

MINUTES
Planning Commission Regular Meeting
CITY AND BOROUGH OF JUNEAU
Mike Satre, Chairman

November 24, 2015

I. ROLL CALL

Mike Satre, 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 7:00 pm.

Commissioners present: Mike Satre, Chairman; Dennis Watson, Vice Chairman; Bill Peters, Michael LeVine, (telephonically) Nicole Grewe, Ben Haight, Paul Voelckers, (telephonically)

Commissioners absent: Mathew Bell, Dan Miller

Staff present: Rob Steedle, Interim Planning Director and Deputy City Manager; Beth McKibben, Planning Manager; Laura Boyce, Senior Planner

II. APPROVAL OF MINUTES

- October 27, 2015 – Planning Commission Committee of the Whole Meeting
- October 27, 2015 – Regular Planning Commission Meeting

MOTION: *by Mr. Watson, to approve the October 27, 2015, Planning Commission COW meeting and the October 27, 2015 Regular Planning Commission meeting with any minor corrections by staff or commission members.*

The motion was approved with no objection.

III. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS - None

IV. PLANNING COMMISSION LIAISON REPORT - None

V. RECONSIDERATION OF THE FOLLOWING ITEMS - None

VI. CONSENT AGENDA - None

VII. CONSIDERATION OF ORDINANCES AND RESOLUTIONS - None

VIII. UNFINISHED BUSINESS - None

IX. REGULAR AGENDA – None

The body was adjourned by Chairman Satre as the Planning Commission and reconvened as the Board of Adjustment.

X. BOARD OF ADJUSTMENT

VAR2015 0031: A Variance request to the requirement for frontage and practical access on a public right-of-way for a proposed minor subdivision.
Applicant: Peterson Creek Landowners Association
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 0031.

Ms. Boyce told the Commission that this variance request is for the requirement for frontage and practical access on a public right-of-way for a proposed minor nine lot subdivision. The property in question currently consists of four lots located at the very end of North Douglas Highway, said Ms. Boyce. The property is accessed by an easement approximately two miles in length across Goldbelt property, said Ms. Boyce.

In 1968 the Forest Service granted the easement for North Douglas Highway to serve this property, said Ms. Boyce. In 1977 the platting board for the CBJ approved the four lot subdivision with a waiver for the frontage and access requirements on a publicly maintained highway, said Ms. Boyce. This request was approved, although the staff did recommend denial of the request at that time, said Ms. Boyce.

The Peterson Creek Landowners Owners Association was formed in 1978, said Ms. Boyce. It established covenants for the property. The Association was formed to serve the subdivision and to deal with the Forest Service special use permit for the continual use of the easement, said Ms. Boyce. In 1981 the Forest Service sold the property to Goldbelt. The permanent easement was purchased from Goldbelt in 2003, said Ms. Boyce.

There are existing conditions and issues with this request, said Ms. Boyce. The code requires direct and practical access to the road with 30 feet of frontage on a public right-of-way for all lots, said Ms. Boyce. There is the access to the subdivision which consists of the 40 foot permanent easement across the Goldbelt property, and then there is the access within the subdivision, said Ms. Boyce. That consists of the existing driveway 12 to 18 feet in width. In some locations it is within the 25 foot no disturbance and 50 foot no development buffer to Peterson Creek, which is an anadromous stream, said Ms. Boyce. None of the lots front on a public right-of-way. That waiver was granted in 1977, said Ms. Boyce.

The current code requirements regarding access to the subdivision would require a 60 foot right-of-way, said Ms. Boyce. She said the code now allows for a potential reduction in that

right-of-way width which could potentially accommodate the existing 40 foot width for the existing property access, said Ms. Boyce. It would need to be a street built to applicable public standards which would be based upon the average daily trips calculated, she said.

The access within the subdivision according to current code would also need to be a 60 foot right-of-way that could potentially be reduced as well by up to 25 feet, said Ms. Boyce. The right-of-way would need to be built to applicable standards based upon average daily trips or publicly maintained access could be constructed, said Ms. Boyce. The driveway would need to be relocated outside of the habitat buffer. All lots would need to front upon a publicly maintained right-of-way with a minimum of 30 feet of frontage, said Ms. Boyce.

There is the option for privately maintained access roads and a public right-of-way for subdivisions outside of the urban service area if they generate 211 average daily trips or less; the property owners could do a privately maintained access within a public right-of-way, said Ms. Boyce. It would be privately maintained with an agreement, she added. The minimum width of the road could be 20 feet with a gravel surface, she said. That would meet the minimum established by the International Fire Code, said Ms. Boyce. A public street could also be built, she said.

The variance requirements are applicable when hardship from practical difficulties result in an extraordinary situation with unique physical features, said Ms. Boyce. The Board of Adjustment may grant a variance in harmony with the general purpose and intent of the title concerning dimensional and other design standards, said Ms. Boyce.

Ms. Boyce then reviewed the variance requirements which the staff determined are not met by the applicant.

The first criterion which must be met states:

“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.”

The staff found that this criterion was not met, said Ms. Boyce. Other property owners and developers are required to dedicate and build a road for a subdivision. They are also required to provide direct and practical access as well as the minimum frontage on a right-of-way, said Ms. Boyce. These requests historically have rarely been granted, she said.

The second criterion states:

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

The staff found that this criterion was not met. Ms. Boyce said the existing driveway is nonconforming with a substandard width of 12 to 18 feet. This substandard driveway would be

continued with the addition of trips along the driveway from the additional lots resulting from the subdivision, said Ms. Boyce. The standards in Title 49 are the minimum standards required for public health, safety and welfare, she said.

The staff did find that Criteria Three, Four and Five were met, said Ms. Boyce.

Criterion Six states:

“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. The proposal would continue use and its expansion along the existing driveway. Increased traffic and improvements to the driveway could cause detriments to the stream, said Ms. Boyce. When future development occurs along North Douglas the residents may expect City services, said Ms. Boyce.

Since three of the six criteria are not met, the staff recommends denial of the variance request, said Ms. Boyce.

The Board of Adjustment can either approve, conditionally approve, modify or deny the request, said Ms. Boyce, based upon the six criteria.

Commission Comments and Questions

Mr. Watson asked what type of bridge was on the property. He stated that the bridge appeared to have a serial number on it.

The numbers on the bridge are an address, responded Ms. Boyce.

Referring to an analysis on page 24 of the report, Mr. Voelckers stated that he thought the average daily trips were premised on the assumption that each of the lots would have two primary residences. He asked why the daily trips were calculated for two residences per lot when the covenant required one residence per lot.

If the property were approved for nine lots in the Rural Reserve area, said Ms. Boyce, two single-family homes and one accessory apartment could feasibly be constructed on each of those lots, she said. Therefore, she said, the trips generated could be for 18 single-family homes with 18 accessory apartments that could potentially result in 291 average daily trips.

Mr. Voelckers said the Planning Commission in 1977 felt comfortable with the covenant which limited the density which could be constructed on the lots. He said he felt the applicant was proposing that the density covenant stay in place. He asked if the covenant would have legal weight.

Referring to a memo on this issue from the Department of Law, Ms. Boyce said that the covenants do not carry legal weight.

Ms. McKibben said that the City cannot enforce covenants. Covenants are an agreement between property owners, she added. The calculation for average daily traffic performed by the staff is based upon two single-family dwellings plus an accessory apartment per lot which is permitted by the Table of Permissible Uses, she said. In the Law Department memo, said Ms. McKibben, the average daily trips are calculated by area and not by lot.

Mr. Voelckers asked what type of agreement for the property would work instead of a covenant to maintain the lower density in the area.

The City can enforce plat notes but it cannot enforce covenants, said Ms. McKibben. She said it may be possible to create plat note requirements reflecting the existing covenants.

Mr. Watson noted that it appeared that the average daily trips number established by the Law Department assumes that all of the property could be built upon, when in fact there are wetlands in the area which cannot be built upon. He asked how much of the property could be built upon excluding the wetlands.

Ms. Boyce said for example if a planned unit development were to be built on the property that the total number of units could be built with clustered development, avoiding the wetlands. The request before the Commission is for a nine lot subdivision, said Ms. Boyce. If the nine lot subdivision were to be approved it could generate 291 average daily trips. Conditions could be placed upon the variance reducing the number of dwelling units and therefore lessening the average daily trips, she said. One single family home and one accessory apartment per lot would generate an estimated 146 average daily trips, she said.

Applicant

Applicant Gretchen Keiser said if one of the goals of the community is to maximize the economic value of land that the subdivision of the property would maximize the economic value of the land in the rural subdivision for both the property owners and the community.

Ms. Keiser said the applicants believe that they have met Criteria One, Two and Six.

Regarding Criteria One, she said the relaxation would give substantial relief to the owners because they would not be required to construct a roadway and plat a right-of-way from the North Douglas Highway. For the proposed nine lot minor subdivision this relaxation would be consistent with justice to other property owners in the Outer Point vicinity because it would allow for continued access via the residential driveway across Lot Three. This is consistent with the Goldbelt stipulation that no public right-of-way will be allowed on Goldbelt land, she said.

Other variances granted on the public access issue focus on what would be just for other properties within the neighborhood, not the entire community, said Ms. Keiser. Two of the previously approved variances were similar to their variance request to the extent that they addressed shared driveways that were not a public right-of-way, she said. These variances were in the Lena Point and Amalga Harbor areas, she said.

Co-applicant Bob Wild said he noticed that the staff and attorney reports addressing the justice issue to other land owners always begin with the preface that all parties are required to meet the subdivision requirements. The codes provide for exceptions, commented Mr. Wild. This is possible through a variance, he said. It is not unjust to other property owners to obtain a valid variance, he said. He said it also concerned him that their covenants did not apply. These are living documents which run with the land, he said. He said he did not understand why the covenants were not enforceable.

Ms. Keiser said the applicants also believe that Criterion Number Two has been met. Granting the variance would allow the continued use of the commonly shared driveway as access for the proposed minor subdivision. The Peterson Creek Land Owners Association commonly held driveway, and annual maintenance charge to the landowners has been functioning since its establishment in 1978, she said. The CBJ code requires an access agreement between the CBJ and the land owners for a privately maintained access road, she said. In this present variance, the privately maintained driveway is similarly governed by easement agreements among the land owners and with the native corporations.

The proposed development is limited by the covenants to one single family residence with an accessory apartment in each of the proposed nine lots, she stated. The average daily trips would be no more than 146, and the existing driveway would be adequate for the very low traffic volume. The public safety and welfare would be preserved because the existing driveway provides direct access to each lot and is adequate for the emergency vehicles, she said. She noted that since they are outside of the service area and would not be eligible for fire truck service, that the required width of 20 feet for the road is not germane.

Ms. Keiser said they suggest that a couple of plat notes which would be enforceable by the City be formulated to reflect the intention and language of the existing covenants.

Title 49 under nonconforming development states that an existing nonconforming situation cannot be aggravated, said Ms. Keiser. That portion of the code talks about changing the physical footprint of the land or expanding something on the land, said Ms. Keiser. There is no reference there to any change in activity. They do not see how a few more vehicles from three more lots is aggravating the nonconformance, said Ms. Keiser.

They also meet Criterion Six, said Ms. Keiser. They could provide mitigation for pollution entering the Creek, said Ms. Keiser. These measures would include:

- ✓ no impervious surfaces in parking areas or personal driveways within the 50 foot buffer
- ✓ snow removal which avoids disposal into Peterson Creek
- ✓ no storage of trash, rubbish, or other wastes within the 25 foot buffer

- ✓ no construction of personal driveways within the 50 foot buffer to access new lots
- ✓ vegetated improvements along stream corridor where necessary and approved by appropriate natural resource agencies with jurisdiction

Commission Comments and Questions

Mr. Haight mentioned that the area has no utilities. The area in question also has no electricity or communications, he said.

Ms. Keiser said that every homeowner has their own power system.

Mr. Haight asked if drainage control from the road along Peterson Creek could be a possible mitigating measure to control drainage from the roadway into the creek.

Ms. Keiser said that typically a road has a crown in the center so that it drains. They do keep the ditch on the east side of the driveway brushed out, she said. There is an average of 20 feet of vegetation on the creek side of the driveway, she said.

Mr. Watson asked what traffic count the DOT was using in its methodology for establishing access.

Ms. Keiser said that she did contact DOT and asked about their determination that this was a development which must adhere to commercial standards. There is language in their code which states that multi-family residential developments of more than four units per lot are considered commercial development as far as driveway standards are concerned, she said.

She said it appears they can obtain a driveway permit from DOT. Their driveway falls off of North Douglas so there is not drainage onto the highway, which would have been an issue.

Mr. Watson asked if the marks he was viewing were walkways or driveways.

There is only one driveway said Ms. Keiser, and that is their drivable bridge.

Mr. Watson asked where the property owners would park their vehicles, should this variance be approved.

There is a parking area on tract two, said Ms. Keiser. She indicated on a map other points of access for current and future residents should the property be subdivided. She added that one of the mitigation measures that they are proposing is no new driveways.

Chairman Satre commented that at this point it did not really matter how the applicants would gain access but that mitigation measures would be in place that no new driveways would be constructed within the 50 foot buffer.

MOTION: *by Mr. Voelckers, to approve the variance including the new findings as presented by the applicant, with the conditions that:*

- 1. A note will be placed on the USS 1555 subdivision plat that requires that a neighborhood association remains in effect, all landowners and their heirs or successors are members of the association and charged an annual fee for driveway maintenance and associated expenses.*
- 2. A note will be placed on the USS 1555 subdivision plat that limits housing development to one single family residence and accessory apartment on each of the lots of no less than 3 acres.*
- 3. Mitigation measures required within the 50 foot no development buffer and 25 foot no disturbance buffer of Peterson Creek are:*
 - a) No impervious surfaces in parking areas or personal driveways within the 50 foot buffer*
 - b) Snow removal which avoids disposal into Peterson Creek*
 - c) No storage of trash, rubbish, or other wastes within the 25 foot buffer*
 - d) No construction of personal driveways within the 50 foot buffer to access new lots*
 - e) Vegetated improvements along stream corridor or where necessary and approved by appropriate natural resource agencies with jurisdiction*
 - f) No parking along the roadway (friendly amendment offered by Mr. Watson and accepted by Mr. Voelckers)*

In support of his motion, Mr. Voelckers stated that he found the comment presented by the applicants compelling. He stated that it sounds like the applicant is perfectly willing to use the mechanism of plat notes to cover some possible weakness with previous covenant language, and to establish a cap on density. He said he personally would be comfortable that there would be low average daily trips on the driveway. Mr. Voelckers said he did feel that variances were the proper vehicle when there was an anomalous piece of property. The width of the driveway is less than would be required for a fire truck, said Mr. Voelckers, but since this area is not served by the Fire Department, it is a moot point. Caveats could be placed in the plat notes by the City stipulating that the City is not liable for the maintenance or service of the road, he said.

Mr. Watson said that he would like to add the condition that there be no parking along the roadway. He said he was concerned that parking along the roadway could prevent access for other vehicles. It could limit access by police and other emergency vehicles when needed, he said.

Mr. Voelckers accepted the condition offered by Mr. Watson as a friendly amendment.

Mr. Haight said he would like to add a friendly amendment limiting the total trips to 146 average daily trips per day.

Chairman Satre asked Mr. Haight if there is a plat note limiting density to one residence and one accessory apartment per lot if that would be suitable.

Mr. Haight said that would be suitable.

Mr. LeVine asked if the conditions addressed the substance of concerns of the Law Department.

Chairman Satre responded that there were no representatives present at the meeting from the Department of Law.

Mr. Haight said he supported the motion as it has been presented. The subdivision was initiated more as a remote subdivision, he said. It was initially accessed by water prior to construction of the road, he said. This is a unique situation which supports the variance in that instance, he said.

Mr. Watson stated that he was in support of the motion. He said the CBJ does take its stream setbacks very seriously.

Chairman Satre said that he was generally in support of the motion. He said the memo from the Department of Law raises several issues which they have not dealt with in the past. He clarified that granting the variance does not grant the subdivision. That will be a different process where some of the issues raised by the Department of Law may be relevant at that time.

The motion passed with no objection.

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

XI. OTHER BUSINESS - None

XII. DIRECTOR'S REPORT

Monday, November 30, (2015) there is an ordinance up for public hearing before the Assembly to change what was enacted a year ago for the subdivision of property from deferral for five years to abatement for three years, said Mr. Steedle.

There is an another ordinance connected with property tax exemptions that the staff will be working on and that is concerned with tax breaks for rehabilitation of deteriorated properties, said Mr. Steedle.

XIII. REPORT OF REGULAR AND SPECIAL COMMITTEES

Wetlands Review Board

Mr. Haight reported that the Wetlands Review Board met on November 19, (2015) for a continuation of their review of the Juneau Wetlands Management Plan. They will continue their review of that plan at their next meeting held on December 17, (2015) said Mr. Haight.

Lands Committee

Mr. Peters reported that the Auke Bay loading facility has been forwarded to the Assembly for consideration.

Public Works Committee

Mr. Watson reported that the Public Works Committee met November 23, (2015) and that the Vista Del Sol subdivision had a property owner complain that the developer did not meet the requirements under Title 49. Mr. Watson said he believed some of the services not provided were a stop sign and lighting. There is a provision in Title 49 that allows the Planning Commission to grant an extension for up to 12 months to the developer, said Mr. Watson.

DOT attended the meeting and provided information on their projects from this year and into the future, said Mr. Watson. He said his recommendation was that DOT be invited to the Planning Commission to go over these items when the new members join the Commission. They will be working on Egan, the harbor area, the Auke Bay corridor and on paths up to the University. DOT is plans on building a road that crosses Meadow Lane in 2016, said Mr. Watson. They also have plans for an additional roundabout at the Stephen Richards and Loop Road juncture, said Mr. Watson.

Marijuana Committee

Chairman Satre reported that the ad hoc Marijuana Committee met several weeks ago and forwarded a tax recommendation to the Assembly for a 5% existing sales tax, going to the voters for another 3% on marijuana products, he said. They are currently dealing with local licensing with the idea that a conditional use permit be obtained for the marijuana-related facilities with the establishment of a local licensing process in addition to the state license, he said.

XIV. PLANNING COMMISSION COMMENTS AND QUESTIONS - None

XV. ADJOURNMENT

The Meeting was adjourned at 8:34 p.m.