his opinion, referred specifically to items that the ADOD addresses. That is the character that is trying to be preserved, he added.

Roll Call Vote:

Yeas: Miller, Dye, Greene, Hickok, Voelckers, Haight

Nays:

The motion passed by unanimous vote.

Chairman Haight adjourned the Board of Adjustment and reconvened the Planning Commission.

XI. OTHER BUSINESS

Chairman Haight said there is an APA Conference coming up in November. He would like three Commission members to attend this year’s conference. Commission members who would like to attend that conference are to notify either Mr. Steedle or Chairman Haight.

Mr. Steedle said at the conference this year that Ms. Boyce and Ms. Maclean will be presenting on ADOD’s, and that three CDD staff will be attending the conference as well.

Mr. Miller and Mr. Hickok said that they would attend the conference.

XII. DIRECTOR’S REPORT

Mr. Steedle said the Rules Committee meets on Friday, September 29, at noon in the large conference room on the fourth floor of the Marine View building. Commissioners Dye, Greene and Voelckers are on this committee, said Mr. Steedle, adding that all commissioners are

welcome to attend.

On October 24, (2017) there will be a Committee of the Whole meeting of the Commission. This will be the CIP discussion headed by Ms. McKibben, said Mr. Steedle. Mr. Steedle proposed that on November 28, 2017, they have a Committee of the Whole meeting of the Commission to review the work plan for the coming year.

XIII. REPORT OF REGULAR AND SPECIAL COMMITTEES

Title 49 met about a week ago and delved into nonconforming uses. There may be one more meeting, prior to bringing it before the Committee of the Whole.

XIV. PLANNING COMMISSION COMMENTS AND QUESTIONS

Mr. Voelckers verified that the staff is actually expecting results on the CIP from the Commission on the October 24, 2017 meeting.

Mr. Steedle said this is correct. He said the Commission will be receiving more CIP information from the staff this week.

Mr. Voelckers said his office had received a call on a Comprehensive Plan amendment for the Diocese property. He asked if Mr. Steedle had further information on this topic.

Mr. Steedle said there is no process for updating the land use maps in the Comprehensive Plan. This results in procedural confusion, he noted. He said there had been a motion by the Planning Commission to request change to the land use designation for the City block upon which the Diocese sits. Mr. Steedle said he saw this request going directly to the Assembly for action, and that Mr. Palmer felt that the rezone request could accompany the land use designation change when they went to the Assembly for action.

Ms. Boyce and Ms. McKibben felt there could be more room for public participation on this item, said Mr. Steedle. Residents in this area feel that the block is rightfully designated Medium Density Residential and that there is no need for a land use change, said Mr. Steedle.

Reviewing the minutes from the meeting at which this was discussed, it seemed clear that the Commission expected this to go directly to the Assembly, said Ms. McKibben. However, she said, it does specify in numerous locations within the Comprehensive Plan the importance of reaching out to the neighborhood, she said. If it does come back to the Commission with a staff report and analysis then it would be noticed to the public, said Ms. McKibben. If it goes straight to the Assembly, the only notice that takes place is the regular notice, she said. There would be

no outreach to nearby property owners, she said.

Mr. Miller said it seemed to him that there is a lot more value to the zone change than there is the map amendment. The zone has already been changed, he said. The map amendment is more like a house-keeping item, said Mr. Miller. If it happens independent of a zone change then it should be given the same public process as a zone change, said Mr. Miller.

Mr. Steedle said the concern of Ms. McKibben is if they modify the maps of the Comprehensive Plan every time they do a rezone then the Comprehensive Plan takes on no value.

On the St. Anne's property it was designated as publicly owned land and the property never was publicly owned land, said Ms. McKibben.

Mr. Dye said he felt the public process was well documented and that the public felt the Comprehensive Land Use Maps should change as well. He added that he is sure there are times when the staff does not necessarily agree with some of the rulings that the Planning Commission makes and how it arrives at its decisions. He said it was evident that the intent of the Commission was that this went directly to the Assembly without coming back to the Commission. He said he did not feel it was the position of the staff to disagree with the rulings of the Planning Commission which is composed of appointed officials.

Mr. Steedle said the staff is really looking for direction from the Commission. If the Commission feels that the case for modifying the Comprehensive Plan land use maps would be better presented directly to the Assembly, then that would be the simplest course of action.

XV. ADJOURNMENT

The meeting was adjourned at 8:29 p.m.