

Agenda
Planning Commission
CITY AND BOROUGH OF JUNEAU
Ben Haight, Chairman
May 9, 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, Kirsten Shelton-Walker, Carl Greene

Commissioners absent: Michael LeVine, Percy Frisby,

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

Assembly members: Debbie White

Altering Order of Business: Mr. Miller stated that the first piece of business was an item which he would be stepping down for. Therefore, he requested that the second item on the agenda for the Commission be dealt with first so that he could then excuse himself from the meeting when the item which he could not participate in arose on the agenda.

The Chairman and other Commission members voiced no objection.

II. APPROVAL OF MINUTES - None

III. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS - None

IV. PLANNING COMMISSION LIAISON REPORT

Assembly Liaison to the Planning Commission Debbie White said the Assembly has been focusing its work on the Finance Committee. They have a lot of difficult decisions yet to make, said Ms. White. They did decide not to close the downtown municipal museum or the downtown pool. They have yet to decide on whether to eliminate the Deputy City Manager

position, and whether or not to fill a vacant position in the Community Development Department, she noted.

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** – None

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

X. **BOARD OF ADJUSTMENT**

A. **VAR2017 0004:** A Variance to reduce the street side yard setback to the undeveloped right-of-way of Stark Street to allow for the construction of a new building at 5275 (also known as 5295) Glacier Highway

Applicant: Northwind Architects

Location: 5275 Glacier Highway

Staff Recommendation

Staff recommends that the Board of Adjustment adopt the Director's analysis and findings and DENY the requested Variance, VAR2017 0004.

If the Board elects to amend the findings and approve the requested variance, the Variance Permit would allow the 10 feet street side yard setback bordering the undeveloped Stark Street right-of-way to be reduced from 10 feet to zero feet in an Industrial zoning district.

The site is approximately 1.8 acres, and it is designated in the Comprehensive Plan as heavy industrial zoning. It is zoned appropriately as an Industrial district, said Ms. Maclean. The applicant plans on retaining the large building on the property and demolishing the two smaller buildings, she said.

The property owner was granted a variance in 2015 for a reduced 10 feet to nine feet street side yard setback. However, it expired last year without any action by the property owner, noted Ms. Maclean. The applicant wants to repair mining equipment, and meeting the current setbacks would prevent them from doing the repair work effectively, said Ms. Maclean.

The property owner is seeking this variance because they have received a new contract to do repairs on mining equipment that historically has been performed down south, said Ms. Maclean. The large mining equipment for this contract requires more maneuvering than the setbacks in place would allow them to do, said Ms. Maclean.

Other utilizations of the property without the variance would require the trucks to back out onto Glacier Highway, noted Ms. Maclean. The Department of Transportation (DOT) has stated that it is opposed to any development which would require the trucks to back out onto Glacier Highway, she said.

They do need to construct a larger building with more bays to accommodate the additional work they have received with this new contract, said Ms. Maclean.

The recent Olmo decision has provided more defined guidelines for variance review, said Ms. Maclean. Per the Olmo decision, the applicant must first show hardship and practical difficulties resulting from an extraordinary situation or unique physical feature affecting only a specific parcel of property prior to determining that a proposal meets the six criteria for granting the variance, stated Ms. Maclean.

Ms. Maclean stated that the applicant at this time has not demonstrated any hardship or practical difficulty resulting from an extraordinary situation or unique physical feature affecting only their property. The parcel is appropriately zoned as an industrial use and is much larger than the minimum lot size, she said. There is nothing extraordinary about the applicant's desire to construct a new building and there is nothing unique about the property, said Ms. Maclean.

Therefore, the applicant has not satisfied that threshold determination, said Ms. Maclean. However, the six criteria which need to be met in order to grant the variance in addition to the threshold determination have been met, said Ms. Maclean. She added that several businesses in the area have built right up to the property line on Stark Street. The granting of the variance would be more consistent with the relief that other businesses in the area have enjoyed recently, said Ms. Maclean. The granting of the variance would have no impact on public safety and welfare, she said. There is no evidence that the authorization of the variance would injure a nearby property, said Ms. MacLean. She added that granting of the variance does not authorize uses not allowed in the district and that compliance with the existing standards would not unreasonably prevent the owner from using the property in a manner which is consistent as to scale, amenities, appearance or features, with existing development in the neighborhood. Granting of the variance would result in more benefits than detriments to the neighborhood, said Ms. Maclean.

The CBJ Building Division and Capital Fire and Rescue have no issues with the proposal, said Ms. Maclean. The CBJ Engineering Department has no problem with the applicant's property being constructed right up to the property line, noted Ms. Maclean.

Commission Comments and Questions

Mr. Miller said he has tried to identify where in Title 49.2250 (b) it states, “Variances other than de minimus where hardship and practical difficulties result from an extraordinary situation or unique physical feature affecting only a specific parcel of property or structures lawfully existing on their own and render it difficult to carry out the provisions of this Title, the Board of Adjustment may grant a variance in harmony with the general purpose and intent of this Title. A variance may vary any requirement or regulation of this Title concerning dimensional and other design standards but not those concerning the use of land or structures housing density lot coverage or those establishing construction standards. A variance may be granted after the prescribed hearing and after the Board of Adjustment has determined...”. Then the six criteria are listed, said Mr. Miller.

It does not say that the Board of Adjustment must first find that it is an extraordinary situation or that there are hardship and practical difficulties as a prelude to the six criteria, said Mr. Miller. He said it is his understanding that when a code changes it goes to the Title 49 Committee, then it comes before the Planning Commission with public testimony. The Planning Commission then rules on whether or not to recommend the proposed change. That then goes to the Assembly where it becomes adopted if approved by the Assembly, noted Mr. Miller.

Mr. Miller said it is his understanding that 30 days later is when the proposal is codified.

Mr. Palmer explained that any existing ambiguity about the portion of the Title 49 code referred to by Mr. Miller was litigated in the Olmo decision in which the Assembly specifically identified that the first sentence of the threshold criteria has to be met before the subsequent six criteria can be granted for a variance.

Mr. Miller said this has not been made public and that when variances are applied for, that the initial threshold is not identified as a criterion that applicants have to meet. He asked how it is possible that the Commission is applying a standard to which applicants are not made aware.

Mr. Palmer said the Assembly’s decision was published, and the staff has relied upon that decision in this staff report which was provided to the applicant so there is no question of due process. The applicant has known about the threshold criteria, said Mr. Palmer. That language has been in the code, said Mr. Palmer. It may not have been crystal clear in the past but it is certainly clear today, he said.

Ms. McKibben said she met with the applicant prior to the submission of their application and that she made it clear to the applicant what the threshold was which must be met.

Mr. Miller said it was not crystal clear to him that this is a threshold determination. He asked how long ago this was appealed. He said it was not clear to him that the initial threshold had to be met before the subsequent six criteria could be evaluated.

Mr. Palmer said this threshold has been determined recently by the Assembly, which in this case is the binding court. The CDD (Community Development Department) must follow this precedent as established by the Assembly, said Mr. Palmer. If a variance could be granted for this project, said Mr. Palmer, then when would industrial setbacks be warranted.

Mr. Voelckers said it appears that the Stark Street right-of-way is not slated to become a true CBJ Street. He asked if Ms. Maclean was aware of any changes going on in that area. They have suggested to the applicant the possibility of a street vacation, said Ms. Maclean. They would need to retain easements for the utilities, she said. The vacated land could not be constructed upon she said, but that would allow the applicant the extra bit of land it needed to meet the setback, she said.

Mr. Voelckers asked if utilities continued to Glacier Highway at that point.

Ms. Maclean said she was not sure exactly where they were located in the vicinity of that right-of-way.

Mr. Dye asked Mr. Palmer what defines an “extraordinary situation”.

Mr. Palmer responded that the Board of Adjustment has some discretion in the definition of that term.

Mr. Greene asked if the property owner lost one of the two curb accesses to the road if that would create a problem.

Ms. Maclean said that would be a question for the applicant.

Applicant James Bibb, of Northwind Architects

Mr. Bibb said the City has been great to work with on this project and that they have been very upfront about challenges they may face for this variance. He said they do feel that the overarching requirement has been met. He said he felt it was very important to note that they have met all of the six criteria.

The opportunity creating the need for this variance has arisen quite suddenly, said Mr. Bibb.

Mr. Bibb said the Olmo ruling caught him off guard as well. He said personally he felt that the initial threshold which must be met was given too much weight in comparison to the six criteria which must be met. The definition of hardship, practical difficulties and extraordinary circumstances is subjective, said Mr. Bibb. Hardship impacts the ability of a business owner to construct on a lot, said Mr. Bibb. There are very few lots in the community which can support

this type of operation, said Mr. Bibb, which addresses practical difficulties. Tyler Rentals relies on street exposure for their marketing, he said.

The depth of the site is the issue, said Mr. Bibb. The site cannot be used exclusively as a driveway, said Mr. Bibb. He said it has to be used for the staging of equipment as well. If they don't have room to turn around on site then the remaining option is to back out onto the highway, said Mr. Bibb. There is not much land available in the community to accommodate a business such as Tyler, said Mr. Bibb.

Manager Steve Kikendall told the Commission in 20 years the business has grown to a staff of over 30 employees. They are the source of income for over 25 families, he said. Their goal is to continue with their growth. They have a scholarship which has been granted to high school students who can come back to good jobs in their community, he said. State spending on projects has been almost cut in half, said Mr. Kikendall. As a result, they have been expanding into other areas, he said. They have received a bid from the mining industry and to perform they need buildings, facilities and employees, said Mr. Kikendall.

They want to bring the mining equipment staging and repair business to Juneau instead of it being sent out of state, he said. They had looked all over town for property, but it would be extremely difficult to run their business out of two or three different locations, he said. They have tried to purchase neighboring property for their expansion but have been turned down, said Mr. Kikendall.

They would have to cut off some of their growth plans to meet the current restrictions, said Mr. Kikendall. This would not be good for the community and it would create less jobs, he said. They don't want to have to be forced to back these very large trucks onto the street, said Mr. Kikendall.

The hardship for this project would be the staff layoffs they would have to implement if they could not have more space, he said. This is critical to their business, he said. They are basically asking to have the building slid back 10 feet, he said. There would be no ill effects on anybody around the area, he said.

Commission Comments and Questions

Mr. Voelckers inquired about the difficulties of fitting the trucks through the passage on the property.

Mr. Kikendall said the trucks need about 94 feet to swing turning around on the property. In answer to a question from Mr. Voelckers, Mr. Kikendall confirmed that the City right-of-way is not a strong enough foundation for their heavy vehicles.

Mr. Miller asked if there has been any discussion about the City vacating the right-of-way so they could move their building ten feet back. They had originally considered it but it has not been discussed, said Mr. Kikendall.

Mr. Dye asked if they have identified what the dollar value of the contract would mean for the community.

They are discussing even more work with the mines, said Mr. Kikendall, but they do not know if they will get that work or not. They anticipate two additional employees in addition to the ones already hired, he said.

Mr. Dye asked how many total employees the new building would allow the business to hire.

They are actively pursuing seven additional positions right now, said Mr. Kikendall.

Mr. Greene asked how it would affect the business if it lost one of the two curbside accesses to the property.

It would be very challenging, said Mr. Kikendall. He said they are fairly optimistic they can reach a settlement about the access, he said.

Mr. Miller asked if it has been verified that the right-of-way could not hold up to heavy truck traffic.

Mr. Bibb said it has not been tested but that the right-of-way utilities are fairly shallow. It would also turn the entire site into a driveway, leaving no room for the heavy equipment, he added. The logistics call for enough room for staging the equipment before and after its maintenance, he said.

MOTION: *by Ms. Shelton-Walker, to reject staff's recommendation and approve VAR2017 0004.*

In support of her motion, Ms. Shelton-Walker said if this variance were to be rejected, that the City would be cutting off its nose to spite its face. The community needs high paying jobs, and this project would keep jobs in Juneau which would otherwise go outside of the community, she said. Ms. Shelton-Walker said she did feel the fact that Juneau is extremely short on industrial land would qualify this as a unique physical feature of this property, and that the applicant was in an extraordinary situation because of this. She said she felt this was unfairly burdensome to the applicant because they did not have anywhere else to go for their business. She said she did not feel the rear setback would be necessary since other properties were already at that property line as well. It would not be fair to give preference to some neighbors

and not the others, she said. With DOT rejecting almost any other plan, she said, the applicant's hands are tied and they are forced into this option.

Speaking in favor of the motion, Mr. Voelckers said he agreed with the points already made and he added that he felt there were unique circumstances in terms of the size of the equipment and the critical adjacencies needed to make this an efficient operation. He said he also felt it was the unique circumstance and that the applicant had a limited time in which to act to secure this opportunity. If they had unlimited time, said Mr. Voelckers, there may be other alternatives, but that is not the case, he said. He said the City has made extraordinary steps in the past to facilitate businesses such as actions it has made to facilitate the development of the Alaskan Brewing Company, where an entire street was closed.

Mr. Miller also spoke in favor of the motion, and said he agreed with the previous remarks. He added that in an industrial area that setbacks on the side are zero, and the front and back setbacks are 10 feet. He said in this case, where the property backs up to a completely unused right-of-way, that a zero setback made sense.

Roll Call Vote:

The motion passed by unanimous vote.

A. VAR2017 0001 and VAR2017 0002

Chairman Haight said they have a memo from the City Attorney that at the last regular Planning Commission meeting the applicant for the above variances had not been given the opportunity to present a closing argument. For this reason, said Chairman Haight, they have the opportunity to reconsider these variance requests.

To do this, said Chairman Haight, there must be a motion and it must pass by six votes.

MOTION: *by Mr. Voelckers, to reopen the matter of VAR2017 0001 and VAR2017 0002 for reconsideration.*

In answer to a question by Mr. Dye, Chairman Haight said if this item is reopened they could hear the applicant's closing arguments. Upon questioning of the applicant, they could then vote again on the issue, he said.

Mr. Palmer clarified that the Commission has broad discretion on what it will consider. If it was a "super majority" then it could be reopened for public testimony, he said. A super majority would mean all of the six voting Commission members, said Mr. Palmer.

Roll Call Vote:

Yeas: Voelckers, Dye, Greene, Shelton-Walker, Haight

Nays: Hickok

The motion failed.

XI. OTHER BUSINESS - None

XII. DIRECTOR'S REPORT

Ms. McKibben reported that the ad hoc committee finished its work on Monday. They are anticipating a draft ordinance for the May 23, (2017) meeting.

XIII. REPORT OF REGULAR AND SPECIAL COMMITTEES

Lemon Creek Steering Committee

Mr. Voelckers reported that the Lemon Creek committee is moving swiftly and that Ms. Maclean was keeping the committee focused. They hope to have their work wrapped up by the end of this month and back to the Commission for its review in July, he said.

Title 49 Committee

The Title 49 Committee met two weeks ago, said Mr. Voelckers. They have been discussing urban livestock, and it is proving to be a surprisingly tricky issue, said Mr. Voelckers. There has been a lot of public input on this issue, he said.

Ad Hoc Committee

Mr. Dye reported that they have made great strides in their work and that he felt the ordinance would be before the Commission on May 23, (2017). They have developed two alternate development districts, he said. One is for the downtown area and one is for the Douglas town area, he said. It would use similar criteria for the conditional use process in order to augment the zoning maps utilizing similar footprints of properties, to give property owners relief to either build or rebuild and match the surrounding area, he said.

Wetlands Review Board

Ms. McKibben reported that the Wetlands Review Board met and reviewed an early draft of a revision to streamside buffers. This is part of a revision to the variance package to provide more flexibility in the code before the variance criteria are revised, she said.

XIV. PLANNING COMMISSION COMMENTS AND QUESTIONS - None

XV. ADJOURNMENT

The meeting was adjourned at 8:17 p.m.