

Agenda
Planning Commission
Committee of the Whole
CITY AND BOROUGH OF JUNEAU
Ben Haight, Chairman
December 11, 2018

I. ROLL CALL

Ben Haight, Chairman, called the Committee of the Whole Meeting of the City and Borough of Juneau (CBJ) Planning Commission (PC), held in the Assembly Chambers of the Municipal Building, to order at 5:45 p.m.

Commissioners present: Ben Haight, Chairman; Dan Miller, Dan Hickok, Andrew Campbell, Nathaniel Dye, Carl Greene

Commissioners absent: Percy Frisby, Paul Voelckers, Michael LeVine

Staff present: Jill Maclean, CDD Director; Beth McKibben, Senior Planner; Laura Boyce, Senior Planner

Assembly members: Wade Bryson

II. REGULAR AGENDA

AME2018 0009: Proposed amendments to 49.30 – Nonconforming Development

Ms. McKibben told the Commission that the primary concept of this proposed amendment to 49.30 is to be less stringent on benign nonconforming situations and more stringent on those that would have a more detrimental effect on public health and safety. The best way to address conformity is to make sure that zoning works, she said. The ADOD (Alternative Development Overlay District) is a good example of this. The other concept is to sanction benign developments. Every community decides what is benign for them, she said. In some residential uses, allowed density may not be conforming to the current code, she said.

The community is experiencing challenges as the finance community is reticent to finance nonconforming properties, said Ms. McKibben.

The other goal is to phase out detrimental nonconforming uses, said Ms. McKibben. There are not too many of these within the community, she noted. Some of these properties truly do not

belong in their existing neighborhood, she said. The goal is that over time these properties will be moved to an area in which they fit, she said.

A change which had recently been made to the draft ordinance is the nonconforming use. The language states that a nonconforming use may be expanded as long it still comports with the neighborhood, she said, with no negative impact.

Other changes were made based upon the discussion at the last meeting regarding nonconforming structures, said Ms. McKibben. A nonconforming structure may be reconstructed in compliance with regulations when they are accidentally damaged or destroyed. If it is intentionally destroyed, it can only be reconstructed in accordance with the current code, said Ms. McKibben. Previously the language stated that a nonconforming structure could be reconstructed whether its damage was by accident or intentional, said Ms. McKibben.

Additional new language was added concerning overcoming a presumption of abandonment, said Ms. McKibben. This provides a method for a property owner to overcome a determination that a nonconforming situation has been abandoned. This would be approved by the Director and could be protested to the Board of Adjustment at a Nonconforming Situation Review. This draft has language which specifically defines what abandonment is, said Ms. McKibben.

Proof of Nonconforming Situation was changed by the staff to Proof of Nonconforming Status, said Ms. McKibben. It is now clearer to have a group defined as nonconforming status such as if someone wanted to sell their four plex which was legally nonconforming. They would have proof of nonconforming status, said Ms. McKibben. The process has not really changed even though the name changed, she noted.

The Nonconforming Situation Review language has also changed since last viewed by the Commission, said Ms. McKibben. This process allows the Board of Adjustment to review, limit, or deny:

- ✓ The change of use to a different use which is prohibited by the base zone
- ✓ Expansion of nonconforming use
- ✓ Change from a nonconforming, nonresidential use to an allowed residential use that exceeds the allowed density in RR, D1, D3, D5, D10SF, D10, D15 and D18 zones
- ✓ Reconstruction of a nonconforming dwelling unit on sites that exceed the maximum residential density standards when an applicant does not provide standard evidence for a Proof of Nonconforming Situation when the Director does not find the evidence to be satisfactory

Commission Comments and Questions

Mr. Miller asked for clarification of a legal nonconforming status. He asked if this would fit

within the Nonconforming Situation Review and if there was an avenue other than the Planning Commission which could review the status.

Ms. McKibben said the proof of nonconforming status which is a staff review. As part of this work CDD needs to reach out to the business and finance communities, the appraisers and the title companies. They could then notify their client that they need to obtain a legal nonconforming status, she said. Often people don't know that their property is nonconforming until it comes to sale, said Ms. McKibben. That would enable the sale to proceed much more smoothly, she said. If they want to appeal the staff decision on the nonconforming status, then the next step would be the Nonconforming Situation Review, she said.

The adoption of ordinance 15-03 provides the opportunity for the Planning Commission to approve right-of-way acquisitions that create nonconforming situations if each lot has at least one building that can be reasonably developed, explained Ms. McKibben. The nonconforming situations created by these acquisitions will be considered legally nonconforming and should be documented as such. This draft nonconforming code works with that process.

In general, a legally nonconforming use that is operated and maintained, has the right to continue operating. Some nonconforming codes provide for amortization of nonconforming uses, meaning the nonconforming use is given a period of time, such as five years, to become conforming, or else move. This is not a process that Juneau has used and is not proposed with this language. If a nonconforming use is not being maintained or well operated, there are other processes outside of Title 49 that can be used to address the problem.

At the last meeting it was discussed what transpires when a nonconforming status is lost, said Ms. McKibben. Language currently in the code states that it is lost if the repair cost of the structure is more than 75 percent of the cost of the replacement of the entire building, exclusive of foundation, with new material. The extent of building damage shall be determined by the building official.

The current proposal is as follows:

- ✓ Nonconforming use - if intentionally destroyed, nonconforming rights are lost, and the redevelopment must comply with current regulations. If accidentally destroyed to the 75 percent threshold, then the nonconforming use cannot be reconstructed or developed.
- ✓ Nonconforming density for more than one dwelling unit - if intentionally destroyed, nonconforming density rights are lost. If accidentally destroyed, there is no replacement cost threshold, and nonconforming density may be reconstructed.
- ✓ Nonconforming density to one dwelling unit - if intentionally destroyed, nonconforming density rights are lost. If accidentally destroyed to the 75 percent cost threshold, the nonconforming density cannot be reconstructed.

- ✓ Nonconforming structure - if intentionally destroyed, nonconforming rights are lost and the construction must comply with current regulations. If accidentally destroyed to the 75 percent threshold, the reconstruction must comply with the current dimensional standards.

Mr. Miller inquired about the case of a nonconforming density.

Ms. McKibben referred the Commission to the table presented earlier which allows for the reconstruction of the dwelling which has a nonconforming density.

Mr. Miller said he has never liked the 75 percent rule. Mr. Miller said he believed that a lot of the legally nonconforming situations in Juneau are in the downtown area. Most of these lots are benign, said Mr. Miller. Referring to more recently constructed and deemed nonconforming buildings along Glacier Highway, Mr. Miller said if they were to be destroyed for over 75 percent of the value, they would not be able to reconstruct their buildings at the same location. They would have to conform to the newer code.

Mr. Dye said he agreed with much of what Mr. Miller said. The purpose of zoning is to spur development in a certain direction, said Mr. Dye. He said he does have some concern about it being too easy to rebuild to a non-conforming standard. He said he does not want nonconforming construction so easy to obtain that zoning regulations become meaningless.

A nonconforming density with a nonconforming structure on a nonconforming lot are exempt from the 75 percent rule, said Mr. Miller. He said he feels this is a good rule. He said he did not think it was fair that some structures were exempt from this 75 percent rule while the others are not. He said they should both be able to rebuild on the same footprint without having to meet the existing setback requirements.

Mr. Dye said he did agree that single-family nonconforming residential units are more benign than other multi-residential nonconforming structures. He said it did seem to be a little unfair that the 75 percent rule still exists for single-family units. Mr. Dye asked the staff if they could set a date which would encompass 100 percent rebuild.

Ms. Maclean said for the most part it is the two town areas which have the most nonconforming single-family residences and structures. The ADOD's are in place to protect those residences, she said.

Ms. McKibben said perhaps once they accomplished the downtown zoning, that they look again at the nonconforming structures in that area. She said they have a number of exceptions for an instance with a nonconforming lot to be granted reduced setbacks. The evaluation for the downtown zoning should result in very few nonconforming structures, she said. It may be a better time to discuss this particular issue when they have a better idea of what the new

downtown zoning will be like, she added.

Mr. Dye said they are trying to protect single-family residences as well as multi-family residences until the zoning is fixed.

In answer to a question posed by Mr. Dye, Ms. McKibben said there are currently no sidebars placed upon what the nonconforming density could be increased to. Referring to line 261 of the draft ordinance, Ms. McKibben read that in all residential zones, (RR – D18) a change from a nonconforming nonresidential use to an allowed residential use that exceeds the allowed density would be the expansion of a nonconforming use. On line 301 of the draft ordinance, Ms. McKibben read that nonconforming residential density will have no net increase in overall detrimental impact on the surrounding area taking into consideration factors such as vehicle trips, impact on surrounding street parking and on lot coverage, vegetative cover, and conformity with the Land Use Plan.

Mr. Dye said he was thinking of a chart similar for the one developed for the Alternative Residential Subdivision (ARS). For D5 zoning for example, maximum development would fall just a little under the zoning for D10, he explained.

Ms. McKibben said she understood they are talking about making a nonconforming use to be changed to a nonconforming density. If this was in a D1 zone there would be the highest density possible.

Mr. Dye said he did have a concern that the ordinance would limit rezone work. He said perhaps it opened up a bigger area than may be optimal.

Mr. Miller posited that if the propane business on Mendenhall Boulevard decided to purchase an industrial lot for their business and change their nonconforming uses to a nonconforming density, their lot could be a D10 zone when everyone around them was zoned D5.

This is an incentive to get rid of nonconforming uses, said Ms. McKibben. This is a concept that has existed in the language, but they had not discussed it very much, she said. The idea is that residential uses are probably more compatible with the neighborhood, she said. They could be more specific about criteria evaluated in the Nonconforming Situation Review that would make the Commission more comfortable, she said. They could put in language as suggested by Mr. Dye, she added. They could combine the two approaches, she said.

Ms. Maclean said she liked the limits suggested by Mr. Dye. She added they do already have bonuses in Title 49 such as the apartments on Riverside Drive which received extra units. There are alternative ways to gain units or density, she said.

The Board of Adjustment through the Nonconforming Situation Review could deny a request, said Ms. McKibben, or it could apply conditions. If there is a density of D15 proposed in a D5 zoning district, and the Commission found that the traffic was incompatible with the area or the site could not be adequately buffered from the adjacent D5 zoning, the Commission could apply conditions, she said.

Mr. Dye clarified that to apply for a change in density the applicant would already have to be in a legally nonconforming situation.

Ms. McKibben clarified for Mr. Dye that things that are not legal need to go away, or become legal.

To clarify what is “intentional” Ms. McKibben said if an individual burns their own house down, that is intentional. If someone else burns that house down, that is not intentional, she said, unless there is evidence that the owner paid someone else to burn their house down, she said.

Changes within the Current Draft Ordinance

On line 44, under nonconforming uses for continued operation, the continued operation has changed to reflect the conversation from the last meeting, said Ms. McKibben. She said based upon the conversation at the last Planning Commission meeting, the Commission seemed to be fine with expansion of the use inside of the building as long as there were not external negative impacts that affected the neighborhood.

“Overcoming presumption of abandonment” on line 208 of the draft ordinance, said Ms. McKibben, has been adjusted. It defines abandonment, and this is decided by the Director. If the applicant is not satisfied with the Director’s decision, that decision can be protested through a Nonconforming Situation Review by the Board of Adjustment. All of the Director’s decisions within this ordinance can be protested through the Board of Adjustment through the Nonconforming Situation Review, said Ms. McKibben.

Mr. Miller asked if there are time frames associated with abandonment.

Abandonment would be a little bit different depending upon the nonconforming situation, said Ms. McKibben. A nonconforming residential density, for example, can be reconstructed no matter how long it has been vacant or abandoned, she said. Once the reconstruction process has begun, it must be completed within three years, she explained. There is a timeline for a nonconforming use, she said. “Once abandoned, the prior legal nonconforming status of the use shall be lost and any use of the property should comply with all applicable provisions of this title, unless the nonconforming use is established to the Nonconforming Situation Review.”

If the propane store changes to a duplex, the previous use of the propane store cannot be regained, said Ms. McKibben. A property would be considered abandoned if no action had been

taken on the property within a year unless the owner can demonstrate that they had to make substantial efforts to continue the use. That is consistent with the current code, said Ms. McKibben.

One dwelling unit that is nonconforming can be reconstructed within three years, said Ms. McKibben.

Mr. Dye asked why there is no time limit for residential density on residential abandonment.

This concept had been discussed at the Title 49 meeting in the support of residential uses and densities, said Ms. McKibben. Ms. McKibben said one example she could think of that was discussed at the Title 49 meeting, was a residence which had been abandoned for several years because it was stalled in the probate process.

Mr. Miller said perhaps it could be placed under the Director's determination of abandonment that proof of a necessary absence such as to take care of a relative could be used as a reason for abandonment not to be declared.

Mr. Hickok asked if a nonconforming use continued to pay property tax if it still would have to be considered abandoned.

If a business stops operating for a period of time, and taxes are still paid on it, the use itself is abandoned, said Ms. McKibben.

Mr. Hickok asked if there is a notification process for abandoned uses.

Educating the community about this new code will be the challenge, said Ms. McKibben.

In answer to a question posed by Mr. Greene, Ms. McKibben said that a nonconforming use can be transferred with ownership. If the new owners wanted to use the property for a different use then they would have to comply with the current code, she explained. There is a process within this ordinance for an owner to go from one nonconforming use to a different nonconforming use, she added.

Ms. McKibben added that she believes there has yet to be added to this draft ordinance a time limit for the nonconforming structure reconstruction.

Mr. Miller said if there is a structure of nonconforming density there is no time limit.

Ms. McKibben said currently nonconforming structures have a one-year time limit. She asked Mr. Miller if he wanted the nonconforming structure for nonresidential uses to have a one-year time limit to reconstruct.

Mr. Dye said it may be very difficult for businesses to come back within a year if they may have to confront insurance and legal issues.

Mr. Dye said he would be more comfortable with a three-year time span.

Mr. Miller concurred with Mr. Dye.

Mr. Dye said perhaps they could file a letter of intent to be constructed within a year and then have several years for completion.

Ms. McKibben said she would work on some language to reflect these ideas.

The law department will be notified of the revisions suggested this evening, said Ms. Maclean.

Chairman Haight said he would like to see this draft ordinance come once again before the Committee of the Whole so that new Commission members can be brought up to speed.

A presentation will be made to the real estate and finance community about this draft ordinance so that it can provide its input at the public hearing of this ordinance, said Ms. McKibben.

III. OTHER BUSINESS - None

IV. ADJOURNMENT

The meeting was adjourned at 6:50 p.m.