

Agenda
Planning Commission
Regular Meeting
CITY AND BOROUGH OF JUNEAU
Ben Haight, Chairman
April 25, 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 7:01 p.m.

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

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

Assembly members: Debbie White, Loren Jones

II. APPROVAL OF MINUTES

March 28, 2017 Regular Planning Commission Meeting

MOTION: *by Mr. LeVine, to approve the minutes of the March 28, 2017 regular Planning Commission meeting with any minor alterations by staff or Commission member.*

The motion passed by unanimous consent.

III. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS

Juneau resident Chris Carte said that she was before the Commission a year ago because they were trying to do a simple subdivision of their half acre lot located on Long Run Drive. At that time the request was denied and they were told this was due to recent changes. She said they have been waiting for a year and there still has been no action on their issue.

Ms. McKibben said she did not think they have yet spent time with Ms. Carte reviewing the shared access ordinance which was recently adopted and how it may affect their proposal. The Title 49 Committee reviewed possible changes to the Panhandle ordinance which she felt

would address some of the concerns of Ms. Carte. Ms. McKibben said she felt it would be a good idea to meet with Ms. Carte and discuss the Shared Access Ordinance which has been adopted.

Ms. McKibben said she would email Ms. Carte and that they would meet early next week.

IV. PLANNING COMMISSION LIAISON REPORT

Ms. White, Assembly Liaison to the Planning Commission, reported that the Assembly has been working hard on the budget.

Mr. Voelckers asked if there was a broad summary which they could be provided regarding the access provisions on two to four lots.

Ms. White responded that she thought the Assembly had passed that provision when it was before them.

V. RECONSIDERATION OF THE FOLLOWING ITEMS - None

VI. CONSENT AGENDA

- a. **USE2017 0005:** A Conditional Use Permit for the Construction of 7 Single-Family Dwellings on Lot 3 on Jackie Street.
Applicant: Juneau Housing Trust
Location: Jackie Street

Staff Recommendation

It is recommended that the Planning Commission adopt the Director's analysis and findings and grant the requested Conditional Use Permit. The permit would allow the development of seven single-family dwelling units with a shared driveway, with the land to be held in trust by the Juneau Housing Trust. The approval is subject to the following conditions:

1. Emergency Access must be signed as such with a "No Parking – Fire Lane" sign.
2. Provide lighting on the individual dwellings and light posts at the end of the individual driveways.
3. A central water meter is required.
4. The wastewater system will have a single connection to the main with cleanouts installed at the ROW, every one hundred feet, at the terminus of the "joint use" main and at each dwelling within 5 feet of the foundation.
5. JHT must provide copies of the leases/covenants that provide for maintenance of utilities and utility payment for water/wastewater, snow removal, and joint access maintenance.

- b. **CSP2017 0005:** Review of Use Permit for Docks & Harbor to permit the use of CBJ property located at People's Wharf for a small addition and siting of propane tanks for Tracy's Crab Shack.

Applicant: William C. Heuman & Marjorie J. Menzi

Location: 470 S. Franklin Street

Staff Recommendation

The Director recommends that the Planning Commission adopt the findings, analysis, and recommends that if the Docks & Harbor Department approves the Use Permit, it should include the following conditions, per CBJ 53.09.310:

1. Use Permit shall expire on November 1, 2017. Propane tanks, signage, and the addition for the crab shack must be removed from the site by November 1, 2017.
2. The applicant shall post a cash bond (\$5,000) for removal of the propane tanks and screening, and the crab shack at the corner of the building.
3. Propane tanks must be enclosed and disguised from view and must meet Fire Code standards.
4. Any signs planned shall receive a sign permit prior to installation.

MOTION: *by Mr. LeVine, to approve the Consent Agenda.*

The motion passed by unanimous consent.

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

VIII. **UNFINISHED BUSINESS** - None

IX. **REGULAR AGENDA**

- a. **USE2017 0001:** A Conditional Use Permit to allow an indoor exercise facility in an Industrial zone.

Applicant: Tongass Crossfit

Location: 125 Mill Street

Staff Recommendation

It is recommended that the Planning Commission adopt the Director's analysis and findings and **approve** the requested Conditional Use Permit for the continued operation and eventual expansion of an indoor exercise facility in an industrial zone. The approval is subject to the following conditions:

1. A minimum of 9 parking spaces at current capacity and 17 spaces with expanded capacity will be provided. One ADA space is required by Code.

2. Any parking agreement that Tongass Crossfit enters into will include a maintenance agreement for snow removal and will be notarized and a copy of the agreement will be provided to the Community Development Department.
3. The applicant will have 30 days from the date of approval of this conditional use permit to have an approved parking plan and provide copies of any parking and maintenance agreement(s).
4. When the applicant applies for a building permit for the expansion the applicant will also provide a revised parking plan and a revised parking and maintenance agreement(s). The parking plan for the expanded facility must be approved and copies of parking and maintenance agreements submitted prior to issuance of the Temporary Certificate of Occupancy.
5. The facility's five on-site parking spaces shall be demarcated with Tongass Crossfit parking signs. Customers shall be made aware that on-site parking is only allowed in front of the Tongass Crossfit parking signs.

Ms. Eddins reported that this request before the Commission is for a Conditional Use Permit to operate an indoor exercise facility within an Industrial zone. This is located within the Thane boat condos, and is accessed via Mill Street, she said. The business will be open Monday through Saturday. It is currently operating without a Conditional Use Permit, as the applicant was unaware that he needed a Conditional Use Permit, she noted. If the Conditional Use Permit is approved, they would like to expand into another unit as well, she noted. In this case, they would probably want a building permit to knock a wall down between the units.

The current capacity within the one unit is for eight participants and one instructor, said Ms. Eddins. Every condo within the unit is assigned two parking spaces in front of the doors, said Ms. Eddins; corner units have a third parking space. The applicant currently has five on-site parking spaces, she said. There have been a few complaints from condo owners that CrossFit participants were parking either too close or in front of other units, said Ms. Eddins.

Title 49 has a table of uses, which are assigned a minimum parking requirement, but not all uses are listed in the table, said Ms. Eddins. There is a section in the code for "uses not specified". It states that the most comparable use should be listed, said Ms. Eddins. For yoga and dance studios in the past the parking requirement used was one parking space for every four people, based upon the public pool parking requirements, she explained.

Due to public comment the staff feels the minimum parking code as required by code would not provide enough parking spaces for Crossfit customers, said Ms. Eddins. The staff recommends that the parking requirement be based upon capacity, which would be nine spaces and increased to 17 spaces if they expanded into the adjacent unit. The majority of these spaces would have to be provided off-site, she noted. The code requires that off-site parking spaces must be within 500 feet of the facility, she said. She said it was her understanding that the applicant was working on obtaining these additional off-site spaces.

The staff did not find any other issues regarding the Conditional Use Permit application, she said. They did find that neighborhood harmony could be negatively impacted if parking was not managed appropriately, she said.

Commission Comments and Questions

Mr. Hickok asked if the condo association was amenable to the suggested parking requirements.

Ms. Eddins responded that it was in agreement based on the recommended conditions.

Mr. Voelckers asked if the plan submitted to the condo association for its review was based upon the nine and 17 parking space requirement plan, or if it was a different count.

Ms. Eddins responded that she thought it was a different calculation. She said she thought they would leave it up to the applicant to work it out with the condo association to satisfy its requirements.

While stating that it was obvious that parking was the central issue, Mr. Voelckers said he was surprised the parking requirements went from one to four parking spaces for something like a yoga studio which seems fairly similar in scope, to the current proposal raising the factor to four. He said he wondered if in its study of the issue a more moderate number had come to the attention of the staff.

Ms. Eddins said she had done research to look at similar uses to the CrossFit proposal. Parking for the Juneau Racquet Club, for example, was based upon the gym's capacity and a carpooling analysis. Staff worked with the applicant to look at carpooling trends for Crossfit customers. She discovered that most of the participants did not carpool for the workouts. They drove in separate vehicles, she said.

Mr. LeVine said perhaps capacity should be based upon the actual number of participants expected to be in the facility at one time.

Ms. Eddins said capacity was based upon the applicant's assertion of its maximum class sizes.

Mr. Dye asked if the ADA parking spot was required regardless of the number of regular parking spaces.

Ms. Eddins replied that an ADA space was required if the amount of parking was between one and 25 parking spaces. She said there is room for the ADA space and she indicated on a drawing where it would be.

Mr. Hickok asked how the parking would be monitored.

It would be up to the applicant to monitor the parking, said Ms. Eddins.

Applicant

Applicant Ryan Johnson said he has a good relationship with the condo association and that he would be monitoring the parking to ensure that no condo owners would be inconvenienced. He said they had been going by the information they were initially supplied with that there would be one parking space per every five participants.

Mr. Voelckers said he thought the parking spaces may be large enough where two small cars could park two deep in one parking space.

Ms. McKibben said that the zoning code prevents stacked parking except for single-family uses.

Mr. Miller asked if stacked parking was also prevented with the condo association.

Ms. McKibben said stacked parking could not be allowed for a commercial use.

Mr. LeVine asked the applicant how many people he felt the two condo spaces could ultimately accommodate.

Mr. Johnson said the spaces were not for people to go work out in but to go for coaching. He said they could effectively coach maybe eight people. A small bouldering wall would not even cover half of the area, he said. If the business was to grow and they needed a bigger space then they would obtain it, he said. There may occasionally be overflow if a bunch of people showed up one night to go climbing, he said.

Mr. Voelckers asked if the applicant found the staff recommendation of nine spaces for one condo and 17 parking spaces if they expanded into two condos to be a good estimate.

Mr. Johnson said he did not think every other business before him should be given requirements for substantially less parking and yet it was raised for his business. He said he would prefer one parking space per four participants as a more reasonable condition than one space for each potential participant. He said one parking space for each potential participant seemed a little unfair.

A participant in the CrossFit program and a person who used the parking for the business, Chris Walker, said he did not feel one parking space for each participant was necessary.

A condo owner in the area, Daryl Miller, said he was in favor of the CrossFit program and that he wished it a lot of success. He said he felt the one to one ratio for parking was too onerous for a small business.

Commission member Dan Miller said he also took note of how wide the road was between the two condo buildings. He asked Mr. Daryl Miller if he could comment on whether there was room for stacked parking regardless of what the current regulations were.

He said there was a substantial distance between the two condo units, and that Mr. Johnson has established a very good rapport with condo unit owners and has been very responsive to

their comments.

Mr. Frisby asked if there was enough room for diagonal parking.

Mr. Miller said he thought there was enough room for diagonal parking.

Ms. McKibben said diagonal parking is allowed but that there are certain dimensions which must be adhered to as well as a specified width. She said she did not know if this would make any difference in the number of spaces which could be accommodated.

Mr. Haight asked about the current parking situation at the Rock Dump when it was in operation.

Mr. Johnson said he did not know, but that there were more parking spaces available at his business than were available at the Rock Dump.

Mr. Voelckers said he was uncomfortable progressing to a four-fold increase in parking requirements to other similar facilities in the past. He said he felt perhaps one space for every two participants would be adequate and still double the parking requirements for similar uses in the past such as yoga studios. He said he felt five spots would be adequate for one condo and if it expanded into the adjacent condo that a total of 10 parking spaces would be adequate.

Ms. Shelton-Walker said that she agreed completely with the comments of Mr. Voelckers and that she had come up with the same numbers as he.

MOTION: *by Mr. Voelckers, to approve USE2017 0001 with staff's findings and analysis with the exception of two modifications:*

- 1. The statement be added under condition one that parking would be calculated roughly on a one parking spot per two participant basis of use creating a minimum of five parking spots at current capacity and 10 parking spots with an expanded capacity with one van ADA space per code.*
- 2. And that a sentence be added at the end of condition two stating that a Conditional Use Permit is tied to an ongoing parking agreement.*

The motion passed with no objection.

Chairman Haight recessed the Planning Commission and reconvened the body as the Board of Adjustment.

Commission members Mr. LeVine and Mr. Miller recused themselves from participating in VAR2017 0001 and VAR2017 0002 due to potential conflicts. Mr. Miller said he may be the contractor for the house construction and Mr. LeVine said he had counseled the property owners.

Mr. Miller: "Yes Mr. Chair I would like to announce that I have a conflict of interest."

Chairman Haight: "And your conflict of interest is?"

Mr. Miller: "I am the potential contractor."

Chairman Haight: "With no objection you may sit at the back."

Mr. LeVine: "I would request permission to join Mr. Miler at the back as I, too, am conflicted here."

Chairman Haight: "And your reasoning?"

Mr. LeVine: "I have been advising the applicant about this project."

X. BOARD OF ADJUSTMENT

The two related variance requests were discussed as one item and would subsequently be voted on as separate items.

- a. **VAR2017 0001:** Request for variance to street side yard setback for new garage.
Applicant: Erica Roguska
Location: 335 West Twelfth Street

Staff Recommendation

Staff recommends that the Board of Adjustment adopt the Director's analysis and findings and **DENY** the requested Variance, VAR2017 0001.

If the Commission elects to amend the finding and approve the requested variance, the variance permit would allow the 10 foot street side yard setback bordering the alley right-of-way to be reduced to 5.8 feet for the finished face of a new two car garage in a D-18 zoning district.

The following condition of approval is recommended to ensure that the appearance of the side of West Twelfth Street of the subject lot and existing site distance at the intersection of West Twelfth Street and 'A' Street is maintained as a result of allowing this variance.

- i) The finished face of the building, including arctic entries, porches and other structures subject to setback exceptions in the CBJ Land Use Code, is no closer than 13.5 feet to the West Twelfth Street property line.
- b. **VAR2017 0002:** Request for variance to front yard setback for new dwelling.
Applicant: Erica Roguska
Location: 335 West Twelfth Street

Staff Recommendation

Staff recommends that the Board of Adjustment adopt the Director's analysis and findings and **DENY** the requested Variance, VAR2017 0002.

If the Commission elects to amend the finding and approve the requested variance, the variance permit would allow the 10 foot front side yard setback bordering the 'A' Street right-of-way to be reduced to 6.8 feet for the finished face of a new dwelling in a D-18 zoning district.

Mr. Felstead said the subject parcel is located on 12th Street in the Casey Shattuck (the Flats) subdivision. Most of the subdivision is zoned D-5 but this particular lot is zoned D-18, said Mr. Felstead.

Since the surrounding properties have smaller setbacks, the setbacks on the existing property can be reduced, noted Mr. Felstead. This is an average based upon the three adjacent properties, he added. In this case all right-of-way setbacks on West 12th Street, A Street and the alley can be reduced to 10 feet, explained Mr. Felstead. The side yard setback cannot be reduced any more than five feet, he added. And where there are lots surrounded by three rights-of-way a rear setback is not required, he said.

The alley provides access to the rear of five properties, said Mr. Felstead. That is not a through right-of-way, he said; it ends at Gold Creek. The house plans for the new dwelling do not make use of the maximum space of 50 percent coverage of the lot nor does it take advantage of the full height allowance, said Mr. Felstead.

The existing house is a nonconforming structure. However, if the reconstruction cost of a nonconforming structure is greater than 75 percent of the cost to rebuild the house from scratch with new material, then the house has to be reconstructed according to the requirements of the Land Use Code, said Mr. Felstead. A single calamitous event such as a fire would be an exception to this rule, he said. That situation, however, is not relevant to this case as the applicant's plan is a totally new construction and they will demolish the existing house, said Mr. Felstead.

The applicant had been misinformed by CDD about the setback which would apply to West 12th Street, said Mr. Felstead. In the analysis of this variance the setback has been revised to reduce it to 10 feet, he said. With a 10 foot setback and exceptions which can be applied to arctic entries and porches, potentially the applicant could slide the desired footprint closer to West 12th Street resulting in the arctic entry and porch being five feet away from the property line on West 12th Street, said Mr. Felstead. This has potential impacts on sight distances, and it would be worth preserving the sight distance on West 12th Street at the intersection of A Street over preserving the sight distance for the alley, he said.

The proposed building line on A Street would be further back than the footprint of the existing house, said Mr. Felstead. The applicant intends for vehicles to enter and exit via A Street. The CDD Director has to determine whether back-out parking is allowed, he said. Based upon the existing footprint the Director finds that back-out parking would be acceptable given the level of traffic that travels down a street, said Mr. Felstead. One of the reasons for the reduction based upon substandard setbacks surrounding buildings is to contribute to the neighborhood form, he said. Moving the applicant's proposed building footprint closer to W. 12th Street would mean extending the building further toward the street than most of the other dwellings on that street, said Mr. Felstead.

Mr. Felstead showed the Commission all the lots in the area which have been granted set back variances in the past. These are based upon the post 1987 version of the Land Use Code, he said. However, the recent Olmo case has changed the way variance criteria have been addressed, said Mr. Felstead. There is now an overarching requirement to address whether a hardship and practical difficulties result from an extraordinary situation or unique physical feature affecting the parcel is present, he explained. In this situation about 25 percent of the lots within this subdivision are bordered by three rights-of-way, he said. On West 12th Street on the side of the applicant's property there are eight similar lots out of 24 that are bordered by three rights-of-way, said Mr. Felstead.

The Olmo decision requires that the Board of Adjustment make the first determination before assessing the standard six criteria that were commonly examined in the past, said Mr. Felstead.

(VAR2017 0001 garage)

Mr. Felstead said the applicant has not shown either hardship or practical difficulties resulting from an extraordinary situation or a unique physical feature affecting only this parcel. In addition, he said, criterion one is not met, criterion two, three, four and five are met, and criterion six is met if a recommended condition is applied. That condition is that the building be constructed to the existing face and on West 12th Street, said Mr. Felstead. That would allow the site distance to be maintained and the appearance of West 12th Street to be maintained, he said.

(VAR2017 0002 dwelling)

Mr. Felstead said the application is complete, and the staff does not find the grounds for granting the variance for the same reasons as above. In addition, he said, criterion one and six are not met, and that criterion two through five are met.

Board Comments and Questions

Mr. Voelckers asked why Mr. Felstead distinguished between condition six on the two variance requests. He said in both cases both the garage and the house are substantially different and substantially relieved along A Street relevant to the current structure. He said he did not see why there was a distinction drawn between the two.

Mr. Felstead said it is possible to slide the footprint forward and move the garage out to the setbacks. The applicant could create extra living space by building into the garage space and trying to find other parking solutions, he said.

Mr. Voelckers clarified by stating that it was a benefit to the neighborhood by holding the garage closer to the back alley.

Mr. Felstead concurred. He added that for the dwelling setbacks for A Street the staff could not find that there would be more benefits than detriments to the neighborhood if the variance was granted because it did not impact the W.12th Street sight distance in the same way.

Mr. Voelckers asked if the applicant was inclined to move the house forward to a 10 foot setback on 12th Street or if it the applicant was satisfied with 13 ½ feet.

Mr. Felstead said when he spoke with the applicants they had indicated that they preferred to keep the appearance of the neighborhood, and were also wary of taking light away from other neighboring properties.

Applicant

Don Roguska said they purchased the home a little over six months ago with the original intention of doing an extensive remodel of the existing building. They found there was too much damage to the existing structure to remodel it, he said. He said they felt that due to the surrounding properties that a three foot encroachment of the garage into the alley-way should be granted. He showed examples of other homes which were built along the property line in the area. They plan on reducing the footprint of the former garage quite a bit, he said. The former garage had been deemed unsafe, he said. The overall encroachment of the existing structure was 999 square feet, and the encroachment of the proposed structure would be less than 187 square feet, he said.

They have reduced their initial home size plans to minimize the footprint and to fit in better with the neighborhood, said Mr. Roguska. Encroachment on the A Street side would have no negative impact on neighboring properties, he said. They have introduced themselves to their neighbors and have since created a blog so that neighbors could post any comments or concerns they may have, said Mr. Roguska. So far the neighborhood has been very helpful and supportive, he said.

Board Comments and Questions

Ms. Shelton-Walker said she appreciated what the couple is doing for the neighborhood. She asked why the couple has not considered constructing living space above the garage.

Ms. Erica Roguska said she had initially not wanted to construct above the garage due to possible vehicle emissions.

Ms. Shelton-Walker asked if it could be a possibility if necessary.

It could be a consideration, said Ms. Roguska.

Mr. Roguska said he was also concerned about that option because they have a neighbor directly behind them who parks behind where the garage would be. He said he felt if they built too high over the garage they would be casting shadows over the neighbor.

Mr. Voelckers said it appeared they had a basement in the house plans.

The applicants said they have a basement in the house plans no longer, so they could reduce the elevation of the dwelling.

Mr. Voelckers asked if any neighbors have expressed concerns over the project.

Mr. Roguska said they had one neighbor who had expressed the desire to preserve the existing structure. He added that the current structure could not be rebuilt. Under questioning from Mr. Voelckers, Mr. Roguska said there have been no concerns from the neighbors about any setbacks with the proposal.

Mr. Dye asked the applicant if they had any supporting arguments they could give regarding undue hardships with the project; if there was an extraordinary situation or unique physical feature about the lot.

Ms. Roguska it was a difficult situation because the lot is surrounded on three sides by right-of-ways. This feature affects the setbacks required for the project, she added.

Mr. Greene asked what the square footage of the proposed house is.

The previous house was a total of 3,000 square feet, said Ms. Roguska. The proposed home would be about 2,000 square feet, said Mr. Roguska.

Mr. Hickok asked if this would be brand new construction, rather than a remodel.

The applicants said that it was. They were not able to preserve the existing foundation, said Mr. Roguska.

Mr. Hickok asked the applicants if they had expected this complete of a house construction.

Mr. Roguska said they did not expect a total rebuild. They had hoped to remodel the existing structure.

Mr. Hickok commented that this must be somewhat of a financial hardship for the applicants, since they cannot remodel the existing structure but must undertake a total new home construction.

Ms. Roguska said they had hoped to use generic house plans but instead had custom house plans drawn up to better integrate the proposed home with the existing neighborhood.

Mr. Frisby said it had been brought up earlier that the applicants had been misinformed about certain aspects of the project. He asked what this misinformation entailed.

Mr. Roguska said they had initially been told the arctic entryway had to conform to the setback.

Mr. Frisby asked if the existing foundation had been usable if the footprint would then have remained the same. Mr. Frisby said he was confused because it appeared that new lines appeared with the new home configuration.

Mr. Felstead said if the original foundation were kept it would still exceed the 75 percent threshold. The 75 percent threshold does not include the foundation, said Mr. Felstead. It only pertains to construction above the foundation, he added.

Mr. Greene asked if the applicants had initially tried to work within the current standards. He clarified that he meant the new conforming standards.

Ms. Roguska said that the original plan was to retain as much of the existing house as possible. Mr. Roguska said they kept scaling back the size of the house in an attempt to meet the setback requirements.

Public Comment

Mr. Carl Brodersen, who said he is building a house around the corner from the applicants, said he was in favor of the variances. He said the final result would be more in alignment with the other residences on the street. He said the project would be in the public interest since it was taking down an old and dangerous structure and erecting a new home in its place. He said he felt the applicants were making a reasonable request and encouraged the Board of Adjustment to vote in the applicant's favor.

Board Comments and Questions

Mr. Voelckers said they had before them a very nice project that is consistent with equivalent projects in the past that have made the Flats one of the most desirable parts of town in which to live. He said on the surface the project is terrific. He said the reason the variances are before

the Board of Adjustment is because of the City's strategic process to develop a more defensible and accurate process and how variances are determined. Mr. Voelckers said what worries him this evening is the result from the Olmo decision stating that a unique hardship must be evident to justify a variance. He said he does understand that the City is working on improved language to dictate the interpretation of variances so that the language would be clearer. Noting that there have been a number of variances issued within the neighborhood since 1987, Mr. Voelckers said he also felt they should be concerned with fairness in process to the applicants. He felt the City should demonstrate some of the equivalent findings for this applicant that is reflective of the variances granted in the past.

The portion of the variance chapter regarding the unique and practical hardships has just been addressed within the past few months, said Mr. Voelckers. The issue regarding the necessity of hardship and practical difficulties is almost lost in the text in the material that the City hands out to applicants, he said. Highlighted in bold print for the applicants are the six criteria, said Mr. Voelckers. That is where the focus has been until just recently, said Mr. Voelckers. He said he felt they should hold these applicants to the same standards they have held other applicants to.

Considering this, said Mr. Voelckers, the only issue which has not been granted a "yes" by the staff's own analysis, is item one. Mr. Voelckers read that criterion:

That the relaxation applied for or a lesser relaxation specified by the Board of Adjustment would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.

Mr. Voelckers said it seemed patently clear to him that were the Board to grant the variance it would most definitely be providing justice for both the applicant and to other property owners in the neighborhood. This would be in keeping with what the City has done in the past with other, similar properties in the neighborhood, said Mr. Voelckers. It would be very easy for him to provide amendments to garner the Board's approval for these variances, said Mr. Voelckers.

Mr. Dye noted that within his short time on the Planning Commission there has been a lot of focus on the unique physical aspects of the property since the map indicating variances in the neighborhood showing variances from 1987. He said he felt it was important for the Board to keep in mind that it was to address those unique physical characteristics for many reasons to ensure that future problems are not created. He said this particular situation indicating the high number of variances within the neighborhood was an indication that rezoning should take place sooner rather than later. That might make a project such as this more feasible and put the Board in a more tenable position, he said.

Ms. Shelton-Walker commented that the Board did consider a variance request not long ago which was based upon design preferences and was denied, even though the applicants had

noted that economic hardship was an element of their variance request. Ms. Shelton-Walker said to be just she wanted to make sure that the Board was being consistent as it moved forward in its deliberations.

Chairman Haight pointed out that this variance request while not unique to the neighborhood is unique to the zoning. This is a small lot within D-18 zoning, said Chairman Haight. He asked if this element would not contribute to a unique condition of the property when considered against a qualified D-18 property. He asked if this would place the variance request into a hardship situation.

In response to a question posed by Mr. Hickok, Mr. Felstead replied that the applicant would have the same setback requirements were the property zoned D-5.

In support of Chairman Haight's remarks, Mr. Voelckers stated that the original, underlying neighborhood configuration does not comport with D-18 zoning. He said judging by the number of variances which have been granted in the past within this immediate neighborhood, that there has been the sense that it is unique enough to allow some relief in these types of circumstances. He said as they move forward that perhaps the underlying issue is a change in the zoning for the area. He said he felt that at this time, they should use roughly the same interpretive criteria that have been given to other properties in the neighborhood which were granted variances.

Mr. Hickok asked if past variances which were granted were for setbacks reduced as much as this variance request.

Mr. Felstead responded that there have been variances granted in the past equal to or smaller than the requested setbacks for this variance.

MOTION: *by Mr. Voelckers, to approve VAR2017 0001 and accept staff's findings and analysis with the exception of item 1.*

He said to get to approval on item 1 the Board needed to find that this variance gives substantial relief to the owner of the property involved and is more consistent with justice to other property owners.

Speaking in support of his motion, Mr. Voelckers said they could make the statement that based upon staff's findings and analysis the Board believes the solution recommended is consistent with justice to other property owners and gives substantial relief to the owner of the property.

Ms. McKibben said the Board would also need to amend finding three:

Does the variance as requested, meet the criteria of Section 49.20.250, Grounds for Variances?

The staff had determined that the applicant had not presented an argument that justifies the grounds for the variance. The staff found the applicant had not shown hardship and practical difficulties resulting from an extraordinary situation or unique physical features affecting only a specific parcel property.

Mr. Voelckers said the grounds which have typically been identified are the six criteria and with this amendment criteria one through six are met.

Ms. McKibben said the sentence stating that the “applicant has not shown hardship and practical difficulties resulting from an extraordinary situation or unique physical feature affecting only a specific parcel of property” must be amended in order for the conclusion to be supported.

Mr. Voelckers said he suggests that finding number three be amended to state, “yes” instead of “no”, and that the six criteria have been met.

Speaking against the motion, Mr. Dye said that a not dissimilar variance request had been denied by the Board some months ago. He said there is a way for the footprint of the house to be reduced without a variance being granted. He said he would find granting this variance to be inconsistent with the Board’s action since he has been on the Board of Adjustment.

Roll Call Vote on the Motion: *by Mr. Voelckers, to approve VAR2017 0001 and accept staff’s findings and analysis with the exception of item one and finding three. The Board finds that this variance gives substantial relief to the owner of the property involved and is more consistent with justice to other property owners, thus meeting the six criteria, and the Board finds that the variance, as requested, does meet the criteria of Section 49.20.250, Grounds for Variances.*

Yeas: Voelckers, Haight

Nays: Greene, Hickok, Dye, Shelton-Walker, Frisby

The motion failed.

MOTION: *by Mr. Dye, to deny VAR2017 0001 and accept the staff’s findings, analysis and recommendations.*

Roll Call Vote:

Yeas: Frisby, Dye, Shelton-Walker, Greene, Hickok,

Nays: Voelckers, Haight

The motion passed.

MOTION: *by Mr. Dye, to accept staff's findings, analysis and recommendations for VAR2017 0002 and deny the variance request.*

Speaking in explanation of his motion Mr. Dye said that the Board should be looking at a rezone of this area sooner rather than later. He said he would like to see this process expedited and executed in a very timely manner.

Roll Call Vote:

Yeas: Shelton-Walker Hickok, Greene, Dye, Frisby

Nays: Voelckers, Haight

The motion passed.

The Board of Adjustment was adjourned and reconvened as the Planning Commission.

X. OTHER BUSINESS

Quoting Title 49.75.410 (a) Mr. Dye read:

Commission initiated. The Commission shall initiate an amendment to this title by holding a public hearing to consider whether it should recommend such amendment to the Assembly. The Director shall provide at least 10 days public notice of the hearing.

Mr. Dye also read Title 49.75.110:

A rezoning may be initiated by the Director, the Commission, or the Assembly at any time during the year. A developer or property owner may initiate a request for rezoning in January or July only. Adequate public notice shall be provided by the Director to inform the public that a rezoning has been initiated.

MOTION: *by Mr. Dye, to form an ad hoc committee of the Planning Commission to draft and present a text amendment to Title 49 for the purpose of creating a zoning district that would enhance and preserve the historic nature and neighborhood characteristics of the historic downtown and surrounding areas.*

Mr. LeVine said he is in full support of Mr. Dye's motion, especially in light of the variance just denied by the Planning Commission. If the Commission is going to be more stringent in its award of variances, then in order to retain the equity for its citizens who want to construct

projects and retain the characteristics of the neighborhood, the zoning ordinances should be revisited.

Mr. Steedle asked for a more specific explanation of what Mr. Dye meant when he referred to the downtown neighborhood. He asked for clarification on just what areas would be subject to this review. Mr. Dye said he would need to revisit the map to identify the key areas which could be included in this review.

Speaking in support of the motion, Mr. Frisby said it would be incumbent upon the Commission to follow through with this rezone proposal as soon as possible.

Mr. Voelckers asked Mr. Dye if he had a little more specific information on the process or the timing of this proposal. Mr. Voelckers said he found that this was an intriguing idea to help solve the problems that they are currently experiencing with some variance requests.

Mr. Dye said he felt they should accomplish this as quickly as possible. It is a multi-step process involving both the Planning Commission and the Assembly, he noted. He said he hoped they could have something to bring before the Commission by its next regular meeting.

Mr. Miller said when he rejoined the Commission there was a variance problem. Since he has been back on the Commission the "fix" has been to rezone, he said. The variances are in effect accomplishing the rezone, he said. Mr. Miller said he is in favor of fixing these types of problems. He said he felt that Mr. Voelckers made a very strong point this evening that in the meantime it is not just to the people who have applications before the Commission to deny their right to build within the allowances of many other properties within the neighborhood that have come before the Commission and received justice. It is not fair to the individuals requesting variances to deny those requests until the zoning is tightened up, said Mr. Miller. Meanwhile, said Mr. Miller, actions such as tonight which are a travesty to justice are going to happen. Mr. Miller said in his opinion the Board of Adjustment blew it this evening, as did the staff in its analysis.

Mr. Hickok commented that he did not think the Board of Adjustment made the wrong decision this evening. He said in his opinion the property has been purchased and there are setbacks and codes to which property owners must adhere. They know what the codes and the setbacks are, said Mr. Hickok, and they could have easily designed a house that fit within the codes and setbacks. He said he felt the applicants can redesign their home to fit within the codes and setbacks required.

Mr. LeVine asked what potential items they should be considering in a rezone other than lot sizes and setbacks.

Mr. Dye said he hoped the staff could help provide the answers to that question.

Mr. Steedle said lot coverage would be another obvious item to be addressed.

Ms. McKibben said it depends on what parameters the Commission wanted to address. If the Commission, however, she said, simply wants to take one of the residential zoning districts and make it a better fit with the lot sizes and the setbacks that would be one action. If the Commission wants to create a new zoning district and review uses, then it would be somewhat more complicated, she said.

Mr. Dye said he hopes they can address the problem which would help alleviate the need in a basic way for more variances.

Mr. Voelckers said while he is in support of this idea he did feel it was a little unrealistic to expect a draft by the next regular Planning Commission meeting. He said he did hope the staff was noting that the Commission was giving a strong message that they could not simply tighten down the variances arbitrarily without addressing some of the causal issues.

Mr. Dye said it is his hope that this work can be accomplished before the end of the building season so that projects could get underway before the winter.

Mr. Steedle asked for clarification on what the Commission would like to see at the meeting after the next (May 23, 2017). He said a draft zoning district would be achievable if that is what the Commission wanted to see. He said when time frames are considered that public process has to be taken into account. They have to take the time to listen to the residents of any affected areas, said Mr. Steedle.

Mr. Frisby asked for the specific items which would be addressed in the rezone process. He added that he would appreciate specific information provided by the staff during this process.

Ms. Boyce said to create a new zoning district for this area they would look at lot size, lot coverage and what setbacks would best fit along with height. If they were to try to fit D-10 zoning to this area, for instance, many of the properties would still not conform, she said. They need to decide if they want every single lot to be able to conform to the zone, and what to do with the few that do not comply. There is a lot of information which must be considered, she said. Calculating lot coverage and existing setbacks will take more time, she said.

Mr. Frisby said he feels there will still be many lots which will not fit into whatever criteria they come up with.

Mr. Steedle said that Ms. Boyce was taking the zoning district most similar to the flats which is D-10 SF. There are many lots in the flats which do not meet that standard, he said. The staff

would be looking at lot sizes in areas such as Douglas, Star Hill, Gastineau Avenue as well as the Flats, he said. They try to synthesize a zoning district to which more lots could adhere, he said.

Ms. Shelton-Walker said she hoped they would look comprehensively at all of the downtown areas. She asked if there are other avenues open to the Commission to help alleviate this problem other than zoning.

Ms. Boyce said that they are looking at a number of ways which can provide flexibility within the code. There is a section of code which allows certain exceptions into setbacks, they can expand that to allow more exceptions such as extra insulation added to the outside of the home, and they've also recently approved a parking waiver process to avoid parking variances in some instances. They are trying to come up with these other tools for flexibility instead of just having to rely on variances, said Ms. Boyce.

Mr. Miller said this is a very long and involved process and it is not quick. He said that is where his frustration lies. People come before the Commission usually for one request and it is the only thing they are asking and the only time they will be before the Commission. He said he strongly believes that it is the job of both the Planning Commission and the staff to try to find every possible way there is to say "yes". Like it or not, said Mr. Miller, variances are a section of the code that everybody gets to use the same as everybody else. Variances are the means with which they are repairing the old buildings, said Mr. Miller. Variances are how they are rebuilding structures built over 100 years ago, he said. Variances are tools which are being used to improve our housing stock, said Mr. Miller.

"We can't just lock the tool box up which has variances in it because we are tired of using those tools," he said.

Mr. Hickok asked what the benefits were of rezoning a community which is already established.

Mr. Steedle said he thinks the zoning which has been applied to the Flats area since 1987 just does not fit. People in this community love this particular area and it is their job to come up with zoning that matches, he said. Mr. Steedle said if the zoning in the Flats was appropriate then perhaps the applicant before the Board of Adjustment this evening could have rebuilt as they wished. He said he thought that was the goal.

Mr. LeVine suggested that they vote on Mr. Dye's motion and defer discussion about the timing and the scope of this conversation until the first meeting of the ad hoc committee if the Commission wanted to form such a committee. Mr. LeVine commented that in his experience after speaking with the applicants who were denied a variance on North Douglas several months ago that they were both very distressed with the process and were not planning on coming before the Commission again. Mr. LeVine said he fully expects the applicant this evening to have the same attitude about the process.

MOTION: (redux) by Mr. Dye, to form an ad hoc committee of the Planning Commission to draft and present a text amendment to Title 49 for the purpose of creating a zoning district that would enhance and preserve the historic nature and neighborhood characteristics of the historic downtown and surrounding areas.

The motion passed with no objection.

Members to the ad hoc committee:

- ✓ Mr. Dye, chairman
- ✓ Mr. LeVine
- ✓ Ms. Shelton-Walker
- ✓ Mr. Frisby
- ✓ Mr. Voelckers

Chairman Haight asked if there was benefit to covering one area initially rather than covering them all at once. He suggested that phasing and strategy of the areas would be something for the ad hoc committee to consider initially.

Ms. McKibben stated that although public process was not required in code that they typically have at least a neighborhood meeting when subjects such as a rezone are going to affect the public. She suggested that the ad hoc committee decide if and how it would want to take neighborhood feedback and if it would want that feedback just at the beginning of the process or if at the beginning and the end of the process, and just how that would look like.

Mr. Voelckers suggested that some draft options to present to the public might be a good approach for the ad hoc committee rather than to just hear unfocused public comment.

DIRECTOR'S REPORT

Ms. McKibben stated that there is a Wetlands Review Board meeting tomorrow (April 26, 2017).

XI. **REPORT OF REGULAR AND SPECIAL COMMITTEES** - None

XII. **PLANNING COMMISSION COMMENTS AND QUESTIONS** - None

XIII. **ADJOURNMENT**

The meeting was adjourned at 9:24 p.m.