

MINUTES
Planning Commission
Regular Meeting
CITY AND BOROUGH OF JUNEAU
Ben Haight, Chairman
March 22, 2016

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; Bill Peters, Michael LeVine, Nathaniel Dye, Matthew Bell, Carl Greene

Commissioners absent: Percy Frisby

Staff present: Rob Steedle, CDD Director; Beth McKibben, Planning Manager; Laura Boyce, Senior Planner; Jonathan Lange, Planner II; Chrissy Steadman, Planner II; Robert Palmer, Assistant Municipal Attorney; Mila Cosgrove, Deputy City Manager

Assembly members: Debbie White, Assembly Liaison

I. APPROVAL OF MINUTES

- February 23, 2016 Regular PC Meeting

MOTION: *by Mr. Peters, that the minutes of the February 23, 2016 Planning Commission be approved with any minor alterations by staff or Commission members.*

The motion passed with no objection.

III. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS

Juneau resident Nancy Waterman said that Title 49 requires that new growth areas require a master plan. She said that a master plan has not been formulated for West Douglas. She said

for the future of the community that the City should follow its own rules. She asked that a new development area which is outside the urban service boundary be carefully studied by the staff.

IV. PLANNING COMMISSION LIAISON REPORT

New City Manager and Deputy City Manager

Assembly Liaison to the Planning Commission Debbie White reported that Rorie Watt and Mila Cosgrove are stepping into their new positions as City Manager and Deputy City Manager.

New Mayor

The new mayor will be sworn in on Monday, March 28, at 6:00 p.m.

Marijuana-related Ordinance

Ordinance 2016 0038 (Marijuana) will be before the Assembly Committee of the Whole on April 14, (2016).

Commission Comments and Questions

Mr. LeVine asked if any substantive changes have been made to the ordinance, and Ms. White said not at this point.

New Planning Commission Member

It may be as late as May 4, (2016) before the Assembly can make an appointment to fill the vacant Planning Commission seat.

V. RECONSIDERATION OF THE FOLLOWING ITEMS - None

VI. CONSENT AGENDA - None

VII. CONSIDERATION OF ORDINANCES AND RESOLUTIONS - None

VIII. UNFINISHED BUSINESS

The Commission was adjourned by Chairman Haight and reconvened as the Board of Adjustment.

BOARD OF ADJUSTMENT

VAR2015 0030:	A Variance request to the requirement for access on publicly maintained right-of-way for a proposed minor subdivision. Proposed access is a private easement.
Applicant:	Olmo, LLC.
Location:	North Douglas Highway

Staff Recommendation

Staff recommends that the Board of Adjustment adopt the Director's analysis and findings and DENY the requested Variance, VAR2015 0030.

Ms. Boyce told the Commission that four letters of support of this variance request arrived in the CDD offices after business hours, so the copies will be forthcoming to the Commission, she said. This is a variance request to the requirement for access on a publicly maintained right-of-way for a proposed minor subdivision, said Ms. Boyce. The proposed access is a private driveway easement. The property is about three quarters of an acre, said Ms. Boyce.

The property is zoned D-18, which allows 18 units per acre, said Ms. Boyce. Property of this size could have 14 multi-family dwelling units, she added. Access to the property is via North Douglas Highway through a private easement, said Ms. Boyce. North Douglas Highway is designated by the CBJ as a minor arterial, she explained.

The initial proposal is for three lots to be subdivided from the main parcel, USMS 569 Tract 2, with common wall dwellings to be constructed on each of those lots. The property would then need to be subdivided to create the six lots total resulting in three, two-unit common walls. The applicant has also proposed an additional pedestrian access path through the property to the south to North Douglas Highway as a secondary means of access, said Ms. Boyce.

The parcel is very steep, located approximately 40 feet above Douglas Highway, but has a flat bench on which to build, said Ms. Boyce. This parcel was created in 1982 through a plat waiver, said Ms. Boyce. Access to the parcel was approved by the Planning Commission through a shared, 20 foot existing driveway easement across Tract 1. That driveway also serves as access for adjacent Lot B, said Ms. Boyce. In 1987, the land was rezoned to D-3 transitioning to D-18, she said. In 2001, when City water was extended, the parcel on which the easement is located was rezoned to D-18, said Ms. Boyce. The subject parcel was zoned D-18 in 2011, she said.

The applicant submitted a request for a major subdivision in 2014, said Ms. Boyce. At the time the application was submitted, the six total lots proposed met the threshold for a major subdivision, said Ms. Boyce. A subsequent code change last fall now designates that parcel as a minor subdivision, she said.

A subdivision triggers the need for a road and additional improvements, said Ms. Boyce. This section of code requires that all lots created through a subdivision must have a minimum of 30 feet of frontage maintained on a publicly maintained right-of-way, she said. They must have direct access to that right-of way, said Ms. Boyce.

Title 49 chapter 35 also has provisions for new subdivisions along arterial roadways, said Ms. Boyce. This portion of Douglas Highway is a minor arterial, she added. This portion of the code allows subdivisions of arterial lots in certain circumstances, said Ms. Boyce. Either a street needs to be built, or a shared driveway could be used as long as the lot meets certain

requirements, said Ms. Boyce. The size parameters are listed in 49.35.210 (B) (3), said Ms. Boyce. Each resulting lot must be 36,000 square feet for a proposed subdivision, said Ms. Boyce, and the subject parcel is less than that.

The applicant is seeking a variance because this proposed subdivision would not directly access North Douglas Highway, she said, which is currently required by code. The current proposal is for all lots to have the required frontage on North Douglas Highway yet have indirect access via the existing driveway, said Ms. Boyce. In the current situation, the lots would not be provided with direct access to North Douglas Highway, said Ms. Boyce, which is required. Instead, the access is proposed to be to the adjacent easement, which then provides access to North Douglas Highway, said Ms. Boyce.

Minimum code requirements are that a 60 foot wide right-of-way be dedicated, which could be reduced by the director, and a street could be built to standards based upon average daily trips, explained Ms. Boyce. The Table of Street Construction Standards, CBJ 49.35.240, within the code is based upon average daily trips, said Ms. Boyce. These standards became effective in September, 2015, said Ms. Boyce. Since this parcel of land is located within the Urban Service Area, said Ms. Boyce, the minimum standard would be a 22 foot wide travel-way with a 60 foot right-of-way for a paved road. It would be publicly maintained, she said. The only privately maintained road option is available outside the Urban Service Area, explained Ms. Boyce.

The staff is proposing to change the code for shared access requirements, said Ms. Boyce. The Assembly has directed the staff to work on shared driveway requirements, she said, since it has been a common practice to approve some smaller subdivisions with shared access. This proposed change in the newly adopted code will be coming before the Commission soon, said Ms. Boyce. The current draft states that shared driveways may be considered when no more than three lots will share access. The access would be a minimum of a 20 foot wide gravel or paved driveway within a 50 foot easement. That easement size could be reduced if it was found that all infrastructure improvements needed could fit into a smaller width, said Ms. Boyce.

This would only apply for single family-zoned districts, said Ms. Boyce. That way traffic would be limited, she said. The homes could have an accessory apartment, she explained. An owner's association would be required, among other requirements, to maintain that private drive, she said.

The staff contacted the Fire Department, the Streets and Fleets department within the City, and General Engineering which approved the proposal as formulated by the applicant. The Department of Transportation had no comments about this variance request other than to require the driveway and approach permit, which has already been approved by DOT, said Ms. Boyce.

Variance requirements stipulate that an applicant must demonstrate hardship and practical difficulties resulting from an extraordinary situation or unique physical feature affecting only a specific parcel of property or structures making it difficult to follow the provisions of Title 49, said Ms. Boyce. The Board of Adjustment may grant a variance if it is in harmony with the general purpose and intent of Title 49, said Ms. Boyce. She listed for the Commission examples of the purpose and intent of the Title.

There are six criteria for variances, said Ms. Boyce. All six criteria must be met in order to grant a variance, she explained.

1. *That the relaxation applied for or a lesser relaxation 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.*

The staff found that this requirement was not met, said Ms. Boyce.

2. *That relief can be granted in such a fashion that the intent of this title will be observed and the public safety and welfare be preserved.*

The staff found that this requirement was not met, said Ms. Boyce. Street standards in the code are declared to be the minimum, she said, for public health, safety and welfare. The 20 foot wide driveway does not meet these standards, said Ms. Boyce.

3. *That authorization of the variance will not injure nearby property.*

Since up to 14 dwelling units could have been constructed for this property, the applicant's proposal leaves a smaller impact on the neighborhood, she said.

4. *That the variance does not authorize uses not allowed in the district involved.*

The subject property divisions result in less than the required 36,000 square feet, said Ms. Boyce. If the Commission finds that CBJ 49.35.210(b) section of the code applies to this project then the criteria are not met, said Ms. Boyce. If it determines that it does not apply, then the criterion is met, she said.

5. *Compliance with existing standards; (A), (B), (C), or (D).*

Only one of the four parts to Criterion five need to be met, said Ms. Boyce. The staff found the Criteria were not met, said Ms. Boyce.

6. That a grant of the variance would result in more benefits than detriments to the neighborhood.

The staff found that this criterion was not met, said Ms. Boyce. Increased development could cause potential increased traffic on North Douglas Highway, said Ms. Boyce.

None of the criteria have been met for a variance except for criterion 3 and possibly number 4, said Ms. Boyce.

The Board of Adjustment can either approve, disapprove, or conditionally approve, or modify the request based on the six criteria, said Ms. Boyce. The Commission could also attach conditions to its approval regarding the location, character, and other features, she explained.

Applicant

Mark Pusich, of R&M Engineering, said he is representing the applicant as a consultant on this project. He said the reason the applicant is before the Commission is to obtain a variance for the requirements of a direct and practical access to a publicly maintained public right-of-way. This property has unique characteristics and physical constraints which need to be considered, he said.

Mr. Pusich said the site is on an extreme slope. When this land was initially platted, the Commission at that time noted that it was not a practical way to access North Douglas Highway, from the top of the slope, said Mr. Pusich. It is impractical, he said. At that time the driveway access easement was to serve the future Lot 2, he said, and a fraction of Lot B. The applicant maintains the access easement, said Mr. Pusich. Mr. Brantner is the actual owner of the easement, said Mr. Pusich.

There have been no recorded accidents on this driveway, said Mr. Pusich. The road has been functioning for over twenty years for the applicant, said Mr. Pusich.

There is a way to craft variance language in favor of the applicant, said Mr. Pusich.

The CBJ code allows the Board of Adjustment to grant a variance if it can be demonstrated that hardship and practical difficulties resolve in an extraordinary situation or unique physical features rendering it difficult to carry out the provisions in Title 49. Mr. Pusich said the property has unique, physical features. The slope is so steep and projects so far up the hillside that it is not physically possible to access North Douglas Highway, said Mr. Pusich. Driveway grades would be in excess of 50 percent if they were to try to make a direct access to North Douglas Highway, said Mr. Pusich.

When the Planning Commission agreed to the easement in 1982, it was with the understanding that Tract 2 would be developed, and that the access provided by the easement would be adequate, said Mr. Pusich.

Mr. Pusich said this is an extraordinary situation because the application has been enmeshed within code changes. They originally applied in June, 2014 under the existing code. As they progressed through the process, the code was under review. On the one hand they were getting advice from the CDD staff that they may want to wait for the variance request, for the code change. The Title 49 changes enacted in September have had an impact on the current standing of the variance request, said Mr. Pusich.

This is classified as a minor development, said Mr. Pusich. It is six lots. Thirteen lots and under is a minor subdivision, he said. The costs for development, at over \$500,000 is extraordinary, he said. There are hardships and practical difficulties involved with this project. It would be a financial hardship to construct this project according to current Title 49 code, he said.

Development of these lots would be helping to reduce the housing shortage, especially since they are within walking distance of the downtown core, said Mr. Pusich. Unless there is an approval for the driveway to be shared by the lots this project cannot proceed, he said.

The applicant could construct eight multi-family units without having to obtain a variance, said Mr. Pusich. The applicant does not want to construct multi-family units, feeling that the shared wall homes better reflect the character of the neighborhood, he said.

It does not make sense to have to construct a 22 foot paved roadway to serve the dwelling units when there is already a driveway that can be shared, said Mr. Pusich. He said they have done some research and found that there are existing developments in Juneau which have received a variance with a common shared driveway access.

The Department of Transportation (DOT) is not concerned about a negative traffic impact on North Douglas Highway from the proposed six dwelling units, said Mr. Pusich. They want the traffic to be filtered through one common spot, he said.

Commission Comments and Questions

Mr. Voelckers asked for clarification on where the right-of-way abuts the applicant's residence. He said he was not sure if the right-of-way was on the applicant's property or the Brantner property.

The lines which Mr. Voelckers was referencing are utility easements to the applicant's property, said Mr. Pusich.

Once the three lots were split into six lots, some of the lots would be 22 feet wide, said Mr. Voelckers. He asked if that was a legal width. He asked why the property could not be three lots with three duplexes instead of six individual lots with common wall homes.

The lot areas do meet the minimum requirements, said Mr. Pusich, for the D-18 zoning. The applicant has selected the common wall business model rather than duplexes, said Mr. Pusich.

Mr. LeVine said they are currently addressing a variance to divide the lots into three parcels, which would eventually become six lots. He asked why they were not addressing the plan of six lots now, instead of three lots.

The process for common wall dwelling units on six lots is that the structure has to first be constructed, with the common wall then verified through a subdivision, said Ms. Boyce. The lots cannot be subdivided prior to construction of those common wall homes, she said.

Mr. LeVine asked if when the subdivision of three lots into six lots came before the Commission in the future, if they would have to address the same issues all over again.

The intent is that if this variance was approved, that it would be for the six lots total, said Ms. Boyce. The variance would not have to come before the Commission again, she said. It would have the effect of approving all six lots.

Mr. LeVine asked if there were other development scenarios considered which did not involve subdivision of the property.

Mr. Pusich said the applicant did consider multi-family development, which they discarded as not being in harmony with the neighborhood.

Chairman Haight said he saw three components to the variance:

1. Relaxation of the requirement for direct access
2. Relaxation of the allowance for a private driveway
3. Relaxation of the right-of-way width for the driveway

In accordance with the recent subdivision ordinance, said Mr. Haight, the Director has the ability to reduce right-of-way widths. He asked if this had been discussed with the Director.

Ms. Boyce said this has not been discussed with the Director. She said if the CDD Director and the head of Engineering determine that a smaller right-of-way could meet the needs of the subdivision that it could be reduced to 35 feet. With the proposed shared access they are proposing a 50 foot easement, she said, but it could be reduced to 30 feet, she added.

With the reduced width of the right-of-way, Chairman Haight asked how snow removal would be addressed.

Mr. Pusich said he thought it would be pushed to the shoulder of the road.

Mr. Greene asked how the parking for the dwellings would be situated.

There would be two parking spaces per unit, with one space located inside the garage, said Mr. Pusich. He said there is no need for a turn-around for fire trucks because since they are installing sprinklers in the buildings, that requirement is no longer necessary.

Applicant

Applicant Haifa Sadighi said this project was initially presented to the Planning Department in 2014. Because of the time involved getting the project to this point, she said, they have missed the peak real estate market which was in 2014.

Ms. Sadighi said she has lived on this property for the past 20 years, and they have used the one driveway for access, and never had any problems with the driveway to access their homes. They have maintained the driveway, and constructed drainage for the road on both the left and the right side of the driveway. They plow the snow and gravel the road, she said. She has the support of the neighbors for the project, said Ms. Sadighi.

The vision for the project is to provide individual housing for young couples who want to get a start in Juneau, and to make it possible for them to own their own homes, she said. Ms. Sadighi said she felt it was unfair that they should have to abide by the new subdivision ordinance when they had started the process long before that ordinance came into effect. Without a variance, they cannot develop this project, she said.

Mr. Voelckers asked Ms. Sadighi what she perceived as the difference between a duplex and a common wall dwelling.

Ms. Sadighi said it was important for her to provide housing for people who would have a sense of ownership over their own homes, which living in a duplex would not provide.

Public Comment

Paula Mcneen spoke in support of the project. She said it is a beautiful piece of property and that it was a great concept that people own their own homes. She said she has navigated the road to the applicant's home all different times of the year and has had no trouble navigating the drive. Ms. Mcneen said she felt this subdivision would add quality housing for Juneau residents who wanted to own their own home within walking distance of town.

Richard Steele said he supported the project because more housing is needed in Juneau, and if the map of the area was examined, that they could see there was really no other alternative to construct a drive. Mr. Steele said this project would help alleviate Juneau's housing shortage. He said shared driveways are common in Juneau, and appropriate for this project.

Luann McVey said she knows the heart of the applicant is focused on helping others. This project will provide housing for people who cannot afford larger homes with big yards. She said she could not imagine putting individual driveways down the steep slope. The existing driveway provides adequate access, she said.

Jessica Quintera said she is the tenant who lives below the applicant. She said she has not experienced any problems with the driveway, and that as a tenant she really appreciates the opportunity to live in such a beautiful area.

Sally Donaldson spoke in favor of the project and said the drive affords easy access to the property at all times of the year.

Adjacent property owner Steve Brantner said they are in support of additional housing in Juneau. He objected to what he said is activity on their property without their knowledge or permission. Trees have been cut and removed from his property, he said. This work took place outside of the bounds of either of the easements, he said. He said he found no evidence in the record that CBJ had recommended a 20 foot width, as he said Mr. Pusich had stated. The records from the Planning Commission from 1982 indicate they found the 20 foot road width to be acceptable for a single family residence, he said.

Mr. Pusich said that the easement for Tract 2 has been in use for 20 years for the applicant to access her home, and that this is all part of the 1982 easement. He said there could have been better communication between the two parties. The site was full of trees which had been felled, and that there was minor disturbance on the Brantner property, and that the applicant had never directed the contractor to disturb the Brantner property. The applicant has maintained the driveway, he said.

Commission Comments and Questions

Mr. Voelckers asked if Mr. Pusich could elaborate on the next steps in the process of development.

Mr. Pusich said the entire road would be extended to 20 feet in width. There would be no additional need for additional easement from the Tract 1 owner, he said.

Mr. LeVine asked if this project could meet lot size requirements once it was subdivided. He said there are certain requirements in code for lot size when they front certain arterials.

Mr. Pusich verified that Mr. LeVine was referring to the D-1 lot size. He said they had examined that, but found that was not justifiable for this project.

Ms. Boyce clarified that one of the Code sections cited by Mr. Pusich regarding flexibility of lot design due to topographical issues is no longer in current code. It was removed with the recent Code update in September.

Chairman Haight said they should first consider the relationship between CBJ 49.15.424 and CBJ 49.35.210.

Mr. LeVine asked Mr. Palmer how they should approach deciding the relationship between the two portions of the code mentioned by Mr. Haight.

Mr. Palmer said it is element four of the variance criteria in which this relationship arises. He said to his knowledge since the new subdivision ordinance was passed in September that 49.35.210 has never been interpreted by the Commission, so this would be the initial decision based upon this portion of the code. The access provisions are in the 49.15.424 which are the access provisions which were specifically placed under the design category, said Mr. Palmer.

The 49.35.210 portion of the code has not been varied by the Commission, said Mr. Palmer, since the subdivision ordinance was passed. It is up to the Commission to decide if the provisions in 49.35 should be subject to a variance. The answer would vary depending on if the Commission went by a design standard, or a construction standard, said Mr. Palmer. The decision of the Commission has the potential to provide relief to the applicant, while at the same time opening up a significant section of the code.

Mr. LeVine said assuming that the variance was granted, if they would be in the situation where they had a project with frontage on a minor arterial. He said it seemed to him that was the crux of the matter. He said it seemed they needed to address the question of whether it was a minor arterial, and whether if the variance were granted that it had frontage.

Mr. Palmer said it is his understanding that North Douglas Highway is classified as a minor arterial by CBJ code. It is not relevant what the DOT classifies the road as for the land use code is irrelevant, he said. The second issue is frontage and direct and practical access, said Mr. Palmer. This property as currently designed has a frontage on North Douglas, said Mr. Palmer. However, as described by the applicant and other testimony on this issue, there is no practical access available through the frontage, he said. In order for the City to have the frontage requirement, said Mr. Palmer, there needs to be a purpose for it. Requiring that direct access be available through that frontage gives it purpose, he said.

If those two concepts are altered, said Mr. Palmer, then some of the fabric which holds Title 49 together begins to come apart.

Mr. LeVine said if the Commission varied the access portion of the code, then it was still left with the portion of the code dealing with frontage.

Mr. Palmer said he felt there was a way to decipher section 49.35.210 to state that for those parcels that have shared access but not a public road do not have to have frontage on a right-of-way. He added that 49.35.210 allows that parcel to be subdivided if they use a shared access, and the parcel has to be a D-1 size. If that occurs, said Mr. Palmer, there is likely a way to read that provision such that they do not have to have frontage on to the right-of-way.

Mr. Voelckers said when he studies 49.35.210 that it struck him as an old piece of code that had not been brought to the Subdivision Review Committee. He said had they addressed this, they would probably have decided that it seemed like an artifact from a decade or two earlier. He said he felt this portion of the code was given too much credence because there are variance

examples that do not even approach the types of sizes and conditions being addressed by the Commission on this variance request.

Ms. Boyce said this section of code lived in the “Access” Chapter of the code prior to September of 2015. During the subdivisions re-write when one subdivision chapter was envisioned, this section of Code was in the draft street design section which was separate from street construction standards, she said. However, with the final subdivision changes, all street requirements were moved to the public improvements chapter. The D-1 lot size requirement for proposed subdivisions along minor arterials was added to the code for a particular subdivision on Back Loop Road in 1991, she said.

Mr. Voelckers said this is an example of language coming from a specific project. He asked Ms. Boyce for her comment on the sheer size of the land parcels in the code, which are so much larger than current standards. He said they were hardly applicable to any of the current examples of other small and minor subdivisions.

In this section of the code there are two options, which are either to build an interior street or to construct a shared driveway, said Ms. Boyce.

Mr. Voelckers said he knew this would not be resolved this evening, but in his opinion criterion 3-6 should be struck from the language all together.

Mr. LeVine said it appears they are discussing (B) (2) which is that access shall be provided onto an interior access street. Mr. LeVine asked if he was correct in surmising the Commission was to decide whether to vary the interior access street requirements.

Mr. Palmer said that (B) (2) lists one option, which is that a subdivision can take place on a minor arterial as long as an interior access or frontage street was provided. Mr. Palmer said that (B) (3) provides the alternative.

Mr. Levine asked if the problem was that the driveway was being defined as an interior access street, but the driveway does not meet the standards for an interior access street.

Mr. Palmer concurred.

If they decide that 49.35.210 applies in this case, then they would have to decide if it was subject to variance which would be for the street requirements for an interior access, stated Mr. LeVine.

The staff read that section as not being applicable, because the frontage in front of this subdivision would not result in an access point whether that is an interior or an access street, or a shared driveway, said Ms. Boyce. The access point is offsite, she said, and a new one is not being created.

Mr. LeVine said he could not see how the Commission could decide that the provision did not apply. He said he could not see how it did not involve frontage along an arterial street. They could perhaps decide that frontage meant access that is in use. But then it would be inconsistent with section (B) (2) which states that access can be provided along an interior street, said Mr. LeVine.

Mr. Haight said they need to decide if it was a construction standard or a design standard.

Mr. LeVine said he saw that decision as the next step in the process.

Mr. Voelckers said it seems to him that on a common sense basis that they should allow continuation of the use of the driveway and to facilitate the development, which has less density than the option which would not even entail coming before the Commission. He said he would like to find a way to proceed with this variance request instead of holding it up even further while the Commission had a chance to delve into the 49.35.210 portion of the code.

Mr. Voelckers added there has been an ongoing precedent over a number of years that small, minor uses of private easements instead of right-of-ways have been used to access three or four lots. He said their packet lists numerous examples of instances where this has happened in the past. Mr. Voelckers said he thought maybe the cleanest variance approval for this request would be to mirror some of the language that they know is being very close to being presented to the Commission.

Mr. LeVine said he agreed the correct result is to allow this project to proceed. He said he doesn't think that this project would comply with the new language which is about to be reviewed by the Commission. He said he did not see a way to grant the variance without changing the code to accommodate it. This may say something about the new code they will soon be reviewing if this sort of project is not allowed, said Mr. LeVine.

Mr. Bell said they are basically setting a precedent for a piece of code which is not well defined. He said they would be making a decision based upon stale code language which is years old.

Mr. Haight said if they can go over each of the criterion and give an affirmative answer, then the project could proceed.

MOTION: *by Mr. Voelckers, that the variance is granted to modify 49.15.424 to allow a limited subdivision access serving three lots maximum in Tract 2MS569 as proposed except that the private easement extension within the subdivision should be a minimum 30 foot width.*

Mr. Voelckers said setting a 30 foot width would make it consistent with the language being proposed for minor subdivisions of three or four lots.

Mr. Voelckers said criterion one could be answered in the affirmative because allowing use of a private driveway easement due to physical constraints for access to a limited number of lots is

consistent with past practices of the City and with proposed draft ordinance language as enumerated by staff.

Criterion 2 is an affirmative answer because the limited private easement driveway will be improved to meet driveway width, gradient requirements, and safely serves the low vehicular counts anticipated.

Under item 5, Mr. Voelckers said he felt option (B) best suited this circumstance. He said granting of the variance would provide three lots facilitating development of single family or duplex residences consistent with North Douglas residential development at an equivalent or lower density than allowed without a variance.

Criterion six could be answered in the affirmative that granting of this variance would result in more benefits than detriments to the neighborhood, said Mr. Voelckers. Granting the variance would result in overall benefits to the neighborhood. Additional housing of a consistent scale and nature would be allowed without unduly affecting the traffic and access issues, said Mr. Voelckers.

Mr. LeVine said he felt they needed to address the question posed by condition four about the consistency with section 210(B). He said at some point they would have to make specific findings or elaborate on the findings in the staff report if they are to grant the variance. He said he understood Mr. Palmer to say that if they were to make a finding that they would have to address that code section.

Mr. Peters asked if the Commission found that 49.35.210 (B) is a construction standard or could be varied; his concern was how this would affect any other 49.35. portion of the code in terms of variances.

Mr. Palmer said he thought Mr. Peters was expressing concern about just what the consequences would be if Chapter 49.35 was opened up in terms of variances. He said that is one of the ultimate questions before the Commission. If it determined that 49.35.210(B) was a design or dimensional standard then it would be helpful for the staff and for other applicants to understand how that is either different or the same as other provisions in Chapter 35.

Mr. Voelckers said there is precedent for access being granted via private easement. He asked Mr. Palmer if he could help the Commission to suggest language that does not create a poor precedent, even though it has been practiced in the community for many years. They would like to vary the requirement that instead of a street there would be a private easement driveway.

Mr. Palmer answered if they would like to obtain that as an end result they would need to explain that the interior street or frontage road did not mean a public street.

Mr. LeVine asked if they were to try to make the street meet code, independent of the right-of-way size which the Director can narrow to 30 feet that the roadway itself would have to be 22 feet wide and paved.

Mr. Palmer responded that would be the presumption under the current code.

If they widened the road to 22 feet and require that it be paved, the problems would be resolved, said Mr. LeVine.

Mr. Palmer said that is one possibility.

Mr. Voelckers said in the draft from October 27, (2015) of this consideration of shared access, that the current language addresses the topic that the road may be unpaved. Mr. Voelckers said he would hate for this applicant to be waiting indefinitely while that language was further refined and approved.

Mr. Peters offered as a friendly amendment to the motion of Mr. Voelckers that it be stipulated this was for six lots, not three lots.

Mr. Voelckers accepted the friendly amendment.

Mr. LeVine asked how far they were from the completion of the frontage ordinance.

Ms. Boyce said they anticipate this would be before the Commission within the next month or two.

Mr. LeVine said he reads enough in that language to preclude just this type of project.

Mr. Palmer said one of the items the Commission may want to consider is that if this motion was approved, that they could be putting the Assembly into a situation in which it would have to differentiate this project allowing indirect access to at least seven lots and that may put the Assembly into a position where it has to split hairs to find a rational basis for the current street standards in the current structure for access within the code.

Mr. Peters said the reason they are moving in the current direction with the variance is because of the topography of the lots.

Mr. LeVine asked if there could be a way the Commission could show this variance is vastly superior to the project the applicant could build without a variance requirement.

They would still have to confront criterion number four, said Mr. Palmer.

Mr. Haight said they cannot move the motion until they come up with a positive finding for number four.

A solution, said Mr. LeVine, is that the Commission could find that 49.35.210(B) does not apply so they would not have to deal with it. They could decide it does not apply because once the access is not through the frontage, the subdivision no longer involves frontage on a minor arterial.

Mr. LeVine said he offered as a friendly amendment to the main motion that 49.35.210 does not apply because this subdivision, subject to the variance, will not involve frontage along a minor arterial.

Mr. Voelckers said he accepted that as a friendly amendment to his motion.

Roll Call Vote on the friendly amendment offered by Mr. LeVine:

Ayes: Peters, Voelckers

Nays: Greene, Dye, Bell, LeVine, Haight

The motion failed.

Mr. Voelckers said the staff report stated that item four had been met. He asked what change in this has occurred creating a different answer.

Mr. Voelckers withdrew his motion.

He said it did not appear they would be able to resolve item four this evening.

MOTION: *by Mr. LeVine, that they continue this item to the next meeting so that they have additional time to come up with a solution with further insight and assistance from the legal staff and the CDD staff.*

In support of his motion, Mr. LeVine said they are concerned about the consequences should the Commission decide to vary 49.35.210 (B).

The motion passed with no objection.

This variance request has been continued to the next meeting, said Chairman Haight.

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

IX. REGULAR AGENDA

USE2016 0001: Conditional Use Permit for a limited marijuana cultivation
business in the D-1 zoning district.
Applicant: June Hall and Paul V. Disdier

Location: 8393 North Douglas Highway

Staff Recommendation

It is recommended that the Planning Commission adopt the Director's analysis and findings and grant the requested Conditional Use permit, USE2016 0001. The permit would allow the development of a 500 square foot marijuana cultivation facility in the D-1 zoning district. The approval is subject to the following conditions:

1. An As-built survey shall be conducted and submitted to the CDD prior to issuance of a building permit.
2. The existing shed shall be relocated to meet the setbacks requirements for the D-1 zoning district prior to the issuance of a building permit.
3. The existing and proposed structures shall have no windows.
4. The door on the existing shed shall be relocated to the rear of the structure.
5. Renovation of the existing shed and construction of the proposed shed shall meet the Sound Transmission Classification (STC) regulations to eliminate any detectable noise from fans or generators outside of the structures.
6. Wastewater generated by the marijuana cultivation facility is prohibited from entering the septic system and the septic system is prohibited from being connected to any building where marijuana is grown or processed.
7. No back out parking shall be allowed onto the North Douglas Right of Way.
8. No parking for the marijuana cultivation facility or the residence shall be located in the North Douglas Right of Way.
9. Trees shall be planted on the north side of each building to provide additional screening.
10. The applicant shall pass the CBJ Fire Marshal's inspection.
11. Charcoal filters shall be replaced no less than once annually.
12. Lighting shall be installed at each doorway to the processing building and cultivation building.
13. No offsite glare shall be produced by exterior doorway lights.
14. Each door shall have either a grade 2 lock with deadbolt or grade 1 lock.
15. Outside swinging doors shall have security hinges.
16. Security cameras shall record in no less than high definition 1080p resolution.
17. Security cameras shall have an unobstructed view of each doorway to the processing building and cultivation building.
18. Security cameras shall have an unobstructed view of the regular activity without sight blockage from lighting hoods, fixture or other equipment in the processing building and cultivation building.
19. Security cameras shall have a battery back-up system installed capable of supporting one hour of recording time
20. Batteries shall be replaced no less than once annually.
21. Prior to the issuance of a Certificate of Occupancy, all security devices shall be

inspected to ensure they are fully operational.

22. This CUP expires if the applicant does not receive a state marijuana license approval within 18 months.
23. The applicant has notice of pending legislation (Ordinance 2015-38) that may affect this approval. The applicant will comply with all requirements that Ordinance 2015-38 imposes when it is passed even if more restrictive than the approved conditions of USE2016 0001. If the Director determines that Ordinance 2015-38 imposes more substantial submittal requirements and/or more restrictive approval requirements than what was analyzed or imposed by this permit the Director may schedule USE2016 0001 for further review by the Planning Commission within three months of the adoption of Ordinance 2015-38.

Mr. Peters said he would like to recognize that they are bringing a Conditional Use Permit before them before the ordinance has been approved. He asked what kind of situation this creates.

Mr. Palmer said that Ordinance 2015 0038 was introduced to the Assembly at its meeting on March 21, (2016). That is the substantive ordinance for marijuana establishments, he said. The Commission can either hear this Conditional Use Permit or it could continue this project until the ordinance was adopted by the Assembly.

Finally, said Mr. Palmer, there may be a way to provide a condition that if there are significant differences in Ordinance 2015 0038 compared to the Conditional Use Permit, if it was approved, that the applicant and the Commission could possibly reevaluate some of those implications stemming from the ordinance.

Mr. LeVine said they can consider this application because it is allowed with the CUP (Conditional Use Permit). He said the application is legally before the Commission because it is an authorized use with a CUP. He asked if his interpretation was correct.

Mr. Palmer concurred, stating that this CUP is before the Commission and that it could address it tonight.

Mr. LeVine added they could also decide to wait on the CUP until the ordinance was approved.

Mr. Palmer said this was correct.

Ms. Steadman told the Commission that the applicants, June Hall and Paul Disdier, were also the property owners. They live on North Douglas on 1.35 acres, she said. It is in the Comprehensive Land Use Plan as Rural Dispersed Residential, said Ms. Steadman. The land resides within the D-1 zoning district, and outside the urban service boundary, she said.

There is one single family residence on the property, said Ms. Steadman. The Urban Service Area boundary ends right after Bonnie Brae Subdivision, said Ms. Steadman. The entire D-1 area outside of the Urban Service area is where limited cultivation of marijuana is allowed with a Conditional Use Permit, she explained.

The staff does recommend that an as built survey be provided to accurately place the boundaries. It would be submitted with their building plan so they could ascertain that each structure meets the required set-backs, said Ms. Steadman, which are 25 feet in the front and 15 feet on the side. The applicant is proposing a 25 foot side setback for both of the structures, she said. The existing parking is currently in the right-of-way, and Title 49 requires that it be located on the site, she said. The single family residence requires two parking spaces and the marijuana cultivation facility requires one parking space, and they do require that those spaces be located on the site, said Ms. Steadman. There is a single car garage and adequate space for the required parking, she said.

There will be a packaging and drying facility, and behind that is the proposed cultivation facility, said Ms. Steadman. The entrance to the cultivation facility is separated somewhat from the cloning and flower rooms so nothing from inside those rooms is visible when the door is opened, said Ms. Steadman. The entire cultivation area is just under 500 square feet, she said.

Both areas within the facility would have dehumidifiers, fans and LED grow lights, said Ms. Steadman. There would also be fluorescent lights as well as a CO2 generator, said Ms. Steadman. The generator would be supported by propane, said Ms. Steadman. The applicant estimates the facility could support 390 plants, she said.

They were asked to analyze this application in light of what the Planning Commission had recommended in the ordinance, said Ms. Steadman, which includes requirements such as:

- ❖ Security plan that shows they meet the state requirements
- ❖ Waste disposal plan
- ❖ Screening plan
- ❖ Private septic inspection
- ❖ Ventilation/infiltration plan
- ❖ Carbon dioxide use disclosure
- ❖ Mold prevention methods

The applicant has proposed to use high resolution cameras as part of their security plan, said Ms. Steadman. There is an alarm system, and the staff recommends commercial-grade locks, said Ms. Steadman. Both of the buildings will have outside lights, said Ms. Steadman. The applicant has chosen a compost method for disposal of its plant waste, said Ms. Steadman. Neither building will have any windows. A secure container must be used for public transport,

said Ms. Steadman. That would happen in the drying facility before being placed in a transport vehicle, said Ms. Steadman.

The applicant is proposing a closed loop system which means there will be no vents to the outdoors, she explained. The fire department will be inspecting the carbon dioxide generator, said Ms. Steadman. The other two requirements are odor management and signage, said Ms. Steadman. Both buildings will have carbon filters to manage any odors, explained Ms. Steadman. Five signs are proposed, three health related, and one regarding public consumption and public transport. There will be minimal traffic involved, said Ms. Steadman, with deliveries expected every two weeks to the testing facility, a product manufacturing facility or a retail location.

A light in front of each of the buildings is suggested, said Ms. Steadman. That is a State requirement, she added. They have received comment from the City Assessor's office, said Ms. Steadman, that with appropriate conditions, the business would not affect the property values. Regarding neighborhood harmony, said Ms. Steadman, they have received sixteen letters in support of the venture and four letters in opposition, she said. The business does fit in with the Comprehensive plan, said Ms. Steadman.

All of the findings were met, said Ms. Steadman.

Commission Comments and Questions

Mr. LeVine said at least some of these conditions were part of the ordinance the Assembly is evaluating. He asked Ms. Steadman which of the conditions were part of the ordinance.

She said numbers 24, 22 and 21 were items addressed with the ordinance.

Applicants June Hall and Paul Disdier

Ms. Hall said the buildings will create no outside light. The plant odor will be controlled with the charcoal filter system, she said. The cultivation building will be a closed system, with no odor or air escaping the building, she said. The rooms will be hermetically sealed with no vents, she said. The light, humidity and temperature will all be controlled, she said. This will be a very technical and very sanitary grow room, said Ms. Hall. They will have the best of equipment and they will take care of any of the issues that need to be addressed, she said.

Mr. Disdier said the fans are very small that will be used in the buildings.

There will be no smell emanating from the building, nor will there be any loud noise, said Ms. Hall. They will not be using any generators, said Ms. Hall. There will be no wastewater to be disposed of, said Ms. Hall. It will be recirculated to the plants, she said. They will be using organic fertilizers, said Ms. Hall, they will not need to flush the growing medium from any salts

which would be created by non-organic fertilizer, she said. They will dispose of their plant waste through composting, said Ms. Hall.

They will have minimal traffic, with maybe one or two handlers on site, said Ms. Hall. The cultivation building will blend with the existing buildings and have low visibility, said Ms. Hall. They will plant trees to shield the buildings, said Ms. Hall. No products will be held on site, nor will any money be held on site, said Ms. Hall. There will be no public access to the buildings, she said.

Commission Comments and Questions

Mr. Voelckers asked how many trips they anticipated to and from the site.

Ms. Hall said they would hope to have a certain rotation of their plants at maturity at every two weeks. Mr. Disdier said they could transport the growing medium at the same time as product transport occurred. He said there would be very little traffic.

Mr. Dye asked if there was a reason why they would like to get the Conditional Use Permit now instead of waiting for the ordinance to be enacted by the City.

Ms. Hall said they would rather have approval sooner than later.

Public Comment

Juneau resident Dixie Hood said she has known Ms. Hall and Mr. Disdier for many years and finds them very trustworthy friends and neighbors to have in the community. She said she hoped the process could move smoothly for the applicants and that a Conditional Use Permit would be granted.

Juneau resident James Barrett said from an industry perspective that this operation is a state of the art, top of the line operation.

Juneau resident John Chapman said he and his wife live next door to June Hall and Paul Disdier. He said in all honesty that he voted against the marijuana initiative, but that he feels they will do a good job, and that private enterprise on private property is encouraged and good for the economy.

Carol Barril said she lives down the road from the applicants. She said she has looked at the plans and is impressed with how thoroughly they are following the rules. She said she was in support of the Conditional Use Permit for the applicants.

Benjamin Wilcox said he was in support of the facility. He said they will be marketing an organic, clean product, which is what the market will demand. He asked that the Commission not submit to scare tactics, and to give the applicants the chance they need to succeed.

Resident John Kremgrs said this is such a good model operation that it will be setting the standard for all operations following after it.

Giono Barrett said he has seen a lot of growing setups in Juneau. The equipment is truly state of the art, he said. The setup is immaculate, he said.

Resident Todd Boris said a lot of times state of the art systems fail. If that is what they would like to use, then Mr. Boris said he would like to see that stipulated in the CUP. He said they could go at a slower pace by waiting for the ordinance and to see the process was done correctly.

Resident Robin Dale said she would like the Commission to know that she has obtained an attorney who wished to call in telephonically this evening, and was denied the opportunity. She submitted written comments to the Commission. She said at the March 14 (2016) Committee of the Whole meeting, that several of the Assembly members acknowledged that important provisions to protect the health, safety, wellbeing and property interests of neighboring residents were missing from the current ordinances (sic). This is not a new concern, said Ms. Dale to Mr. Voelckers. She said back in September that Mr. Voelckers had believed that Ordinance 2015 0039 was missing specificity of buffer adjacencies and protections. To date none of those setbacks or buffers have been considered, said Ms. Dale.

Mr. Greene asked Ms. Dale why she had obtained an attorney.

She replied she felt there had been several process violations. She added that she is not entirely sure that her comments have been included in the record to date. This hearing announcement and the information in the staff report was not made available to the public until a week ago, said Ms. Dale. There are things missing from the application, said Ms. Dale, such as additional setbacks according to the CBJ code which have not been addressed. She said the staff is recommending approval of the application without ascertaining that the requisite information was in the application.

Resident Robert Minch said he has known the applicants for years. He said he read the staff report which he obtained online. He advised the Commission not to delve into areas that are already covered by another body, such as the State.

Resident Paul Dillon said he lives a few houses down the street from June Hall and Paul Disdier. He said it is dangerous to get into a situation of over regulating the industry. He said he and his wife are in support of the applicant's new business venture.

Resident Zane Luther said he did not know of anyone that he could recommend more highly than the applicants as pioneers in the new business of marijuana cultivation.

Applicants

Mr. Disdier said he would like to make one comment referring to the July deadline mentioned during public comment. When July arrives and the permits are issued for cultivation, they have to have a building, said Mr. Disdier. Once this is approved, they then start going through the building permit process, he added. Ms. Hall said if anything is changed about their operation, they have to notify the State. They do not need extra strictures in the Conditional Use Permit forbidding them to make any changes, since they have to notify the State about any changes already, she said.

Commission Comments and Questions

Mr. LeVine said that since the Assembly is currently considering the ordinance, if the applicants would comply with anything that came out of that process.

Ms. Hall said they did plan on complying with the new ordinance, as long as the requirements were reasonable. She said she would find huge setback requirements of 60 or 80 feet to be unreasonable. They have no choice but to comply with any regulations that came their way, said Ms. Hall.

Mr. Voelckers noted that the 25 foot side setbacks in the applicant's proposal are actually larger than those required in the CUP.

They measured out the space and decided that 25 foot setbacks would be adequate, and maybe make the neighbors feel more comfortable, said Ms. Hall.

MOTION: *by Mr. Peters, to move approval of USE20016 0001 with staff's findings and analysis, and the list of conditions as presented.*

Mr. Dye said he would like to add a friendly amendment adding security hinges to outward swinging doors on item number 15 which addresses the doors.

Mr. Peters agreed to the friendly amendment.

Mr. Dye said he would like to add to number 16 that UV or night vision capabilities be added to the cameras.

Mr. Peters said that would be fine.

Mr. LeVine asked to add a friendly amendment that they take conditions 21, 22 and 24 which were the items the staff had identified as already existing within the ordinance and replace them with the item that the applicants are to comply with the requirements of the ordinance and to give the Director the discretion to have the permit placed before the Commission again

if there are substantial changes mandated by the ordinance. He proposed the language state that, "The applicant has notice of pending legislation that may affect this approval. The applicant will comply with all requirements that Ordinance 2015 0038 imposes when it is passed, even if they are more restrictive than what is granted in this permit. If the Director determines that Ordinance 2015 0038 requires more substantial submittal requirements or more restrictive approval requirements than what was analyzed or imposed in this permit the Director may schedule USE2016 0001 for further review by the Planning Commission within three months of the ordinance being adopted.

Mr. Peters accepted that friendly amendment.

Speaking in favor of the motion, Mr. LeVine said as a general matter it would be better to have the ordinance passed prior to approving the Conditional Use Permit. He said in this case the use is already permitted without the ordinance being passed. They also have by all accounts an exemplary application and applicant; he could see no reason not to approve this permit, but that it would not create a precedent on passing Conditional Use Permits prior to the ordinance being enacted.

Mr. Haight said this application is setting a standard and placing the bar up high.

Roll Call Vote: *(on the final motion by Mr. Peters that USE20016 0001 with staff's findings and analysis be approved, with the list of conditions as presented, with the friendly amendment of Mr. Dye that security hinges to outward swinging doors be added to item number 15 which addresses the doors, and that it be added to number 16 that UV or night vision capabilities be added to the cameras. In addition, the amendment of Mr. LeVine's was added to the main motion that the applicant has notice of pending legislation that may affect this approval. The applicant will comply with all requirements that Ordinance 2015 0038 imposes when it is passed, even if they are more restrictive than what is granted in this permit. If the Director determines that Ordinance 2015 0038 requires more substantial submittal requirements or more restrictive approval requirements than what was analyzed or imposed in this permit, the Director may schedule USE2016 0001 for further review by the Planning Commission within three months of the ordinance being adopted.)*

Ayes: Dye, LeVine, Peters, Voelckers, Greene, Bell, Haight

Nays:

The motion passed by a unanimous vote.

AME2016 0008: A Rezone Request for 14 lots, 4.19 acres, in the Vintage Park neighborhood from LC - Light Commercial to MU - Mixed Use.

Applicant: GMD Development, LLC.
Location: Lots on Clinton Drive and 2797 Postal Way

AME2016 0008 has been rescheduled to April 12, 2016.

Staff Recommendation

Based upon the proposed project (identified as Attachments A), and the findings and conclusions stated above, staff recommends the Planning Commission adopt the director's analysis and findings and RECOMMEND APPROVAL to the Assembly to rezone the subject parcels from LC to MU.

CSP2016 0002: A City Project Review for construction of a pioneer road through CBJ lands on the west side of Douglas Island near the end of Douglas Highway.
Applicant: City and Borough of Juneau
Location: North Douglas Highway

CSP2016 0002 has been rescheduled until April 12, 2016.

Staff Recommendation

Staff recommends that the Planning Commission recommend to the Assembly that CSP2016 0002, City Project Review for construction of a pioneer road through CBJ lands on the west side of Douglas Island near the end of Douglas Highway is consistent with Title 49, the 1997 West Douglas Concept Plan, and the 2013 Comprehensive Plan, with the following recommendations:

1. Development of the pioneer road shall strictly adhere to CBJ Manual of Stormwater Best Management Practices.
2. Prior to development of culverts and bridges in the proposed project, Fish Habitat Permits shall be acquired and approved.

XI. OTHER BUSINESS – None

X. BOARD OF ADJUSTMENT – See UNFINISHED BUSINESS

XII. DIRECTOR'S REPORT

- Housing Action Plan Community Meetings

Mr. Steedle announced that there are two upcoming workshops on the Housing Action Plan: one on March 30, (2016) at the KTOO 360 studio and the other on March 31, (2016) at the

Valley Library.

- Joint Meeting with the Assembly

There is still a joint meeting with the Assembly scheduled for April 25, (2016).

- Commission Training

There may be a new commissioner appointed on May 4, (2016) said Mr. Steedle. He asked the Commission if it still wanted to proceed with the training for new members on April 26, (2016).

The Commission decided to keep that training date of Aril 26, 2016.

XIII. REPORT OF REGULAR AND SPECIAL COMMITTEES

XIV. PLANNING COMMISSION COMMENTS AND QUESTIONS

XV. ADJOURNMENT

The meeting was adjourned at 11:15 p.m.