Agenda

Planning Commission - Title 49 Committee
City and Borough of Juneau

October 9, 2018
Assembly Chambers
5:30 PM

I. ROLL CALL

II. APPROVAL OF AGENDA

III. APPROVAL OF MINUTES

A. Title 49 Committee September 17, 2018, Draft Minutes

IV. AGENDA TOPICS

A. AME2018 0009: Proposed amendments to 49.30, Nonconforming Development

V. COMMITTEE MEMBER COMMENTS AND QUESTIONS

VI. ADJOURNMENT

Meeting Agenda of the City and Borough of Juneau
Title 49 Committee of the Planning Commission

Monday, September 17, 2018
Community Development Department
Large Conference Room, 12:00 pm

Members Present:
Nathaniel Dye, Paul Voelckers, Michael Levine, Carl Green

Members Absent:
Dan Miller

Staff Present:
Laura Boyce (CDD Planner)
Jill Maclean (CDD Director)
Teri Camery (CDD Planner)
Marjorie Hamburger (CDD Admin)
Nate Watts (Code Compliance Officer)

Members of the Public:
Patty Wahto (CBJ Airport)

I. Call to Order
Meeting called to order at 12:05 pm.

II. Approval of Agenda

The agenda was approved as is.

III. Agenda Topics

A. <u>Review of Financial Guarantee Requirements for Stub Streets & Temporary Cul-de-Sacs</u>

Ms. Boyce said that this case, AME2018 0015, was presented at the September 11, 2018, Planning Commission meeting but was referred back to the Title 49 Committee for more discussion.

Tim Felstead's memo was reviewed. Page 2 of the memo asked if there should be a link between a temporary cul-de-sac and a stub street. Mr. Voelckers said there seems to be an obvious link between the intent language for cul-de-sacs and the option for a pseudo-stub street. Mr. Miller said he thought the cul-de-sac should be put in no further than needed and not be required to extend to the edge of the property if not needed. How does staff recommend this be dealt with?

Ms. Boyce said the code now says that temporary cul-de-sacs are to be built as close to property line as possible. She sees that the street extension is a stub, foreseeing that a road will need to be extended in the future. The cul-de-sac is needed for fire access. With a stub street, there is not any purpose except for a future extension. Mr. Voelckers asked if staff had any historical information. Ms. Boyce said that in 2015, temporary cul-de-sacs were added to the code and since then only one temporary cul-de-sac was built, on Blueberry Hill. Mr. Dye asked if that project was bonded for the removal. Yes, said Ms. Boyce. The Vista del Sol subdivision does not have temporary cul-de-sacs but dealt with that in a subdivision plat note.

Mr. Voelckers said he is still interested in considering if cul-de-sacs and stub streets are linked or not.

Mr. Dye said he can't see the point of removing a cul-de-sac; you might just end up with a bulbous area. He also can't see the intent of bonding for a removal. It seems simpler to just leave it and not bond for removal; the area can be used as a traffic calming feature or something like a basketball court, he said. Mr. Levine asked why cul-de-sacs are built at all. Mr. Voelckers said they are for emergency vehicles to turn around in.

Mr. Dye said there currently is a bonding requirement to remove aspects of the cul-de-sacs and realistically there is a reason to get rid of it. Mr. Levine said it could be that an owner of a property in the cul-de-sac might want that little piece of property removed from the right-of-way. Mr. Voelckers said setbacks are established to accommodate and by the time a property owner could get this land back it is a done deal. The house on the property will be situated so that the cul-de-sac setbacks work, and so he does not see this as a big deal. Mr. Dye said that the leftover space can be extra parking, a place to play, etc. or the cul-de-sac can be converted to a roundabout.

Ms. Boyce displayed a permanent cul-de-sac on the GIS viewer. Mr. Dye asked if the person with the narrowest frontage could have a dogleg lot if they are the only one wanting to reclaim the land. He pointed out that others might not want the extra land back due to an increase in property taxes. Ms. Maclean said it seems that CBJ would have to vacate even if just one owner wants it. Mr. Voelckers asked if there is any reason to have a category of "temporary" at all, since these things are built to permanent standards. He said he likes Mr. Dye's point about leaving it be.

Ms. Boyce said from the city's point of view there is more street to maintain that is not needed. Mr. Voelckers said this would be such an insignificant amount of effort versus the effort of rebuilding. Ms. Boyce said if platted today, the street bulbs would be easements on the properties. Mr. Voelckers said so functionally this operates like a property line. Ms. Maclean said the other option is to create a hammer head. Mr. Voelckers pointed out that takes up a lot of space too.

Ms. Boyce asked if the remainder piece is treated as a stub street and dealt with in that way and nothing else is touched does the Committee feel ready to move on and come back later about temp cul-de-sacs? The code would still say developers need to build as close as possible to the property line. Mr. Dye said he thought these needed to be addressed at the same time. Mr. Voelckers said that Vista del Sol could have been moved to the edge but then there would be wasted land.

Mr. Levine said that a hypothetical situation could be that if there are not enough funds to build all the lots in a development and therefore cul-de-sacs would be built in the middle of the property, then the next developer would have to bear the cost. We don't make the developer bond for that, he said. Mr. Voelckers said the stub has to give access to the furthest lot, even if only half the property is being developed. Mr. Dye said he used to think the city should not get rid of bonding, but he has since changed his mind.

Mr. Levine said for landlocked property the developer could create a disincentive for a future developer depending on how he platted the street. CBJ does not want to disincentive a developer, he said. Mr. Dye said the fact that the right-of-way got closer is advantageous. Mr. Levine said the second guy might end up building the road for the first guy. Mr. Greene said if a cul-de-sac is at the end, then there is no need for a stub street. There would need to be a compelling reason not to put it there.

Mr. Levine said the existing code is intending to make the person who is subdividing a property bear the cost of a street that will help connect the community. Having cul-de-sacs abut property lines might not be the best way to do it. Mr. Dye asked if there is a way to tie a not-to-exceed number to minimum lot depth. Mr. Levine said he did not feel strongly about the wording but wants to not run a risk. Mr. Voelckers asked for clarification. Ms. Maclean said the guy without access gets a benefit, even if the road helps the first developer because half of it is though his land. Mr. Dye suggested bets should be hedged against future benefits. Mr. Levine pointed out that that this ordinance started down this road because it was requiring folks to bond for roads that will never be built or not be built in the near future and also the situation of temporary cul-de-sacs not needing to be at the end and not removing them. But, he said, he is sensitive to the fact that getting rid of all the requirements might allow for gaming the situation. Is there a possibility of reversing the policy about who is paying for what?

Ms. Maclean said staff agrees that temporary cul-de-sacs should be platted as close as possible to the edge of a subdivision and should plat to un-subdivided lands where practicable. The question is do you consider the extra land for a stub street, and do you have to bond for the stub? Mr. Voelckers said Mr. Miller would likely say that it is necessary to practicably access the next lot but that there is no need to go to the end. Mr. Levine said the purpose is to insure it accesses the back lot.

Ms. Maclean reiterated that it is all about making sure the requirement is practicable. In Vista-del-Sol, a stub street is not most practical because it would be platted on the steepest part of the property. A stub street could have been located on a different lot on the west side, instead of at the back of the property. She said she thinks if there is un-subdivided land next door, access should be allowed. Mr. Greene asked in the example under discussion, why not make the lot accessible from the main road? Ms. Boyce said that code requires connectors; the city wants to create a local street network.

Mr. Levine said it makes sense to treat this as a stub street. Mr. Voelckers said all the members agree. The question is about bonding, and he is not persuaded that the new policy is any better but he does not feel strongly about it. Mr. Voelckers said not doing a stub street if there is no reasonable practical use partly solves it. But developers feel bonding is punitive. Mr. Greene asked if the street in Vista has been turned over to CBJ. Ms. Maclean said not yet; bonding is for 5 years from plat approval.

Mr. Dye asked what happens if a stub street is bonded for but the intermediary road is never built. Ms. Boyce said generally 2 years is the timeframe from plat to build. Ms. Boyce said having a 5 year time frame in code provides the next-door developer incentive to develop. Mr. Dye said he felt that it is crazy to bond out at the start.

Mr. Voelckers asked if there is an appetite to get rid of bonding and go back to cul-de-sacs. Ms. Maclean said she is only concerned with a situation like a large parcel that has to plat all 30 acres and build cul-de-sacs at the far end although only building 10 of the acres. Mr. Voelckers asked how that is practicable defined. Ms. Maclean said if phasing a large development, a developer would put cul-de-sacs 1/3 of the way up because of the large size of the phase.

Mr. Greene said so if someone is phasing, they do not have to plat the whole thing? Yes, they would provide a sketch plat if phasing, said Ms. Maclean. Mr. Greene said if someone was phasing, then the 5 years makes sense. Ms. Maclean said that the first developer has enough skin in the game.

Mr. Voelckers stated that the committee agreed that the remnant is a stub street. Ms. Boyce said she trusts the market will dictate for the first developer. Mr. Levine suggested the wording could say “as close and practical, not to exceed unless determined by director. He suggested finding a way to give the director discretion to put the stub street somewhere else on the property.

Ms. Boyce said so the issue left is bonding for the temporary cul-de-sacs. Who converts the stub street then, asked Mr. Greene. Mr. Voelckers said it would be the next guy up who picks up the first 150 feet or so. Ms. Maclean said it makes sense if the owner of the land behind that developer could get a lot back.

Mr. Voelckers asked if committee members see any issue with Mr. Dye’s idea of allowing it to be built permanently once and just leaving it. Mr. Levine said right now there can only be temporary cul-de-sacs if it is determined that there is undeveloped land adjoining. Mr. Dye said can’t someone just do it when they want to? There are no minimum requirements, just maximum. Is there any code language that says you can’t do it? Mr. Levine said we have to make recommendations to Law regarding what we want the outcome to be and Law then does the cleanup. Ms. Maclean said she will check with Engineering first. What is the next step, she asked?

Mr. Levine said these points have been agreed on and now just need wordsmithing for:

1. The thing after cul-de-sacs is a stub street
2. No bonding requirement for stub streets
3. Get rid of the word “temporary” in cul-de-sacs.
4. Build cul-de-sacs as near as possible to a lot line
5. Cul-de-sacs can be built anytime

Mr. Dye suggested the case go to the Planning Commission next; the Committee did not need to see it again.

B. Common Walls

Ms. Maclean said she wants to keep this in committee a little longer; at the last meeting the discussion happened too fast for her comfort. She pointed out that uses just approved became nonconforming. Her preference is that there is one common wall ordinance for residential zones, D3-D18, and a common wall mixed-use ordinance for other zonings. She said she wants to move both ordinances through concurrently in order to cover all bases. Mr. Levine and Mr. Dye said they had no problem with that.

Mr. Dye asked if there is any reason the common wall ordinances need to happen soon. Ms. Maclean said they are almost done so she'd like to get that off the plate. Mr. Levine said he remembers thinking there was a lot of value in separating residential and mixed use common walls. We might as well take the time and do them right, said Mr. Levine.

This will come back to the Title 49 Committee.

C. Review of Proposed Revisions to CBJ Code re: Stream and Lakeside Buffers

This topic was moved to the next committee meeting due to a loss of quorum.

IV. Next Meetings

- Maybe October 8 or 1– Ms. Boyce will check for attendees' availability.
- Monday, October 15, 2018, 12:00 – 1:30 pm.

VI) Adjournment

The meeting adjourned at 1:07 pm.

CITY AND BOROUGH OF JUNEAU
ALASKA'S CAPITAL CITY
COMMUNITY DEVELOPMENT

(907) 586-0715
CDD_Admin@juneau.org
www.juneau.org/CDD
155 S. Seward Street • Juneau, AK 99801

October 5, 2018

Memorandum

To: Title 49 Subcommittee

From: Beth McKibben, AICP, Planning Manager

RE: AME2018 0009 Proposed amendments to 49.30 – Nonconforming Development

Attachments:
A – Proposed Language
B – Title 49 Minutes – 07/19/17, 08/16/17, 09/20/17, 10/11/17
C – June 21, 2017, Memorandum to Planning Commission and attachment - American Planning Association Planning Advisory Service Quick Notes

Introduction

The Planning Commission referred the consideration of amendments to CBJ 49.30, Nonconforming Development, to the Title 49 Committee. The Title 49 Committee reviewed and considered a complete revision to CBJ 49.30. The Committee discussed the proposed amendments at four meetings in 2017 (see Attachment B).

Staff previously identified this section of code as needing revisions to provide clarity. More critically, prospective buyers have been encountering challenges in financing non-conforming developments that previously have been financed, which has raised the level of urgency to improve this chapter.

Discussion

The existing purpose of the non-conforming section of code is to provide standards for the continued use of property made non-conforming by adoption of revisions to Title 49. Four categories of nonconformity are identified in 49.80.120, Definitions:

> ***Nonconforming lot*** *means a lot, the area, dimensions or location of which was lawful prior to the adoption, revision, or amendment of this Code, but which fails by reason of such adoption, revision or amendment to conform to present requirements.*
>
> ***Nonconforming structure*** *means a structure, the size, dimensions or location of which was lawful prior to the adoption, revision, or amendment of this Code, but which fails by reason of such adoption,*

revision, or amendment, to conform to present requirements.

Nonconforming use *means a use or activity which was lawful prior to the adoption, revision or amendment of a zoning ordinance, but which fails, by reason of such adoption, revision or amendment, to conform to the present requirements of the zoning district.*

Nonconforming situation *means a nonconforming lot, use or structure, or any combination thereof.*

Zoning nonconformities are existing uses, structures, or lots that were legally established prior to a change in zoning provisions, which do not comply with new ordinance standards. As communities revise land use policies and zoning regulations, they are faced with questions regarding the continued use, replacement, or expansion of such nonconformities. How we answer these questions will affect acceptance of new zoning standards and whether local land use objectives can be fully realized.

Communities implement land use plans using a variety of strategies including regulations, public investment, education, and incentives. Zoning is one of the regulatory tools available. Zoning is a valid use of police power intended to protect public health, safety, and welfare. Specific reasons for zoning include:

- Ensuring that new development and redevelopment are located according to the community plan;
- Matching development to the environmental limitations of the landscape;
- Promoting quality development to maintain property values and the quality of life by stabilizing the character of neighborhoods and business districts;
- Controlling densities to avoid overcrowding while developing housing and promoting land conservation;
- Providing predictability for property owners and efficiency related to demands for public services and facilities; and
- Moving traffic safely and efficiently based on road standards and layout.

The Alaska Constitution and Alaska State Statutes provide maximum jurisdiction to municipalities to adopt and implement planning and zoning powers to protect public health, safety, and general welfare. The use of zoning police power must be reasonable and fair.

With this background in mind, CBJ 49.30 is sorely in need of revision. The various non-conforming situations are blended into single paragraphs and the reconstruction section is poorly written, which makes it challenging to understand. Staff proposed a complete rewrite of the chapter rather than attempting to edit the existing code.

Zoning ordinances vary considerably in how they treat nonconformities. There are four general options:

- Phase them out over time;
- Maintain the status quo;
- Allow limited modification and expansion;
- Change zoning standards to make certain uses, structures or lots conforming.

The American Planning Association Planning Advisory Service Quick Notes attached to the June 21, 2017, memorandum to the Planning Commission discusses the management of nonconformities (Attachment C). The article suggests, and staff agrees, that not all nonconformities are the same. Some nonconformities are benign while some have significant detrimental effects. In some instances, continuance or expansion of a benign nonconformity may not threaten public health or safety, may have little impact on the long term land use objectives, and may even be preferable to the alternative of disinvestment. For this reason, it makes sense for communities to treat benign nonconformities differently than those likely to have significant detrimental effects. Staff recommends an approach that mixes the phasing out of detrimental nonconformities and recommends maintaining the status quo or allowing limited modification and expansion to benign nonconformities. Additionally, over time and separate from this project, the Commission and staff will work to review and revise zoning standards and will continue to consider the impacts of those proposed changes on various nonconforming situations. The downtown zoning project mandated by the adoption of the ADOD is a step in this direction.

The proposed language provides a process for a property owner to establish that a given nonconforming situation was legal when it was created, which if true may allow for development. This places the burden on the property owner rather than the Community Development Department, which is fair and consistent with the burden for other permits. The Director would then make a nonconforming determination, and that decision could be appealable to the Commission. The process is spelled out in the proposed language (see p. 9, line 230 in Attachment A). By allowing the Director to approve proof of nonconforming status, time will be saved by applicants, the Commission, and staff. The proposed language also includes a process called “a nonconforming situation review”, which is undertaken by the Planning Commission and explained below.

The proposed language provides for this nonconforming situation review for the following:

- As an alternative to an appeal of a director’s decision on a “proof of nonconforming status”;
- An alternative to staff review of a “proof of non-conforming status” when non-standard proof is provided by the applicant. The code contains a list of standard proof.
- For changes of use within the same use category that do not comply with associated district-specific, dimensional, and development and design standards such as setbacks, parking, landscaping, etc., or the Director determines that an increase in off-site impacts can reasonably be anticipated;
- A change to a use in a different use category which is prohibited by the underlying zoning district;
- In RR, D1, D3, D5, D10, D15 and D18 zones, a change from a nonconforming, nonresidential use to an allowed residential use that exceeds the allowed density;
- Re-establishment of a nonconforming use that has been discontinued for 365 days.

The proposed amendment would repeal and replace all of 49.30.

The proposed language clarifies the following non-conforming situations:

- Nonconforming uses,
- Nonconforming residential densities,
- Nonconforming structure,

- Nonconforming lot, and
- Nonconforming parking.

Nonconforming signs are addressed in 49.45. Staff proposes to address signs when that section of Title 49 is amended.

Key Policies for Discussion

Normal maintenance and repair of nonconforming situations is allowed. The Title 49 Committee discussed this concept and agreed that it should be allowed. Staff recommends defining what constitutes "normal maintenance and repair".

> Example language from Anchorage: *…ordinary repairs, or on repair or replacement of nonbearing walls, fixtures, wiring or plumbing, to an extent not exceeding ten percent of the current replacement cost of the nonconforming structure or nonconforming portion of the structure as the case may be. Nothing in this chapter shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.*

The proposed language requires nonconforming lots in common ownership to be treated as one lot and provides a process for the Director to allow the nonconforming lots to be used as separate lots. This concept provides the flexibility for property owners to use the lots as separate lots but in most cases requires the lots to be treated as one.

A concept proposed by the Title 49 Committee would allow a building that is violating a setback (i.e. a nonconforming structure) the ability to expand up to the existing nonconforming location. Staff recommends against the proposed language to preserve the legality of setbacks and to avoid fairness problems. While staff recognizes the desire to allow nonconforming structures the ability to expand, such an expansion should only be allowed where it complies with the setbacks. In this way, the legality of the setbacks is maintained and owners of *conforming* structures are not penalized because they would not be allowed to encroach into a setback. Additionally, older areas where there may be a higher percentage of nonconforming structures currently have the option to apply for relief under the Alternative Development Overlay Districts. The upcoming area plans may identify zoning revisions in areas where zoning is not seen to fit the character of the existing neighborhoods, and these revisions may also provide relief for property owners.

The existing code allows for residential uses in nonconforming structures to be reconstructed on the existing footprint (except for encroachments into public ROW and adjacent properties) when damaged (75%) by means beyond the control of the owner. This percent includes the cost of the replacement of the entire structure, exclusive of foundations, using new materials, and is determined by the Building Official. Staff recommends this remain available and that the Committee consider, for residential structures only, allowing for reconstruction when repair cost is up to 100 percent of the cost of the replacement of the entire structure, exclusive of foundations, using new materials.

The proposed language allows for a nonconforming use to be re-established within 365 days of being

destroyed or ceasing operation. The proposed language also allows for a nonconforming use to be re-established after 365 days through a nonconforming situation review. However, the re-establishment of a nonconforming use through the nonconforming situation review must take place within 3 years of the use no longer being in operation. This assures that a nonconforming use cannot retain the opportunity to re-establish the use in perpetuity, thus allowing for the integration of the current and future zoning, while still maintaining some flexibility within the code.

The proposed language provides that nonconforming densities will not be enlarged, altered, or reconstructed until proof of a nonconforming situation is established. Additionally, density cannot not be increased from the density established through the proof of the nonconforming situation, except in accordance with Title 49. Nonconforming residential densities can be reconstructed to the density determined through the proof of nonconforming review. This is intended to specifically retain the residential character of the residential zoning districts, while supporting the need for housing in Juneau.

Purpose

When a zoning ordinance or other land use regulation is adopted or amended, or when the zoning district designation applicable to a lot changes, then as a result a previously lawful lot, structure, density or use may no longer be allowed. Such previously lawful use, density, structure or lot shall be considered a nonconforming use, density, structure or use. Such nonconformities may continue, subject to the requirements of this chapter and any other provisions of this Code that expressly apply to nonconforming lots, structures, density or uses.

This chapter provides methods to determine whether situations have legal nonconforming status. This is based on whether they were allowed when established, and if they have been maintained over time. This chapter also provides a method to review and limit nonconforming situations when changes to those situations are proposed. The intent is to protect the character of the area by reducing the negative or undesired impacts from nonconforming situations. The regulations ensure that the uses and development may continue and that the zoning regulations will not cause unnecessary burdens to property impacted by the zoning change.

Nonconforming situations that have a lesser impact on the immediate area have fewer restrictions than those with greater impacts. Nonconforming nonresidential uses in residential zones are treated more strictly than those in commercial or industrial zones to protect the livability and character of residential neighborhoods. In contrast, nonconforming residential developments in residential zones are treated less strictly because they do not represent a major disruption to the neighborhood and they provide needed housing opportunities.

Nonconforming Situations

A specific site may be nonconforming because it contains a nonconforming use, a, an allowed residential use that exceeds the allowed density, nonconforming structure, nonconforming lot, or a combination of these. Nonconforming uses, nonconforming residential densities, nonconforming structures and nonconforming lots are defined in Chapter 49.80, Definitions.

Applicability

The nonconforming situation regulations apply only to those nonconforming situations which were allowed when the situation was established or which were approved through a land use review. Additionally, they must have been maintained over time. These situations have legal nonconforming status. Nonconforming situations which were not allowed when established or have not been maintained over time have no legal right to continue and must be removed.

Ownership. The status of a nonconforming situation is not affected by changes in ownership.

Change to a conforming situation. A nonconforming situation may be changed to a conforming situation by right. Once a conforming situation occupies the site, the nonconforming rights are lost and a nonconforming situation may not be re-established.

Change to conditional use. A nonconforming use may change to a conditional use if approved through a conditional use review. Once an approved conditional use occupies the site, the nonconforming rights are lost and a nonconforming use may not be re-established.

Maintenance. Normal maintenance and repair of nonconforming situations is allowed.

Nonconforming Uses

Continued operation. Nonconforming uses may continue to operate. Changes in operations, such as changes in ownership, hours of operation and the addition or subtraction of permissible accessory uses, are allowed. Nonconforming uses in residential zones may not extend their hours of operation into the period between 11pm to 6am.

Change of use in the same use category. A change to a different use in the same use category, such as a change from one type of Sales and Rental Goods, Merchandise or Equipment use to another type of Sales and Rental Goods, Merchandise or Equipment use, is allowed by right, provided that the use complies with associated district-specific, dimensional, and development and design standards such as setbacks, parking, landscaping, etc.

For changes of use within the same use category, which do not comply with associated district-specific, dimensional, and development and design standards such as setbacks, parking, landscaping, etc. or the director determines that an increase in off-site impacts can reasonably be anticipated, the change may be allowed through a nonconforming situation review.

Change of use in a different category. A change to a use in a different use category which is prohibited by the base zone may be allowed through a nonconforming situation review. In RR, D1, D3, D5, D10, D15 and D18 zones, a change from a nonconforming nonresidential use to an allowed residential use that exceeds the allowed density may be allowed through a nonconforming situation review.

Comment [BM1]: An example of this is a conversion of a store in a D5 zone to an office in D5 –both nonconforming.

Comment [BM2]: *An example of this is conversion of a storefront in a D5 zone (nonconforming use) to a triplex (allowed use, nonconforming residential density).*

Expansions. A use made nonconforming due to a change in the zone or zoning regulations may be expanded throughout any portion of the existing building manifestly designed or arranged to accommodate such use. A nonconforming use may not be expanded to other buildings or to land outside the original building.

Loss of nonconforming use status.

Discontinuance. If a nonconforming use ceases operations for 365 consecutive days, even if the structure or materials related to the use remain, the use has been discontinued. A nonconforming use that has been discontinued for more than 365 continuous days may request re-establishment through a nonconforming situation review. The non-conforming situation review must take place within 3 years of the discontinuation of the non-conforming use.

Accidental destruction. When a nonconforming use is damaged by fire or other causes beyond the control of the owner, the re-establishment of the nonconforming use is prohibited if the repair cost of the structure is more than *75* percent of the cost of the replacement of the entire

building, exclusive of foundations, using new materials. The extent of building damage shall be determined by the building official.

Intentional destruction. When a structure containing a nonconforming use is intentionally damaged by fire or other causes within the control of the owner, the reestablishment of the nonconforming use is prohibited.

Nonconforming Residential Densities

Changes to dwellings.

Generally. Existing dwelling units may continue, may be removed or enlarged, and amenities may be added to the site provided that existing dimensional requirements such as setbacks and lot coverage are met.

Sites that exceed the maximum residential density standard. On sites that exceed the maximum residential density standards, reconstruction of the non-conforming dwelling units may be approved through a nonconforming situation review.

Nonconforming densities may not be increased, altered or reconstructed until proof of a nonconforming situation is established.

No increase in the number of units from that established through the nonconforming situation review is allowed.

Discontinuance and damage.

Building unoccupied but standing. Nonconforming residential density rights continue even when a building has been unoccupied for any length of time.

Accidental damage or destruction.

More than one dwelling unit. When there is more than one dwelling unit on a site, and when the site is nonconforming for residential density, the following applies if a structure containing dwelling units is damaged or destroyed by fire or other causes beyond the control of the owner:

If the structure is substantially complete within 3 years, nonconforming residential density rights are maintained;

If the structure is not substantially complete within 3 years, the nonconforming residential density rights are lost, and the site is considered vacant;

One dwelling unit. When there is only one dwelling unit on a site, and when the site is nonconforming for residential density, the following applies if the structure containing the dwelling unit is damaged or destroyed by fire or other causes beyond the control of the owner:

If the repair cost is more than *75*, percent of the cost of the replacement of the entire structure, exclusive of foundations, using new materials, nonconforming residential density rights are maintained and the structure may be rebuilt within *3* years if it complies with the existing associated district-specific, dimensional, and development and design standards such as setbacks, parking, landscaping, etc. (except for density) that would apply to new development on the site. The extent of building damage shall be determined by the building official. If the structure is not rebuilt within *3* years, the nonconforming residential density rights are lost, and the site is considered vacant.

Nonconforming densities may not be enlarged, altered or reconstructed until proof of nonconforming situation is established. Density shall not be increased from that established through the proof of a nonconforming situation, except in accordance with this title.

Intentional damage, destruction or demolition. When a structure that is nonconforming for residential density is intentionally damaged, destroyed or demolished by fire or other causes within the control of the owner, the nonconforming residential density rights are lost, and the new development must meet all development standards for the site.

Nonconforming structures

Nonconforming structures. A nonconforming structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

A nonconforming structure may be enlarged or altered, but only if it does not increase its nonconformity.

A nonconforming structure may add additional stories in accordance with 49.25.430(4)(M).

If a nonconforming structure is moved for any reason for any distance whatsoever it shall thereafter conform to the code provisions applicable in the zone in which it is located after it is moved;

If a nonconforming structure or nonconforming portion of a structure is damaged by any means to an extent of more than 75 percent of its replacement cost at time of the damage, it shall not be reconstructed except in conformity with the provisions of this code. The extent of building damage shall be determined by the building official. This does not preclude the reestablishment of nonconforming residential density as allowed by 49.XX.XXX.

If at any time a nonconforming structure is abandoned or brought into conformity with this title, the structure shall thereafter conform to all the regulations of the zone in which it is located.

Tenant improvements or renovations within an existing structure shall not be considered an enlargement or an alteration as described in subsection XX above.

This subsection shall not be construed to allow the expansion of a nonconforming density or use of structure, which is governed by sections XXXX.

A nonconforming structure may not be enlarged, altered or reconstructed until proof of nonconforming situation is established.

Nonconforming Lots and Lot Fragments

A lot rendered substandard in size by the adoption of this title may nonetheless be used provided if all of the following can be met:

The use does not have a minimum lot size greater than the minimum lot size required by the underlying zoning district;

Any associated district-specific, dimensional, and development and design standards such as setbacks, parking, landscaping, etc. are met; and

The lot is accepted as legally nonconforming.

When a nonconforming lot or lot fragment contains a dwelling unit that is damaged or destroyed for any reason other than fire or other catastrophe beyond the owner's control the structure may be rebuilt to the same footprint on the original location with the exception of encroachments into public rights-of-way or adjacent property.

Undeveloped nonconforming lots that adjoin and have continuous frontage with one or more undeveloped lots under the same ownership shall be treated as a single lot for zoning purposes in order to minimize nonconformities with the dimensional requirements. Nonconforming, adjacent lots in common ownership may be treated as separate lots for zoning purposes if the Director finds that the owner of said lots has demonstrated the intent to maintain the lots as separate. The Director shall rely on the following factors:

a. The existence and maintenance of walls or fences along the original lot lines;

b. The lots are separately assessed for tax purposes;

c. The placement of structures on the various lots.

The manner in which the lots were acquired or the fact that the lots were separately described on a deed shall not be considered.

Nonconforming parking. A building may be replaced or reconstructed under this subsection with the same number of off-street parking spaces as were provided for the original building. Any use that had non-conforming parking and later became more conforming may not revert to the original, lesser, non-conforming parking. Such uses may apply for a parking waiver in accordance with 49.40.210(d) Exceptions (6) Parking Waivers.

Nonconforming signs. 49.45.400

Proof of nonconforming situation

Purpose. This review will determine if a use or site has legal nonconforming situation rights. In addition, it will determine what the current legal use is, based on the use categories in Chapter 49.XX.XXX. It is the responsibility of the owner to produce evidence proving the nonconforming situation was allowed when established and has been continuously maintained or used over time.

Upon presentation of such proof the Director may formally approve each nonconforming situation. If approved, the Director shall issue a written decision that includes a complete description of each approved nonconforming situation.

No permit may be issued under 49.15 for any activity on a lot prior to Director approval of each nonconforming situation existing on the lot.

Standard evidence that the situation was allowed when established includes:

1. Building, land use, or development permits;
2. Zoning codes or maps;
3. Recorded plats;
4. Sanborn Maps.

Situation maintained over time. Standard evidence that the use has been maintained over time includes but is not limited to:

1. Utility bills;
2. Income tax records;
3. Business licenses;
4. Listings in telephone (record? books?), business;

5. Advertisements in dated publications;
6. Building, land use, or development permits;
7. Insurance policies;
8. Leases;
9. Dated aerial photos;
10. Insurance maps that identify use or development, such as the Sanborn Maps; or
11. Land use and development inventories prepared by a government agency.

Nonconforming Situation Review

Purpose. A nonconforming situation review provides an opportunity for the Board of Adjustment to consider nonconforming uses changes of use within the same use category, which do not comply with associated district-specific, dimensional, and development and design standards such as setbacks, parking, landscaping, etc. or the director determines that an increase in off-site impacts can reasonably be anticipated, the change may be allowed through a nonconforming situation review.

Applicability. A change to a use in a different use category which is prohibited by the base zone may be allowed through a nonconforming situation review. In RR, D1, D3, D5, D10, D15 and D18 zones, a change from a nonconforming nonresidential use to an allowed residential use that exceeds the allowed density may be allowed through a nonconforming situation review. On sites that exceed the maximum residential density standards, reconstruction of the non-conforming dwelling units may be approved through a nonconforming situation review when an applicant does not provide standard evidence for a Proof of Nonconforming Situation or when the Director does not find the evidence to be satisfactory.

Comment [BM3]: *An example of this is conversion of a storefront in a D5 zone (nonconforming use) to a triplex (allowed use, nonconforming residential density).*

Procedure. A nonconforming situation review is processed……. Refer to public notice section – red sign, newspaper, mailing to property owners…

Approval criteria. The request will be approved if the Planning Commission finds that the applicant has shown that all of the following approval criteria are met:

With mitigation measures, there will be no net increase in overall detrimental impacts (over the impacts of the last legal use or development) on the surrounding area taking into account factors such as:

a. The hours of operation;

b. Vehicle trips to the site and impact on surrounding on-street parking;

c. Noise, vibration, dust, odor, fumes, glare, and smoke;

d. Screening, public safety, neighborhood harmony;

e. The amount, location, and nature of any outside displays, storage, or activities.

If the nonconforming use is in a D1, D3, D5, D10, D15 or D18 zone, and if any changes are proposed to the site, the appearance of the new use or development will not lessen the residential character of the area. This is based on taking into account factors such as:

a. Building scale, placement, and facade;

b. Parking area placement;

c. Buffering (screening?) and the potential loss of privacy to abutting residential uses; and

d. Lighting and signs.

Nonconforming residential density will have no net increase in overall detrimental impacts on the surrounding area taking into consideration factors such as:

a. Vehicle trips and impact on surrounding on street parking

b. Lot coverage, vegetative cover, anything else? Conformity with future land use maps maybe?

49. 80 Definitions

Nonconforming building or structure. A building or structure that does not meet one or more height, setback, building coverage, , or other dimensional requirements for the land use district in which it is located.

Nonconforming lot. A lot which legally existed prior to the adoption, revision, or amendment of this Code does not comply with current minimum lot size, lot depth, lot width requirements or other lot requirements of the district in which the lot is located.

Nonconforming Residential Density. A residential use that is an allowed use in the zone and that was constructed at a lawful density, but which subsequently, due to a change in the zone or zoning regulations, now has greater density than is allowed in the zone.

Nonconforming Situation means a nonconforming lot, use or structure, density, or any combination thereof.

Nonconforming Use. A use that was allowed by right when established or a use that obtained a required land use approval when established, but that subsequently, due to a change in the zone or zoning regulations, the use or the amount of area devoted to the use is now not permitted under the current zone designation.

Abandon means (a) with respect to a use, the cessation of such use for any length of time, combined with intent to indefinitely cease such use, or (b) with respect to a structure, the cessation of occupancy of such structure for any length of time, combined with intent to indefinitely cease occupancy of such structure.

Change means, with respect to a nonconforming use, that the nonconforming use has been converted to a different use for any period of time, regardless of intent.

Discontinued means that a nonconforming use has ceased, and has not substantially resumed, for a period of 365 consecutive days regardless of intent.

Occupy or occupancy means actual physical occupancy of a structure or lot, regardless of intent.

Primary use means the primary activity actually conducted in a serious, substantial, and ongoing manner on a lot or in a structure, and for which the lot or structure is actually and primarily occupied and maintained, regardless of intent.

Substantially resumed means substantial and continuous resumption of the use as the primary use for a period of at least 60 consecutive days. Activity that does not meet this standard is not sufficient to interrupt a period of discontinuance.

Use means activity actually conducted on a lot or in a structure, and for which the lot or structure is actually occupied and maintained, regardless of intent.

49.85 Fees

Proof of Nonconforming Situation – staff review $200 (similar to letter of zoning compliance)

Nonconforming Situation Review – to PC $400 (similar to variance and ADOD) plus public notice fees…NOTE NSR should refer to public notice section.

Meeting Agenda of the City and Borough of Juneau
Title 49 Committee of the Planning Commission

Wednesday, July 19, 2017
Community Development Department, Large Conference Room
3:15 p.m. to 4:30 p.m.

Members Present:
Dan Miller, Paul Voelckers, Kirsten Shelton, Dan Hickok (Alternate)

Members Absent:
Carl Greene

Staff Present:
Laura Boyce (CDD), Beth McKibben (CDD), Marjorie Hamburger (CDD)

Public Present: Scott Rinkenberger (Airport Superintendent)

Mr. Rinkenberger stated that it seems the airport is under different types of scrutiny regarding tree limbing on anadromous streams. Mr. Rinkenberger wanted to be sure the airport is involved and keeps an ear to the ground regarding this topic. He hopes to be present at Title 49 meetings that address the topic of streamside setbacks. Ms. Boyce assured Mr. Rinkenberger that she would keep him in the loop for when the Committee addresses the topic.

I) Call to Order
Meeting called to order at 3:18 pm.

II) Approval of Minutes
June 28, 2017 Draft Minutes

MOTION: *by Mr. Miller to approve the June 28, 2017 minutes.*

The motion passed with no objection.

III) Old business:
a) Panhandles

Ms. McKibben remembered that she had work to do on panhandles as previously requested by the committee.

Mr. Voelkers reminded her that she was going to share graphics and other adjustments for panhandles with the committee. Then the issue is expected to move on to Committee of the Whole. Ms. McKibben suggested putting this as a discussion item on the August 8th agenda, not for public hearing.

IV) New Business
a) Review of Title 49's Nonconforming Development Policies

Ms. McKibben started by reviewing the memo on nonconforming development policies that she had prepared for the committee. When analyzing non conformities, she stated, it is essential to clarify if the lot, the structure and/or the use is

non-conforming. While it is possible to have all three areas meet the definition of non-conforming, it is better for staff, commissioners and the public to understand these three dimensions as separate entities.

Mr. Voelckers said it is helpful to know if one type or another of non-conformance is of particular concern to lending institutions. Ms. McKibben said she believes that banks are mostly concerned with use. An example is Aurora Arms where the zoning doesn't support the use, at present, she said.

Mr. Voelckers said that another item that got on the community's radar was a parcel with a triplex where zoning only supports a duplex. Ms. McKibben said there are numerous examples of this type of situation in the borough.

For discussion today, Ms. McKibben said she intended to review with the committee the existing code and focus on the simpler things – lot and structure. She suggested leaving the more complicated piece – use – for a second discussion. It will take some time to parse out the question of benign and non- benign uses, she said. Perhaps the non-benign uses are on a case by case basis. Ms. McKibben asked if this was a good approach to the topic.

Mr. Voelckers asked if the whole process of determining benign use was an active or passive decision. Do we want to bring attention when there is a complaint or a problem presented, he asked? Ms. McKibben offered as an example a gas station located in a residential area. If it has been there since 1964, the business gets to continue its operations. Complaints about it would receive the response that it is legally non-conforming and gets to continue. However, she said, the gas station couldn't expand its business under current code. The issue of non-conforming comes up most often when there is a change of ownership. Another question is, can it be rebuilt if it is destroyed? Can it be expanded or moved? Zoning codes historically try to amortize out non-conforming uses to make them go away over time, said Ms. McKibben. That is the concept.

Mr. Voelckers said regarding the gas station example, if a person wants to sell the business but can't get financing from a bank, does this come to the Planning Commission? Ms. McKibben suggested deferring discussion on this question to the committee's next meeting, as it is the more difficult facet of the topic. She said she will collect a variety of tools for the committee to use while considering.

The discussion refocused regarding non-conforming properties. Ms. McKibben noted that in her June 27 memo, the final section is a discussion of work to do as follow up to the recently approved overlay districts to get the work done regarding zoning in historic districts.

Ms. McKibben suggested that the ordinance be repealed and replaced, not amended. But, she said, the committee still needs to review the policies to see what to keep, rework, etc.

Ms. McKibben said that non-conforming lots are the most simple to address. In the case of a non-conforming lot due to width or depth, current code says you can have a single family home on a non-conforming lot, meeting current setback requirements. It is pretty clear and simple except for in the industrial zone where single family homes are not allowed, she said. Ms. McKibben said she was not suggesting this be changed. Mr. Voelckers asked committee members if they agree with this suggestion.

Ms. McKibben stated that for accessory apartments there now is a process to apply with a non-conforming lot and bring the case to the Planning Commission. Mr. Miller asked if in the industrial zone, can someone build a structure with a caretaker apartment. Yes, said Ms. McKibben, if you can comply with setbacks then any use that is allowed in a district can be built provided it can meet current setbacks, parking, lot coverage, vegetative coverage, etc.

There will be challenges in older, historic districts, said Ms. McKibben. Juneau currently has some lots in these districts where the ownership has been fractured. In such situations, in the event one building is destroyed, under current code it can be replaced. Can it be subdivided further, asked a commissioner? No, said Ms. McKibben. She used as an example a lot on Sixth Street which was broken up into 3 lots, sometime in the past.

Mr. Miller wondered if a person might not want to lock themselves into a property if it is a non-conforming lot with a non-conforming use. In order to fix the mortgage problem, it is not the duplex or triplex that is non-conforming, it is the zoning, he said. Ms. McKibben said it was not quite that simple. For a 1500 square foot lot downtown, we don't want to take away usage by holding to current setbacks, etc., she said. This could make the lot unusable to build a home whereas we said "any use in the district". The zoning in that area requires a larger lot size for a duplex, so an application for this type of development would be denied. But the owner can apply for an accessory apartment in that case, said Ms. McKibben. Mr. Miller said that if he bought a duplex downtown and then discovered that more than 75% of the building needs rehabilitation when he attempts to remodel. If he went to the bank, they would not loan him money to upgrade the duplex because it is non-conforming.

Allowed use and dimensional criteria is the most important policy, said Mr. Voelckers. Ms. Shelton said she understands that for a rebuild but wonders about an initial purchase. The bank says it won't loan to purchase an already existing duplex because that type of structure would not be allowed as a new build, she said. As an example, Ms. Shelton could not get a loan on her house on Sixth Street because of the size of the lot, which has two single-family structures on it. Ms. McKibben said it was not the lot size but the use that prevented the loan.

Ms. McKibben said that non-conforming structures are ones not meeting setbacks, height requirements or parking. She said she would talk about parking later. The variance that was denied recently by the Planning Commission is a great example (VAR2017 0002 on 12th street) because the proposed structure did not have the required setbacks. If a catastrophe happened to destroy the original building, it could be rebuilt on the footprint, but since the applicants wanted to tear down the old structure and replace it, they were required to meet the setbacks. Mr. Miller noted that the house was less expensive to rebuild than to restore/remodel, since it was in such poor shape.

Mr. Voelckers said a slow-roll calamity versus a single event have two different attitudes i.e. slow rot versus an earthquake. Ms. McKibben said the 75% recovery line is for a catastrophic event and lack of maintenance is not such an event. Theoretically termites or something could have been prevented or mitigated with maintenance, she said. This is the way most non-conforming codes are written. Do you like the term in code "involuntary change", asked Mr. Voelckers? Ms. McKibben shrugged.

Ms. McKibben read from code concerning change to a building such as the one on 12th street which continued with a description of catastrophic change. What is the magic with the 75% number, asked Ms. Shelton? Ms. McKibben said it was a policy call and was hard to talk about. There is no magic number; some prior somebody came up with this, she said. Mr. Miller said he thinks the advantage is for people who are trying to rebuild their homes. He would agree with Mr. Voelckers that the intent is to not let people let their building deteriorate and then claim calamity. Mr. Miller agrees with that intent as it offers the possibility to rebuild if there truly is a calamity. Mr. Voelckers suggested the language could include some unknowable calamity that is not a one-time event like a fire. Ms. McKibben read some other examples of code with ideas of changes such as for health and safety. Mr. Voelckers suggested that staff mess around with this language. Ms. Shelton said another wording could be "involuntary change". Ms. McKibben said the code defines that as catastrophic, but staff can work on some draft language.

Mr. Miller said that on the 12th street property, there was a feeling that the bad shape of the foundation was just cause for a variance, but it turned out not to be.

Ms. Shelton said she was still confused about the purpose of having 75% as the number. Mr. Voelckers and Mr. Miller both felt the 75% number was justifiable. Here in Juneau, the cost of doing business requires being closer to the high end, they said.

Going back to the topic of non-conforming structures, you can put additions on the building if they meet setbacks, said Ms. McKibben. Now we have the Alternative Development Overlay District (ADOD) for this purpose, she noted. Also we have the process of up-fill conditional use; for example if an applicant wants to add height to a building, the conditional use process can be used. This is for a property owner who has a building already encroaching into setback but wants to add another story, for example, she said. Ms. Shelton asked, if you have a non-conforming structure with a non-conforming use, can you add to it? Mr. Voelckers drew a case on the whiteboard showing a situation where a portion of a house stuck out

into a setback and the owner wants to fill in the notch. The narrow interpretation, he said, is that this is not allowed, however other interpretation could be that it just fills in along the line that already exists. In such a case, he said, the structure does not get any closer to the property line than the portion that is already there – it is just an extension of that line. Mr. Voelckers said his own house has a similar situation that was denied by one planning commission and allowed by another.

Mr. Voelckers asked about Ms. McKibben statement on page 3 of her July 27 memo suggesting that additions to non-conforming situations should not aggravate. This was followed by a discussion about aggravated use. Ms. McKibben said that currently if the gas station from the earlier example wanted to add another bay to their business, this would be denied. What about widening the bay they already have, asked Mr. Miller?

Ms. McKibben said that the question before the group is regarding the extension of the front encroachment of the house, creating a greater encroachment. Mr. Voelckers said the code is unclear what "greater" means in this case. Mr. Miller said at some point that house was built legally. So the old setback ought to be considered legal, if it currently is considered legally non-conforming, and therefore that would be a valid reason to extend the house to fill in the notch. Mr. Hickok said he would like to be able to approve something like that. Mr. Voelckers said it is tricky when the design is fine and seems benign yet other times the proposed development seems less desirable because we don't "like" it. "Additions to non-conforming structures that don't add density or don't expand non-allowed uses" could be new language here, suggested Ms. McKibben. Commissioners liked the notch infill as not further increasing the encroachment and felt this sort of infill should not be dismissed outright.

Ms. McKibben said that staff has been working for the last few years to reduce the number of applications coming to the Planning Commission because it takes longer for the applicant and is more of a gamble. For example, applications for accessory apartments used to come to before the Planning Commission. Mr. Voelckers and Ms. Shelton said they felt there needs to be some oversight. Ms. McKibben suggested that the director have some discretion to approve some of applications involving non-conforming situations while others would need to come before the Planning Commission.

Would you want this sort of non-conforming structure in any district, asked Ms. McKibben? We've focused on residential district so far, she said. A good example is the new bank by the Bill Ray Center which required 3 variances for that building, said Ms. McKibben - variances for parking and for the drive-through window. Today this would not have met the unique threshold. That is an example of a building built that is legally non-conforming. Mr. Voelckers asked if the variance lives with the land. Yes, said Ms. McKibben. Why would the triplex not follow, asked Mr. Hickok? Because of the use, said Ms. McKibben.

Committee members felt that a similar event in another district – filling in a notch for example – was the same difference as the residential example. Ms. McKibben said some things come to the Planning Commission, versus the director, because it then becomes a public process with 9 decision makers, and the public can participate.

What is the process to repeal the ordinance, asked Mr. Hickok? Ms. McKibben said it is a repeal and replace action and is fairly easy.

V) Next Meeting

Wednesday, August 16, 3:15 pm

At this meeting, we will dive into discussion about non-conforming uses, said Ms. McKibben, and she will suggest some language. The committee needs to discuss the issue of benign – what is and what is not. Ms. Shelton asked for some examples. Ms. McKibben said she would bring examples from the finance world.

Mr. Voelckers said he felt that we are dancing around the big issue, which is the sudden, instantaneous change of ownership. This is when the bank suddenly refuses to loan and owners did not even know they had an issue. When the appraiser pulls up info on a property which says it is non-conforming, said Mr. Miller, there needs to be a way to say that it is legally non-conforming or have some sort of a process to make it legal and satisfy the lender.

Ms. McKibben used the example of Homer where the burden of proof is on the owner to show that the non-conforming use is rooted in history. Mr. Voelckers said it is more than just the owner proving it was legal back in the day; they also have to prove it continues to be in the public interest to remain so. Mr. Miller said once the designation is set, he thinks it should be done. The bank loans for 30 years. Mr. Voelckers said that there are tons of properties in Juneau that are non-conforming but that get loans all the time. The bank asks can this building be rebuilt, said Ms. McKibben. Yes, we say, a single family can be rebuilt, but not the triplex as it stands today.

Ms. McKibben said that conversation needs to be had concerning Aurora Arms. Is it OK to have such a building here for 50 years but now is not conforming to zoning, remain in place as such, asked Ms. McKibben?

VII. Adjournment

The meeting adjourned at 4: 35pm.

Meeting Agenda of the City and Borough of Juneau
Title 49 Committee of the Planning Commission

Wednesday, August 16, 2017
Community Development Department, Large Conference Room
3:15 p.m. to 4:30 p.m.

Members Present:
Dan Miller, Paul Voelckers, Kirsten Shelton, Dan Hickok (Alternate)

Members Absent:
Carl Greene

Staff Present:
Laura Boyce (CDD), Beth McKibben (CDD), Marjorie Hamburger (CDD), Tim Felstead (CDD)

Public Present:

I) Call to Order
Meeting called to order at 3:19 pm.

II) Approval of Minutes
July 19, 2017 Draft Minutes

Mr. Voelckers commented that on page 4, 3rd paragraph add "Commissioners liked the notch infill as not further increasing the encroachment. This sort of infill should not be dismissed outright."

MOTION: *by Mr. Miller to approve as amended the July 19, 2017 minutes.*

The motion passed with no objection.

III) Old business:
a) Review of Title 49's Nonconforming Development Policies

Ms. McKibben is not totally prepared to dive deep into the use discussion. She has an example of nonconforming code from Portland, OR that she thinks represents the direction our code want to go. It has very clear parameters, although it might be more complicated than we want. She said this will help with challenges in this section of code for example to separate use from density. She pointed out other concepts that she finds useful in this example and will share this document with the committee members at a later meeting.

She also recently learned that different lending institutions will take on different amounts of risk. Most strict, for example, is the HUD 180 loaning program. Ms. McKibben talked about Aurora Arms as an example, and she found evidence of a loan that was processed in 2011 and flew through with no problem. If we say the building can be rebuilt to the existing footprint, the loan goes through. Mr. Miller noted that yes, it could be a single-family rebuild.

Mr. Miller said there have been many changes from 2011 to today with housing loans. Now there is much more paperwork and scrutiny and this has been gaining steam since 2008.

Ms. McKibben said the American Planning Association (APA) service told her they had not seen many communities revising their sections of nonconforming code since the Great Recession. Ms. McKibben said we need to focus on the issues to make a code that works for the community and not just focus on the lending institutions. If this is clear, likely it will improve things for the lenders.

Mr. Voelckers asked if committee members want a copy of the Portland model. Ms. McKibben said for her, reading through it gave her a framework for thinking through concepts. She handed paper copies to the attending members. She suggested they read this for homework. The way the language is framed, what is ok to continue and what is not will help to group things into various kinds of uses, she said.

Mr. Voelckers suggested the committee have two weeks to read the document and then give their comments to Ms. McKibben so that the topic can come back at the September committee meeting.

IV) New Business

a) <u>Review of Planned Unit Development Code (PUD)</u>

Mr. Felstead came in to talk about a developer who wants to build in the West Montana Creek PUD. Each plat says 1 dwelling unit per lot. He explained that we don't include accessory apartments counting towards density. There is nothing in the staff reports that says allowed or not allowed, he said, and it was not talked about in the minutes for permits for the PUD.

Ms. McKibben said whether an accessory apartment is allowed or not is one question. Another question is do they need a permit or not. The density of the entire property is a D3 density.

Mr. Voelckers asked what these apartments trigger for parking. One additional space, replied staff. As part of a review we would insure 3 parking spaces for each property with an apartment, said Ms. Boyce. Montana Creek lots are designed like a D5 neighborhood in a D3 zoning area, said Mr. Felstead. Ms. McKibben said housing is clustered in these lots.

Ms. Boyce has no qualms about saying it is an over the counter permit because overall this meets density requirements. But planners are all over the place with this, she said. Mr. Felstead has done forensic planning on this topic, said Ms. McKibben. What we can't discern is whether one dwelling per lot included accessory apartments or not. We don't know the intention from the past, said Ms. McKibben. They count as dwelling units but not density, said Ms. Boyce

Mr. Miller said the reason is we took full acreage and figured out how many lots could fit in there. We were not using zoning as the framework. Then we were blindsided by the flood plain trigger for rezoning and so it was determined that the wetlands there could not be built upon, he said. We were forced into the PUD situation; trying to make the best of it. The question never came up when Mr. Miller built the first houses in that area. No clients wanted an accessory apartment at that time, although he said he thought it would have been allowable, said Mr. Miller.

There is a plat note that says zoning allowances allowed for the entire PUD parcel can be transferred over to the smaller sub lots, said Mr. Felstead. This means each small PUD lot is effectively bigger in terms of zoning allowance since it can 'borrow' lot area from the large conservation lot. Each lot is effectively 12,000sq ft. in size in terms of zoning rights. This was my interpretation as well, said Ms. Boyce. This was the first PUD I took from start to finish, said Mr. Miller, so not every eventuality was thought through.

When we changed the code so that accessory apartments could be permitted over the counter if conventionally conforming, I noticed Low Pete offering these options to clients, said Ms. McKibben.

About PUD, is the only issue regarding setbacks is that they only have to stay within 10 feet from another building, asked Mr. Voelckers? Montana Creek subdivision is a little different, said Ms. McKibben. So, I think we can do it as a single blob with 8 units. A subdivision within a PUD is not the same, said Ms. McKibben. Mr. Voelckers argued that setbacks are still minimal.

I threw my hat into the ring to be a commissioner after this experience and seeing how tough it was, said Mr. Miller. Forty percent is a big huge number and stops a lot of PUDs, said Mr. Miller. Land is priceless in Juneau. He said it only can work if there are so many wetlands that already can't be built on, for example.

What if a PUD was four 8-plexes, asked Mr. Voelckers? Montana Creek West has something like that, said Mr. Miller. But then, said Mr. Voelckers, this may color our perception of accessory apartments. Multi-family can't have them, said Ms. Boyce, only a single-family dwelling. A 12-unit PUD on North Douglas collectively owns the land; dwellings are not sitting on their own lots, so they can't have accessory apartments.

Mr. Miller stated that common wall dwellings are single-family and duplexes are not. This has to do with the situation of the structure on the lot and where the lot line runs. Mr. Miller asked, if there is a single owner and the lot is big enough, why not allow an accessory for a duplex?

Changes made for these apartments has been great these past years, said Ms. McKibben

Mr. Voelckers asked committee members if they have enough info about PUDs and accessory apartments to make some suggestions.

Plat notes added to Montana Creek were required by the Planning Commission, said Mr. Felstead. Ms. Boyce pointed out that 49.15.12 talks about number of dwellings in a PUD. Mr. Voelckers asked if it was the thought to amend PUDs with some language that would help clarify something like Montana Creek. We probably want to deal fast with this particular question, said Mr. Voelckers. Ms. McKibben said that staff at CDD hopes to find an answer but planners are not all of one mind. The hope is that someone would have history in order to help clarify the intent.

Mr. Miller hopes to fix PUD code to make it friendlier. Mr. Voelckers said he thinks we should allow accessory apartments because this quacks like D5 zoning in terms of lot size. Who knows where the note came from as this was started some years ago, he said. Ms. Shelton said her gut tells her it makes sense to allow accessory apartments. Allowed outright or with a Conditional Use Permit (CUP), asked Ms. McKibben. It would be so for anyone else with the minimum lot size to receive a permit over the counter, said Ms. McKibben. Mr. Voelckers clarified that this is a single case we are approving now, but not setting precedent. Yes, however this means the next time someone in Montana Creek West asks, we would say yes to that as well said Ms. McKibben.

Mr. Felstead said planners would look at lot size in combination with the common space of the entire development - this is still at D3 density. Mr. Miller examined the comparison of D3 and D5 and overall density. Ms. Boyce is concerned that people who bought into the development might have thought that it would only be a single-family community, not understanding the situation that accessory apartments would not be considered adding density.

If we brought this to the Planning Commission, we could notice everyone in the PUD about this, said Ms. Boyce. PUDs are the beginning of a subdivision, is this correct asked Mr. Hickok? A clustered subdivision, said Ms. Boyce. Give some flexibility suggested Mr. Miller. Ms. McKibben gave examples of how the zoning flexes under a PUD such as putting 4-plexes in a D3 zone. Mr. Voelckers said it is a progressive way to work with difficult lots or afford residents more green space.

So, this should go before the Planning Commission, asked Ms. Boyce? Mr. Miller said it will probably be the residents immediately outside of the Montana Creek PUD who will be most concerned; that was the biggest meeting I've ever seen. But he thinks this is the best way to go nevertheless. Maybe beginning with a public hearing would have an eye towards moving to an over the counter permit process, but for this first time let the public have their say, said Mr. Voelckers. This would then say this new rule would apply to existing PUDs, said Mr. Miller. One option is to go through a CUP for this one and have the Commission say that the CUP is not necessary, said Mr. Felstead. Have a public hearing and have the Commission make an interpretation, he suggested. Commissioners in attendance nodded their heads, and Ms. Boyce stated she liked this idea. We should err on the side of over-noticing and explaining at this point. Who pays for the CUP, asked Mr. Felstead? We will need to talk to Mr. Steedle (Department Director), said Ms. McKibben. We will vet that option, she said. So it appears we are of a mind to get to a process that involves the Planning Commission, stated Mr. Voelckers. Staff can game it out, he said.

Ms. Boyce brought up another situation related to PUDs. Rich Harris has a condo project with units owned individually but the land is owned collectively, she said, sort of a cottage housing concept. The project is under construction already, but the developer wants to make it a PUD. However he can't make the 25-foot greenbelt requirement and a few others requirements, yet Ms. Boyce wants help reviewing the project to see if the developer can make this work somehow. There is some "shall" language in the code that makes it hard to modify, she said.

Mr. Voelckers said that the Planning Commission should figure out what is right for PUDs first and then see if Mr. Harris' project can be accommodated.

Mr. Miller stated that he has a laundry list of modifications concerning PUDs. There should be discussion about prioritizing things to be fixed in code from the builders' perspective, he said.

- 40% common open space is fine if underlying D1 zoning but 30% for D3 – Mr. Miller feels the code ought to start lessening the percentage sooner than it does at present. Once the developer gets into planning a multi-family project, it gets easier to set aside more land again. There ought to be some scale to make PUDs a more useful option for development.

- 25 foot buffer – ought to be more flexibility with this requirement.

Mr. Voelckers asked if the PUD is in a D3 or D5 zone, can it be developed as though it were D18. Yes, said Ms. Boyce. It is the underlying district that sets the tone, said Mr. Miller. If D1 and 10 acres, a developer would need a 25 foot buffer all around and 40% greenspace, leaving 6 acres to build the 10 dwellings. A developer buys land, pays for road, sewer, etc. and then gives this to the city to maintain, said Mr. Miller. It becomes unfriendly for the developer to lose all that land to recoup expenses. Ms. Boyce thinks the sliding scale is an interesting idea.

Mr. Miller said when he did Montana Creek West, the selling point was having less road to build and he could save development costs with the same amount of lots and houses because it was more dense. The level of difficulty for the construction went up, however. Also the design was more difficult.

What about the requirement for building separation of 10 or 6 feet, asked Mr. Voelckers, side setback for D10-SF is 3 feet in code, why not here?

We are hoping there is enough existing language to make a process flexible but now with the "shalls" this makes it less so, said Ms. Boyce. There is a need for language to be clearer between PUD and subdivisions, she said. PUD talks about a density bonus up to 15 %, but another section of code offers a 50% bonus. On the to-do list is work on the bonus section, said Ms. McKibben.

Maybe there is opportunity for mitigated judgements like a fence. Probably we will have to address the utility hook ups, said Ms. McKibben. The high school house-build is an example of a lot with multiple units owned by a Land Trust and with only a master water meter for all the properties. Housing Trust doesn't want to function that way and allow for individual meters. There needs to be an avenue to have a discussion with utilities to see what flexibility there can be in such a situation. When not subdividing, what are options for utilities, asked Ms. McKibben?

V) Next Meeting

Wednesday, September 20, 3:15 pm

VI) Adjournment

The meeting adjourned at 4:34 pm.

Meeting Agenda of the City and Borough of Juneau
Title 49 Committee of the Planning Commission

Wednesday, September 20, 2017
Community Development Department, Large Conference Room
3:15 p.m. to 4:30 p.m.

Members Present:
Dan Miller, Paul Voelckers, Dan Hickok (Alternate)

Members Absent:
Carl Greene, Kirsten Shelton

Staff Present:
Laura Boyce (CDD), Beth McKibben (CDD), Rob Steedle (CDD), Marjorie Hamburger (CDD)

Public Present:

I) Call to Order
Meeting called to order at 3:21 pm.

II) Approval of Minutes
August 16, 2017 Draft Minutes

MOTION: *by Mr. Hickok to approve the August 16, 2017 minutes.*

The motion passed with no objection.

III) Agenda Topics
a) Language for Nonconformities

Ms. McKibben explained that document before the committee was a patchwork of concepts - some from existing code, some from Homer and Anchorage and Portland, OR. There are a number of categories and processes for nonconforming situations. A nonconforming situation could be any one or a combination of these things.

Is it the intent of these meetings to convert this document into Title 49 language, asked Mr. Voelckers? We will plan to repeal and replace from 49.30.500, said Ms. McKibben, rather than try to amend what we have. The idea is to put in new language. We also want to provide a process to determine legally nonconforming status and we need to discuss which decisions can be done administratively or need to happen through the Planning Commission process.

Discussion of Proof of Nonconforming Situation (Lines 33-80)
Mr. Steedle said this puts the burden on the applicant or the property owner to demonstrate nonconforming status and there is not a definition of this at present.

What about the purchase of the triplex on Sixth Street recently, does this situation apply, asked Mr. Hickok? Did the bank not get confirmation on the legally nonconforming status? So we don't know if the buyer made the

purchase of the building considered as nonconforming, asked Mr. Hickok. I don't know, said Ms. McKibben. He may have found a workaround with owner financing, said Mr. Voelckers. But this language we are drafting could provide a process for an owner to show us, in the future, said Ms. McKibben.

Lines 37, Option A and Option B present an option for whose decision it should be. Mr. Hickok asked what the director wants. Mr. Steedle said he did not have an opinion but thinks this determination could be handled administratively. Mr. Voelckers said he liked having it be a director decision with the option for an appeal to the Planning Commission or if the determination gets too complicated. Mr. Steedle says he would rather keep the noise away from the Planning Commission and direct things to them that are necessary only. It is also cleaner if things happen at the director level, said Mr. Voelckers. But something can be said for making decisions in the public eye, said Mr. Steedle. This could be where the appeal comes in if the neighbors are unhappy, for example.

We have tried to make it a trend for more applications to be approved at the director level, said Ms. McKibben. We are trying to be more responsive.

Ms. McKibben said the language concerning evidence of nonconformity is borrowed from other code, and she thinks it is pretty good. There is in this document a lot of clarifying language that is not currently in our code, such as on Line 63 (Ownership). Other language here is not addressed in our code but she thinks is useful such as Line 69 (Change to conditional use). We have the opportunity to talk about maintenance (Line 73). Do we need to define it, asked Ms. McKibben? I put in some language borrowed from Anchorage, she said. She has not talked to building official yet but thinks it would be good to run this language by him.

Mr. Miller said there can be a situation, for example rebuilding a staircase where the stairs could be built to the new standards even though the building as a whole is nonconforming. Do you think we should have language here about such a situation, asked Ms. McKibben? I think most people would want or need to do this when replacing their staircase but doing so might affect the nonconforming status of their building, replied Mr. Miller. You are correct, said Ms. McKibben, if a building owner was going to reconstruct stairs, this should be done to code, and so should we say here that repair or maintenance should be done to code? I think it is implicit, said Mr. Steedle, and a building official would determine this requirement so it is not needed to be spelled out here. Mr. Voelckers said he likes the last section (Lines 75-80) where it says fixing a rotten stair, for example, does not interfere with nonconforming status. However, while it mentions a percentage, it is not specific about the 10 percent. What if someone breaks a project into smaller chunks and has ten 10% projects? This is of concern, said Mr. Voelckers.

Discussion of Nonconforming Lots and Lot Fragments in ??? Zones (Lines 82-113)

I think nonconforming status should not be specific to a particular zone but borough wide, said Ms. McKibben. Mr. Voelckers said the first sentence in this section (line 84-85) should be broader. Mr. Miller asked about Line 86. Wouldn't a lot already have gone through the land use review process to establish use and so it wouldn't have to meet a minimum lot size if it is determined to be nonconforming? Ms. Boyce could not recall a specific use that requires a specific land size (minimum lot size requirement). Ms. McKibben said that in Homer there was a minimum lot size for use, but Juneau doesn't have one so this could be eliminated in that sentence. Mr. Voelckers agreed.

Regarding district standards, Juneau does not have any so this can be taken out said Ms. McKibben. Basically we can keep the same policy we have now - if you can meet all the requirements. And the lot needs to go through the process of determining that it is legally nonconforming, said Ms. McKibben. It might be that for different categories of nonconforming, some are determined administratively while others are brought before the Planning Commission.

Ms. McKibben said that Line 92 contains a concept staff suggests - that lots sharing ownership must be combined into one lot. Should the language say one conforming lot, asked Mr. Voelckers? What if there are five lots? Does the committee want to consider when nonconforming lots have common ownership that the lots should be required to be combined, asked Ms. McKibben? North Douglas Highway and 9 Mile Road is an example, said Ms. Boyce. Is there anything external to this section that says a legally nonconforming lot can have a house on it, asked Mr. Voelckers? Yes, said Ms. McKibben, and if you want to make this come forward there is merit. She suggested committee members think about it.

In the Casey Shattuck area, an owner could have two nonconforming lots and today could build two houses, one on each lot, said Mr. Steedle. But the rub is that we want to encourage the development of more housing, he said, and so if code requires the owner to combine the two lots and then only be able to build one house, that is in conflict. Mr. Voelckers said that if someone can meet setbacks, we have had the attitude to allow for a build and sometimes give a variance regarding the setbacks. Ms. McKibben said all this is fine, but it is a discussion we need to have. Ms. McKibben recalled a property owner of 4 legal lots on Douglas Island, with one single family home w/accessory apartment. But with a density change, the 4 lots only have one tax id number and one parcel number which is of concern to the CBJ assessors.

Ms. McKibben suggested removing "must be" in Line 94– keep the language simple. She next suggested taking out everything after the "OR". Commissioners agreed saying that less is more.

Ms. McKibben said that Line 96 is a concept from existing code. Mr. Miller questioned the 75% replacement cost concept. He said what if something happens and the house is destroyed to 76%, why shouldn't the owner be allowed to rebuild if they are willing and have the money? He said he does not see the reason. If an unintentional event happened and they want to rebuild, even if it might cost 120% of the replacement cost, why not allow them to do that if it was a legally nonconforming use? Mr. Miller was also concerned with the definition of catastrophic damage. He said he has been in situations where an owner sets out to replace a window and then discovers a ton of rot. This is a catastrophic event although initially was simply considered "maintenance", said Mr. Miller. Stepping away from the discussion of percentage, said Ms. McKibben, we want nonconformities to go away over time and be replaced with things that conform. This code provides more opportunities to extend nonconforming situations. But that is the concept behind percentages. Committee members might want to think about this as we go though, said Ms. McKibben.

Mr. Miller said that in the neighborhoods downtown, for example, with nonconforming use, these lots and buildings are completely a part of the fabric of the neighborhood. Mr. Voelckers agreed but reminded members that with the Planning Commission's reworking of the zoning in these historic neighborhoods, whole swaths of nonconforming situations might disappear. If we get the underlying zoning right, then there will be less need for nonconforming determinations, he said.

Ms. McKibben said a home that unintentionally burns to the ground could be rebuilt, according to this language. But poor maintenance would not be supported.

Do we need to say explicitly (Line 97) that something can be rebuilt, asked Mr. Voelckers? The language implies this for a catastrophic situation but maybe it is not explicit. Mr. Voelckers said his point regarding Lines 96-97 is that it talks about structures destroyed due to a reason other than a catastrophic one. But the language does not address what is allowed if it is. Mr. Miller suggested it should say if it IS a fire. The word "other" is what is wrong, said Mr. Voelckers. Take out the word "other" and add "such as". If there is a shed or garage, could they

rebuild that, asked Mr. Hickok? Yes, that is current code, said Ms. McKibben, but the committee may want to think about that.

Mr. Steedle said we need to get back to the point about percentage brought up by Mr. Miller. The Alternative Development Overlay District (ADOD) is only temporary, but it would not have helped Trinity Church. Lines 96-97 do not cite a percentage, is this correct asked Mr. Miller? Lines 103-104 discuss intentional damage and I am ok with the percentage there, said Mr. Miller.

Line 103 concerns intentionally damaged dwellings; everyone is fine with this said Ms. McKibben. What about negligence, when things just rot asked Mr. Voelckers? This is a can of worms, said Mr. Miller. Many people just don't know about rot until it is discovered, said Mr. Hickok. I think the phrase "exclusive of the foundation" has to go, said Mr. Miller.

Discussion of Nonconforming Structures (Lines 115-141)

It says here that nonconforming structures can continue and I've added the concept discussed in the July meeting about additions to buildings not encroaching into setbacks, said Ms. McKibben. This is about it being okay to fill in a little cut, as discussed previously, said Mr. Hickok. Yes, when infill doesn't aggravate the nonconformance, is not further into setback, etc. said Mr. Voelckers. Ms. McKibben said this language is trying to articulate this concept but would be improved with an explanatory drawing. I am advocating for more illustrations in our code book, she said. Line 123 is better than Line 121, said Mr. Voelckers. I can get Lisa to help me with a drawing, said Ms. McKibben.

Ms. McKibben pointed out Line 124 which allows for additional stories on a building, which is in code. An applicant would apply for an upfill CUP. We are not suggesting a change, but this should be referred to in the language, said Ms. McKibben. There should be language about this being permissible as long as it doesn't negatively impact the neighbors; also language for the footprint infill. Mr. Voelckers suggested that this could be a CUP process so that neighbors could have the opportunity to comment. But this would come up in a building permit review, said Mr. Miller. Maybe this should rise to the Planning Commission level, suggested Mr. Voelckers.

Ms. McKibben moved onto Line 127 which discusses structures damaged by any means. The language here says it is not to be reconstructed except for the provisions of this code. What does this talk about, asked Mr. Steedle? This breaks down into lots, structures and uses, and I think that is good, said Mr. Voelckers. Mr. Miller said he received a call from a woman who came to town to move her father into a home. The father had been living on 4th street for 40 years, there was lots of trash, and the woman needed help to move things. When Mr. Miller arrived, he pointed out things that had gone unnoticed; the house was basically falling down the hill. Now it is up for sale, and someone is going to buy it, said Mr. Miller. But to fix it right it will be considered more than a 75% rebuild. This is an example of someone who wants to live in a particular building and location and wants to put the money in to fix it up, but they might get shot down. Ms. McKibben said that the current policy is we would allow for a rebuild in the existing footprint except for encroachments into the right-of-way. Do you want to keep that, she asked? But the 75% thing is still there, said Mr. Miller.

Mr. Voelckers asked for a nonconforming structure example. Ms. McKibben said the variance requested recently on Twelfth Street is one where the setbacks did not conform for a complete rebuild on the property.

Mr. Voelckers asked Mr. Miller his thoughts. Mr. Miller said maybe it doesn't really matter and the structures in our town are important enough that if they are legally nonconforming then it is ok. The potential is that a legally nonconforming structure, damaged by any mean (not just catastrophic), any new building except one built on

encroachments is ok; this is what I am hearing, said Ms. McKibben. Mr. Voelckers said the thing he is concerned about is the neighbors. Maybe we are bending over backwards to accommodate a homeowner but the structure has been problematic for years for the neighbors, he said. Also there is a concern about health and well-being. Mr. Hickok said he doesn't like the idea of property owner losing out. Ms. McKibben said to get back to Mr. Voelckers' reminder, we have the ADOD process and active plans to work towards a new zoning district which will more accurately reflecting the historic nature of the neighborhoods. These are things to think about, she said, and a decision is not needed today. We will flag this topic to come back to later.

Ms. Boyce asked if height is a factor for a nonconforming structure. Mr. Miller said for a building that is already in place, neighbors can't be purchasing property with the intention that this tall building will someday come down.

Just have a situation with the recent fire on Sixth Street where the house will need to be totally rebuilt, said Mr. Steedle.

Line 134 – no disagreement here. Density or use is governed somewhere else in the code.

Discussion on Nonconforming Uses (Lines 143-215)

Nonconforming use is a big, tough area, said Ms. McKibben. Beginning with Line 150 is a whole new concept, the change of use in the same category, borrowed from Portland. Portland has code for off-site impacts while we do not, said Ms. McKibben. I like the language, she said, so staff has the ability to document in some way showing we have done an evaluation of this in our review.

For Line 147, I would suggest that they don't operate between 11 and 6, said Mr. Voelckers. What about the conex containers we just approved with noise happening beyond the operating hours, asked Mr. Hickok. Ms. McKibben said, if this was a nonconforming use, then it would go before the Planning Commission. And then it would no longer be nonconforming, with a CUP, said Mr. Miller.

Mr. Voelckers suggested matching the operating hours to the noise ordinance.

For changes of use (Line 165) the example is the conversion of a storefront in a D5 zone, and my suggestion here is that these are reviewed on a case-by-case basis, said Ms. McKibben. An example is AmeriGas which is situated in a residential district, said Ms. McKibben in response to a query from Mr. Hickok.

Ms. McKibben explained that at Line 172, expansions, there is current code here with Portland language in italics, below. This could be simplified, she said. I thought we already decided not to allow expansion for nonconforming uses, said Mr. Hickok. Mr. Voelckers said what if AmeriGas wants to add more tanks on their property? We would want to decide that on a case by case basis, he suggested. How does that compare to Rainbow Foods expanding their grocery to more parts of the building (interior)? Ms. McKibben postulated about a small, nonconforming grocery in a residential district. This fits with CBJ policies about walkability for the neighborhood. Maybe more eyeballs will be on it if it goes through the Planning Commission process, said Mr. Steedle. I think Juneau is lucky because other communities have things like a strip club that are more emotional and controversial, so this is a great time to get this language into place, said Mr. Voelckers.

The intent for language beginning with Line 195 is to reinstate use. Ms. McKibben said it is interesting because the language is used in other communities but the intention is not explained. What if AmeriGas closes for a time to repair the building? I don't know what would be permissible, said Ms. McKibben. It is tricky and worth thought, said Mr. Voelckers. Maybe pull the director into the question to determine if there is legitimate reason

versus gaming the system, said Mr. Voelckers. Maybe proof goes back to the owner, suggested Mr. Miller. There are other concepts in Lines 199 and 200), is the committee okay with them, said Ms. McKibben? Mr. Voelckers said in Line 196 it says used discontinued for 365 days, does this apply here as well? How many people in Juneau know about filing a change of use application, asked Mr. Steedle? I think idea is legitimate, said Mr. Miller, but the reality is what if owners have a little grocery store which is accepted by the neighborhood and no one has ever said it is nonconforming. But then another large, cheaper grocery store opens nearby and the small store owners replace groceries with bicycles. Should they lose their ability to make a living when competition opens nearby driving them to sell bicycles instead of groceries, asked Mr. Miller? It seems difficult to determine what "different" use is; we might need more definition of changed use, said Mr. Voelckers.

Less than 365 days is considered unfriendly to property owners, said Ms. McKibben. But changing to a different thing is instantaneous, said Mr. Voelckers. I like the part about asking permission to reestablish, said Mr. Voelckers. This might clarify the variety of things that cause a stoppage – selling, moving, whatever – he said.

In Line 206 it was suggested to add an example.

Discussion on Nonconforming Residential Densities (Beginning Line 217)
It was decided that the committee will pick up here next time they meet.

IV) Next Meeting

Wednesday, October 11, 3:15 pm

VI) Adjournment

The meeting adjourned at 4:41 pm.

Meeting Agenda of the City and Borough of Juneau
Title 49 Committee of the Planning Commission

Wednesday, October 11, 2017
Community Development Department, Large Conference Room
3:15 p.m. to 4:30 p.m.

Members Present:
Dan Miller, Paul Voelckers, Carl Greene, Dan Hickok (Alternate)

Members Absent:
Kirsten Shelton

Staff Present:
Laura Boyce (CDD), Beth McKibben (CDD), Rob Steedle (CDD), Amy Liu (CDD), Marjorie Hamburger (CDD)

I) Call to Order
Meeting called to order at 3:20 pm.

II) Approval of Minutes
September 20, 2017 Draft Minutes

Ms. McKibben pointed out that on Page 2, second to last paragraph, it was she who talked about the minimum lot size in Homer, not Ms. Boyce.

MOTION: *by Mr. Miller to approve the September 20, 2017 minutes as amended.*

The motion passed with no objection.

III) Agenda Topics

a) Update on Committee Topics and Actions

Mr. Voelckers reminded staff that the committee would like to start each Title 49 meeting with an update on legislative topics and actions. Ms. Boyce reviewed:

- Privately Maintained Access Roads Amendment is scheduled for the Assembly's Lands Committee meeting agenda on October 23. If the committee wants to move it forward, they will then schedule a hearing with the Planning Commission.
- Variances (AME2016 0002) is scheduled to be heard at the November 14 Planning Commission meeting.
- Eagles (AME2016 0019), Panhandles (AME2017 0003) and Essential Public Facilities (AME2017 0006) are scheduled to be introduced at Assembly meetings in October and November.
- Urban Agriculture (AME2017 0011) is in internal review with plans to come before the Committee of the Whole (COW) soon.
- Staff is working on a clean up to Junk and Salvage Yards (AME2016 0014) and will bring this to a COW, not back to the Title 49 Committee.

Mr. Miller asked how sure staff was about November 14th for variances. This date coincides with the American Planning Association (APA) training in Anchorage, but he doesn't want to miss that hearing. Mr. Steedle

concurred and said staff will push back the hearing date. Mr. Voelckers suggested the commission may even want to consider not having a meeting at all that night, since three commissioners will miss it.

b) Language for Nonconformities - Continued

Discussion on Nonconforming Residential Densities (Beginning Line 217)

Ms. McKibben said this is a whole new concept borrowed from Portland as they have similar challenges for housing, therefor it may be useful to use these concepts. The language creates new nonconforming situations. When use is residential, a triplex in a D5 zone for example, the dwelling is legally nonconforming. While the use conforms, the density does not, she said. In this case we are separating density from use. Is Aurora Arms an example, asked Mr. Voelckers? Yes, said Ms. McKibben. This building is a challenge in the world of finance; if Aurora Arms burnt to the ground, they would not be able to rebuild all 18 units – only 5 of them according to the zoning. Property owners of these condominiums would suffer a loss – 13 of them. The language in this section creates a new way of looking at that type of nonconforming, said Ms. McKibben.

Ms. McKibben said that Line 219, "Existing dwelling units may continue …." needs more definition and description about what is meant by "amenities" so planners can understand the intent. There is a new process suggested in this section which is a nonconforming review. Would this be done by the department or the Planning Commission? She suggested maybe a departmental review with the option to kick it up higher. Mr. Voelckers asked about the overlay zone as now we have the Alternative Development Overlay District (ADOD) in place.

Does Aurora Arms meet the height requirement for the zoning, asked Mr. Miller? It is close, said staff. What is the point, then, he asked? If it has to meet underlying requirements maybe that could also be reviewed. Ms. McKibben suggested that maybe in such a case Aurora Arms could be rebuilt to meet height restrictions but still include the same number of units.

Mr. Voelckers said that on Line 219 the word "enlarged" seems tricky if the dwelling is already above density. Ms. McKibben said she reads it to mean that if the owner wants to take out one unit, such as to combine two units into one larger one, s/he can do that. So for a triplex in a D5 zone the owner can add another room but not add another unit.

People are nodding with intent, said Mr. Voelckers. This is about existing dwelling units, not the creation of new units, said Mr. Steedle. Ms. McKibben said for legislative history, new units added is a no, modifications to existing units is a maybe. If at Aurora Arms an owner combines two units into one, is the density now 17 units for the building into the future or can this be undone and returned to the original 18, she asked? In Portland if a unit is removed, the building can't get it back. Staff and the commissioners need to think about this.

Discontinuance and Damage (Line 228)

This is interesting, and we have some of these buildings in Juneau, said Ms. McKibben. A building that is unoccupied but standing is a big policy question. Juneau has policies about housing and so having density rights continue despite being unoccupied is something we might want to support. Mr. Voelckers stated that the committee already talked about timelines for removing nonconforming structures in other categories and so why not be consistent? Mr. Miller said he thinks differently. If an owner discontinues a nonconforming use, then they lose that status in a year but in this situation, for example with a triplex that is nonconforming that suffers a fire which makes all units uninhabitable it might take more than a year to sort out insurance and contractors and so forth. Mr. Voelckers asked how fundamentally different density is to other nonconforming categories. Ms. McKibben said there is another section in this draft that talks about damage. However this section talks about

buildings that are vacant and deteriorating because of neglect, she said. The language here says you can redo the building; it is not about damage.

Mr. Voelckers said he thinks the situation should be treated the same as other types.

Accidental Damage or Destruction (Line 231)

Ms. McKibben said the language here is similar but there questions to be answered. She said she heard Mr. Voelckers liking the timeline of one year to rebuild. Mr. Miller said that if he gets a building permit but doesn't act on it, it expires in 18 months unless he renews it. Maybe there should be language here about in order to keep the status the owner has to have an active permit? Mr. Hickok asked doesn't the owner have to get an inspection within certain time? You can't renew a permit without getting an inspection, said Mr. Hickok. Mr. Voelckers said the 365 day marker was about the cessation of activity, but he agrees that if a process is underway and legitimate there could be some other timeline. But if nothing is happening, then the owner loses the nonconforming status. Ms. McKibben said we would have to create two different categories of passive and active regarding density. Portland has 5 years as the magic number. Mr. Hickok asked if the apartment building on Gastineau Avenue is an example of this. Why is it not being rebuilt? Ms. McKibben said it encroaches on a right-of-way; the issues for this building have to do with setbacks and parking, not density.

(Line 237 - If the structure is not rebuilt)

Ms. McKibben explained that this sentence is about if a structure is not rebuilt the density reverts to whatever zoning exists today. She said she likes having the two separate sentences. It is up to the commission to set the policy, the amount of time after which it reverts and if there is an opportunity for an extension. She thinks that 5 years is generous. If at 4.5 years the owner just poured a foundation, the status won't be taken away if work has begun. But if nothing has happened in 5 years, it will. Mr. Voelckers clarified that this is the first pass on language in this document, and the committee will finalize the draft later. Mr. Hickok said he thinks 5 years is generous. Mr. Greene said if within that time something has begun to be rebuilt, then the window should be extended. Mr. Miller said he wants to think about it a while. He said he likes the idea that every 18 months someone checks in about what is going on. What if an owner is elderly and doesn't have the energy to rebuild and leaves it to the grandkids, he postulated? There is value to having a triplex said Mr. Miller. Who will tell the owner they have to fill out the paperwork every 18 months? How do we make sure the person knows of the situation, he asked? Mr. Greene said that in this case it is damaged property. Ms. Boyce said 3 years could be reasonable for replacing housing units but if in 5 years the city doesn't get housing back this is a concern. Mr. Voelckers said he likes having 3 years to get something going, to initiate the rebuild. Mr. Miller asked again how a person will know they have to do this and that they will lose the value of the dwelling if they don't act. Mr. Steedle asked if thought the department should notify owners. Ms. McKibben recalled a burn on Basin Road and the house coming down immediately afterwards. Property owners have some responsibility, she said.

Ms. Boyce said she has trouble with the definition of abandoned buildings. If a person owns multiple homes around the country, for example, and spends only a little time in each, is the home considered vacant? Mr. Hickok said he wouldn't call it vacant if the house is maintained. Ms. McKibben said the concern is backwards, nonconforming status remains if a building is unoccupied. Mr. Steedle talked about squatters. There was a situation in Juneau where squatters were maintaining a building with water and electric being paid, but they were not the owners nor did they have permission to be there.

(Line 239 – If the repair cost is more than . . .)

Ms. McKibben said that this section takes us back to repair costs and the 75% figure, but the committee does not have to talk about that at this meeting. Mr. Voelckers said it seems we are saying the same thing a couple times. Why not state it once and then reference the statement for each of the nonconforming instances, he

wondered? Ms. McKibben said this is Law's job and the language should be consistent. There are pros and cons either way about restating it depending on use.

One Dwelling Unit (Line 242)
The language here is from Portland, said Ms. McKibben. Does this apply to us, asked Mr. Voelckers? Ms. McKibben said yes, in our industrial zoning with only caretakers units allowed as residences. There are some parcels where there is no industry but there is a caretaker unit. It may not apply to Juneau but we need to talk about it. How do we think about caretaker units in these zones, asked Ms. McKibben? Mr. Voelckers asked what we are thinking about here. Ms. McKibben explained that in industrial (I) and waterfront industrial (WI) zones, residences are not permitted but a caretaker unit as an accessory to industrial use is permissible. However Juneau has some residential use in these zones on lots with no active industrial use taking place on the parcel. She said there are lots of policies in the Comprehensive Plan that talk about the need for industrial areas in the borough and talk about not allowing residential uses in these zones. Ms. Boyce said that recently a Conditional Use Permit for a marijuana facility was protested due to residential use in the industrial zone where the facility was proposed to operate.

Mr. Voelckers suggested the committee should give this concept the benefit of half-engaged thought. He said it seems this raises a philosophical question about what might be considered a "bad actor", a house in a WI or I zone that is damaged, do we want to give the owner the ability to rebuild or have it go away because it doesn't belong? Yes, that is the question, said Ms. McKibben. Mr. Miller said he thinks this fits for industrial land that is very active and has a caretaker unit on it, storage for boat condos or a plumbing contractor or tour company as examples. But what about a caretaker unit on an industrial parcel owned by a contractor who just parks dump trucks and wants someone to keeps eye on things? Ms. McKibben said a caretaker unit is still conforming for a parking yard; this is ok. But, she said, we also have situations where an industrial use took place and a caretaker unit was built in conformance but then that industrial building was made into condominiums and the caretaker unit was no longer associated with the industrial use. Anyone could buy the former caretaker unit but not do any care taking of the industrial use, said Ms. McKibben. This has happened. Mr. Voelckers asked if there are cases where people are just gaming the system. There are a few from a while back, said Ms. McKibben. Mr. Steedle pointed out Sherwood Lane and Crazy Horse Drive during a discussion about installing an asphalt plant. There were residences in this industrial zone, and people were against the asphalt. We can run some data on this, said Ms. Boyce.

Mr. Voelckers said this seems like a fringe situation. He would err on the side of if someone is gaming the system, then we should not have to accommodate. Mr. Hickok said what about the Fairweather barn, is that in an industrial zone? If the zone is commercial, you can have more residential use, said Ms. Boyce. Mr. Voelckers suggested maybe staff look at whether this situation is worth giving language in the document when it is not likely to have much use in our community. Ms. McKibben brought up the point of a parcel where the zoning changed after the house was built, or a duplex built before zoning changed to industrial, then should the owner be able to keep that use. Mr. Voelckers said these situations are already covered elsewhere.

(Line 260 – Nonconforming densities may not be enlarged . . .)
Mr. Voelckers pointed out that this is literally the same statement as on Line 226.

Intentional Damage, Destruction or Demolition (Line 262)
We don't want to encourage people to set fire to their homes, said Ms. McKibben. The fire department will determine if something has been intentionally set and this should not be rewarded.

Nonconforming Parking (Line 266)
The concept here is already in current code, said Ms. McKibben. She brought the committee's attention to the words "may be replaced or reconstructed". The new requirement is less, she said, now just 1 parking space is required, and she thinks this works. Mr. Voelckers asked if this is specific. Only to nonconforming situations, said Ms. McKibben.

Nonconforming Signs (Line 268)
This topic is addressed in the code that deals with signs (49.45.400).

Nonconforming Situation Review (Line 269)
Ms. McKibben said this is a new concept, and she has been thinking about what the process might look like. What does this mean, asked Mr. Steedle? Ms. McKibben said to change the use or to get density approved owners would need to go through a review regarding nonconformance. Are we talking about an administrative review and the Board of Adjustment, asked Mr. Steedle? There would need to be some sort of process for establishing this status, said Ms. McKibben. The language here asks that the owner provide evidence of a nonconforming status. Mr. Hickok asked if someone purchases a property that is in some way nonconforming, will they have to go through this review. Ms. McKibben said that right now people call the department and staff does the research, but she thinks this needs some thought. The department would have records on a property and share them with an appraiser if this review had already been done. But if not done, we haven't thought about how to handle that.

Mr. Voelckers said the process of determining a property to be nonconforming might want to be at the front end of the document because it leads to a series of active requirements.

(Line 271 - Approval criteria.)
Ms. McKibben reviewed the list of proposed criteria. She suggested thinking about Rainbow Foods, which is a nonconforming use grocery in a residential area. "With mitigation measures, there will be no net increase in overall detrimental impacts . . ." This list is borrowed language, she said. We would want to also look at on-site parking requirements for the parcel; what else for this list? Mr. Voelckers suggested public safety; he said he was thinking about AmeriGas in the Valley. Does the committee want to think about language regarding neighborhood harmony asked Ms. McKibben? Mr. Voelckers said he would, for example what about a strip club? He would like to include the opportunity to raise the question. Mr. Greene said he likes this phrase as a catch-all to for something that doesn't fit in a neighborhood.

The line about outdoor displays, etc. (Line 280) pertains to residential uses, said Ms. McKibben. This language refers to maintaining neighborhood character. To be contrary, said Mr. Voelckers, why are not all items on Lines 276-280 also relevant elsewhere? Mr. Steedle suggested that the sentence beginning on Line 282 could say "in addition". Ms. McKibben said that this section is an additional layer of review for a residential district and might not be applicable elsewhere. She suggested leaving the language for Mr. Palmer to work on, as there is structure for writing an ordinance that would make it clearer.

Definitions (Line 291)
Ms. McKibben pointed out that the draft includes a boatload of definitions. In particular, a definition for nonconforming density is important because this is a new concept. Does it seem clear to others, she asked? Mr. Voelckers asked if these were pulled from the Portland model. Some are already in our existing code, replied Ms. McKibben, some come from other communities and from the dictionary of planning concepts.

Mr. Voelckers pointed out the phrase on Line 309 about intent and said that this is hard to establish. He felt this might need some thought, and he suggested making the language more about action than intent which is hard to suss out. I don't know if there is a better way to do it, said Ms. McKibben. Mr. Voelckers asked how can one prove intent or lack thereof. Ms. McKibben said that when something is not defined, we go with a common definition.

(Line 315 -Discontinued)
Ms. McKibben said that the 365 consecutive days is used in our code. The committee liked that number.

Ms. McKibben said she is not sure if all these definitions are needed in this document. Are these definitions broader than just this piece of Title 49, asked Mr. Voelckers? Yes, nodded Mr. Steedle and Ms. Boyce.

Mr. Voelckers asked about the expectations of time on this document. Will it come back from law with baby wheels on it? Ms. McKibben said she wants to go through it and make notes on what needs more input. Ms. Boyce asked if staff should bring back the draft ordinance before it moves on to the next step. Mr. Voelckers said he would like to see it again. Once it is all written down, he would like staff and committee members to think about their own experiences and see how this would apply. Ms. McKibben said she is not sure of Mr. Palmer's schedule and when he can get together with CDD staff to discuss updating this draft.

IV) Next Meeting

Wednesday, November 15, 3:15 pm.

VI) Adjournment

The meeting adjourned at 4:25 pm.

CITY AND BOROUGH OF JUNEAU
ALASKA'S CAPITAL CITY
COMMUNITY DEVELOPMENT

(907) 586-0757
Rob.Steedle@juneau.org
www.juneau.org/CDD
155 S. Seward Street • Juneau, AK 99801

June 21, 2017

From: **Beth McKibben, AICP, Planning Manager**

To: **Planning Commission**

Subject: **Review of Title 49's Nonconforming Development Policies**

The Planning Commission has expressed interest in examining CBJ's Nonconforming Development code. The impetus for this review is that recent changes in practice by the mortgage industry have made it difficult for some buyers to get mortgages for properties with nonconforming situations. Staff has previously identified this section of code as needing revisions to provide clarity.

CBJ's Nonconforming Development code, found at Title 49 Chapter 30, codifies policies that are very typical of other municipal land use codes. It addresses three types of nonconformity: use, lot dimensions, and structures. It appears buyers are encountering most financing challenges when the current zoning does not support the existing density.

Community Development staff has begun reviewing the policies expressed in the Nonconforming Development code and will present an analysis and recommendations to the Title 49 Committee later this summer. Attached to this memo is a succinct summary of nonconformities with recommendations from the American Planning Association. Also attached is Chapter 49.30 of Title 49.

Planning fundamentals for public officials and engaged citizens

QUICKNOTES

This PAS QuickNotes was prepared by David Morley, AICP, senior research associate at APA and APA's PAS coordinator.

Managing Zoning Nonconformities

In zoning, a nonconformity is an existing lot, structure, or use that fails to comply with existing standards. Legal nonconformities are lots, structures, or uses that either predate zoning or were in conformity with the zoning standards in effect at the time of their establishment, while illegal nonconformities were noncompliant when established.

Most discussions of zoning nonconformities focus exclusively on legally nonconforming lots, structures, or uses. This is because legal nonconformities may remain a part of the community fabric indefinitely, but illegal nonconformities have no protection from code enforcement actions to bring them into compliance. Consequently, in the sections below the term nonconformity refers only to a legal nonconformity.

Zoning changes often result in a net increase in nonconformities. Some common nonconformities in older communities include building setbacks or lots that are too small and corner stores in areas zoned for exclusive residential use. While it makes sense to assume that all nonconformities are undesirable and should be brought into compliance, in reality community members often don't mind if some nonconformities continue or even expand.

Background

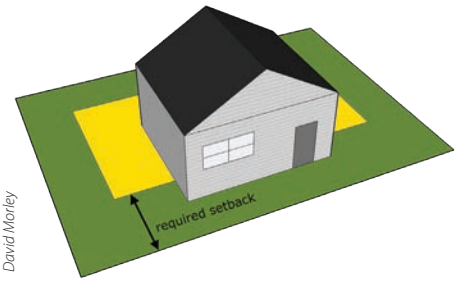
Communities have typically applied zoning standards prospectively. In other words, new standards only apply to new development. Existing nonconforming lots, structures, and uses are grandfathered under new zoning standards. The early framers of zoning law did this on purpose to take the sting out of new regulation. In fact, it's unlikely that zoning would have caught on if all property owners were required to immediately extinguish nonconformities. However, this grandfathered status comes with limitations.

These limitations are most relevant in situations where owners want to modify or expand a structure or use or rebuild after a fire, flood, or storm. Generally, property changes that cross a certain threshold, whether physical or monetary, trigger a requirement that an owner must bring the property into compliance with the current zoning standards. The purpose of these triggers is to encourage redevelopment that is in line with the community's vision for the zoning district. But, as a side effect, these building and use limitations can actually slow the pace of change. Owners may be reluctant to make costly conforming improvements, and banks are typically hesitant to make loans on nonconforming properties. Because nonconforming status creates a barrier to reinvestment, it is important for communities to carefully consider how new zoning standards will affect the types and location of nonconformities.

Not all nonconformities have negative effects on adjacent properties or the larger community. In fact, in some instances, continuance or expansion of a nonconformity does not threaten public health or safety and may even be preferable to the alternative of disinvestment. For this reason, it makes sense for communities to treat nonconformities that are relatively benign differently than those likely to have significant detrimental effects. The following sections contain three broad recommendations for managing nonconformities through zoning.

Recommendation 1: Rezone to Minimize Nonconformities

When communities map new zoning districts, multiple contiguous blocks or even entire neighborhoods may be rendered nonconforming. If the intended goal is to facilitate dramatic redevelopment of these areas, this may make sense. But, if the structures and uses in these neighborhoods are generally viewed as desirable, widespread nonconformities may be a sign that the new districts are a poor fit for older areas of the community.



David Morley

The home in this illustration would be a nonconforming structure, since it does not comply with the minimum front setback.

American Planning Association

Making Great Communities Happen

In these instances it makes sense to change the zoning to minimize nonconformities. This can be accomplished by remapping mature neighborhoods to a more appropriate zoning district, adjusting the use permissions or dimensional standards of the current district to better match existing conditions, or creating a new zoning district that fits the character of these areas. All of these approaches have the net effect of reducing inadvertent nonconformities and decreasing the likelihood of hardships for property owners.

Recommendation 2: Sanction Benign Nonconformities

For nonconformities that are not geographically concentrated, it often makes sense to distinguish between those that pose a significant potential threat to public health or safety and those that are largely benign. Examples of benign nonconformities may include small deviations from required setbacks or lot area requirements, unlisted uses that are similar to explicitly permitted uses, and minor shortfalls in off-street parking spaces.

While each community will need to establish its own criteria for what constitutes a benign nonconformity, the most effective way to sanction the continuance or expansion of these lots, structures, or uses is to state this tolerance clearly in the zoning ordinance. This may be as simple as adding a provision to a new set of zoning standards that authorizes the expansion or rebuilding of any existing development, subject to the standards in effect when the lot, structure, or use was established. Or communities may want to create a special permit process that allows local officials to grant conforming status on a case-by-case basis. Both of these approaches remove the stigma associated with nonconformance, which is especially important to lenders.

Recommendation 3: Phase Out Detrimental Nonconformities

In contrast to a benign nonconformity, a detrimental nonconformity has a high probability of eventually harming public health or safety. Consequently, zoning should encourage the elimination of detrimental nonconformities. Examples of detrimental nonconformities may include a bar or restaurant with late-night hours in a quiet residential district or a heavy industrial use in a floodplain.

As communities try to phase out potentially harmful nonconformities, they usually focus on limiting expansion and preventing rebuilding or reoccupancy. Typically, this means prohibiting any building expansions or site modifications that do not reduce or eliminate the nonconformity, changing one nonconforming use for another, reestablishing a nonconforming use or structure after a period of vacancy, or reconstructing a severely damaged or demolished nonconforming structure.

In instances where continuance of a nonconformity poses an especially acute risk to public health and safety, communities may take more drastic measures. These measures include nuisance abatement actions, amortization schemes that require conformance after a specified period of time, or public buy-outs for willing sellers. Because these options carry significant legal risks for local governments, local officials should always engage competent legal counsel before taking action.

Summary

Nonconforming lots, structures, and uses are a natural byproduct of new zoning standards. While most zoning ordinances encourage phasing out nonconformities, not all nonconformities pose risks to public health and safety. Instead of treating all nonconformities the same, it makes more sense to distinguish between benign and detrimental nonconformities. Communities can transform benign nonconformities into conforming lots, structures, or uses through rezoning, explicit exemptions from new standards, or special permit processes. And they can expedite the elimination of detrimental nonconformities through strict limits on expansion, rebuilding, or reoccupancy.

PAS QuickNotes (ISSN 2169-1940) *is a publication of the American Planning Association's Planning Advisory Service (PAS).*

RECOMMENDED READING

1. Published by the American Planning Association

Easley, V. Gail. 2009. "Distinguishing Between Detrimental and Benign Nonconformities." *Zoning Practice*, November. Available at www.planning.org/zoningpractice.

Rosenthal, Deborah. 2010. "Nonconforming Uses: Part 1." *The Commissioner*, Fall. Available at www.planning.org/thecommissioner.

Rosenthal, Deborah. 2011. "Nonconforming Uses: Part 2." *The Commissioner*, Winter. Available at www.planning.org/thecommissioner.

2. Other Resources

Elliott, Donald L. 2008. *A Better Way to Zone: Ten Principles to Create More Livable Cities*. Washington, D.C.: Island Press. Available at http://islandpress.org/ip/books/book/islandpress/B/bo7003715.html.

Markham, Lynn and Diane Milligan. 2005. *Zoning Nonconformities: Application of New Rules to Existing Development*. Stevens Point, Wis.: Center for Land Use Education. Available at www.uwsp.edu/cnr-ap/clue/Documents/Zoning/Zoning_Nonconformities.pdf.

Chapter 49.30 - NONCONFORMING DEVELOPMENT

49.30.010 - Purpose.

It is the intent of this section to provide standards for the continued use of property made nonconforming by adoption of this title.

(Serial No. 87-49, § 2, 1987)

49.30.100 - Continuation of nonconforming situations.

Unless otherwise specifically provided in this chapter and subject to the restrictions and qualifications set forth in sections 49.30.200—49.30.700, nonconforming situations that were otherwise lawful on the effective date of the ordinance codified in this chapter may be continued.

(Serial No. 87-49, § 2, 1987)

49.30.200 - Residences in industrial and waterfront commercial industrial zones.

The restrictions of this chapter shall not apply to existing dwellings in the industrial and waterfront commercial industrial zones.

(Serial No. 87-49, § 2, 1987)

49.30.300 - Nonconforming lots.

(a) A lot rendered substandard in size by the adoption of this title may nonetheless be used in conformity with applicable use regulations, provided that no use, including duplexes and multifamily dwellings, requiring a lot size greater than the minimum for that zone shall be permitted except as provided in subsections 49.25.510(h) and (i)

(b) This section applies only to nonconforming lots undeveloped at the time of the adoption of this Code. A change in use of a developed nonconforming lot shall be accomplished in accordance with section 49.30.600.

(c) If, on the date the ordinance from which this section derives becomes effective, an undeveloped nonconforming lot adjoins and has continuous frontage with one or more other undeveloped lots under the same ownership, each lot may be developed with single-family dwellings if community or approved individual waste systems are provided.

(Serial No. 87-49, § 2, 1987; Serial No. 91-01, § 4, 1991)

49.30.400 - Aggravation of nonconforming situations.

(a) Except as provided in this section, section 49.25.430, section 49.25.440, and section 49.25.510, nonconforming situations may not be aggravated. As used herein, "aggravate" includes the physical alteration of structures or the placement of new structures on open land if such results in:

  (1) An increase in the total amount of space devoted to a nonconforming use; or

  (2) A greater invasion in any dimension of setback requirements or height limitations, a further violation of density requirements or further deficiencies in parking or other requirements.

(b) A use made nonconforming by the adoption of the ordinance codified in this title may be extended throughout any portion of a completed building manifestly designed or arranged to accommodate such use, but may not, except as provided in section 49.30.800, be extended to other buildings or to land outside the original building.

(Serial No. 87-49, § 2, 1987; Serial No. 91-03, § 4, 1991; Serial No. 91-50, § 3, 1991)

49.30.500 - Reconstruction.

(a) Except as provided in subsections (b) and (c) of this section, if a building is damaged by any change so that the cost of renewal of the damaged parts exceeds 75 percent of the cost of the replacement of the entire building, exclusive of foundations, using new materials, then such building shall not be rebuilt, unless the building and its intended use comply with this title. The determination of whether a building is destroyed to the extent described shall be made by the building official.

(b) If a single-family dwelling, duplex, or multifamily dwelling in a residential district is damaged by any involuntary change, including fire, flood, landslide, avalanche, or earthquake, so that the cost of renewal of the damaged parts exceeds 75 percent of the cost of the replacement of the entire building, exclusive of foundations, using new materials, then such building may be replaced or reconstructed to the same footprint on the original location with the exception of encroachments into public rights-of-way or adjacent property; provided, the intended use of the building is the same as, or less intensive than, the prior use and is a permissible use in the district. The determination of whether a building is destroyed to the extent described shall be made by the building official. If the building official determines that the foundation of the building is not reusable due to damage or substantial noncompliance with Title 19, the building regulations code, then the building may be replaced or reconstructed to the same footprint and the footprint shall be relocated on the lot so as to reduce, to the extent reasonably feasible, the occurrence or severity of any nonconforming setbacks, taking into consideration topography, shape, and size of the lot, and all other relevant factors. However, if such relocation is not reasonably feasible, the building may be replaced or reconstructed to the same footprint on the original location. Projections beyond the footprint including architectural features, roof eaves, foundation footings, porches, decks, terraces, patios, unenclosed stairways, and fire escapes, and attached structures, may also be replaced or reconstructed as they existed on the original building, with the exception of encroachments into public rights-of-way or adjacent property. An as-built survey or other proof of the footprint and location of the original building and projections beyond the footprint is to be provided to the City and Borough at the time the building is to be replaced or reconstructed. A building may be replaced or reconstructed under this subsection with the same number of off-street parking spaces as were provided for the original building. Nothing in this subsection constitutes an approval or waiver of an encroachment of the building or its footprint or projections beyond the footprint into a public right-of-way or adjacent property, nor does it authorize the building or projections beyond the footprint of the building to be replaced or reconstructed so as to encroach into a public right-of-way or adjacent property. Nothing in this subsection waives any other applicable laws or regulations including Title 19, the building regulations code, and this title.

(c) The commission, through the conditional use permit process, may allow the replacement or reconstruction of a multifamily dwelling in any multifamily residential, general commercial, light commercial, mixed use, or waterfront commercial district when the dwelling is damaged by any involuntary change, including fire, flood, landslide, avalanche, or earthquake, and the cost of renewal of the damaged pans exceeds 75 percent of the cost of the replacement of the entire building, exclusive of foundations, using new materials, provided the intended use of the building is the same as, or less intensive than, the prior use. The determination of whether a building is destroyed to the extent described shall be made by the building official. A building may be replaced or reconstructed under this subsection with the same number of off-street parking spaces as were provided for the original building unless additional spaces are required under the Federal Americans with Disabilities Act. Nothing in this subsection constitutes an approval or waiver of an encroachment of the building or its footprint or projections beyond the footprint into a required yard, nor does it authorize the

building or projections beyond the footprint of the building to be replaced or reconstructed so as to encroach into a required yard, except as provided in subsection 49.25.430(5). Nothing in this subsection waives any other applicable laws or regulations, including title 19, the building regulations code; and title 49, the land use code.

(d) The director may allow a building in the MU zoning district which has been converted from residential to nonresidential use to revert to residential use at the original density and parking requirement, if the reversion results in no additional floor space.

(Serial No. 87-49, § 2, 1987; Serial No. 89-05, § 3, 1989; Serial No. 89-33, §§ 3, 4, 1989; Serial No. 91-46, § 2, 1991; Serial No. 2001-02, § 2, 4-2-2001; Serial No. 2006-15, § 7, 6-5-2006; Serial No. 2012-36, § 4, 9-17-2012)

Cross reference— Right-of-way encroachment permits, CBJ Code ch. 62.55.

49.30.600 - Change in use of property.

(a) A substantial change in the use of property containing a situation made nonconforming by the adoption of the ordinance codified in this title may be made only after review and approval according to the procedures applicable to an initial use.

(b) Property changed in use pursuant to subsection (a) of this section may not thereafter revert to its nonconforming status. As used in this subsection the term "substantial change" means a change sufficient to require a new development permit.

(Serial No. 87-49, § 2, 1987)

49.30.700 - Abandonment and discontinuance of nonconforming situations.

(a) If a nonconforming use is discontinued for 365 consecutive days, or discontinued for any period of time without a present intention to reinstate the nonconforming use, the property involved may thereafter be used only for conforming purposes.

(b) For purposes of determining whether a right to continue a nonconforming situation is lost pursuant to this section, all of the buildings, activities and operations maintained on a lot shall be considered as a whole. Discontinuance of part of a use or the use of part of the property shall not necessarily terminate rights to the nonconformity, but if a nonconforming use is maintained in conjunction with a conforming use, discontinuance of the nonconforming use for the required period shall terminate the right to maintain it thereafter.

(c) When a structure or operation made nonconforming by this chapter is vacant or discontinued at the effective date of the ordinance codified in this chapter, the 365-day period for purposes of this section begins to run on the effective date of the ordinance codified in this chapter.

(Serial No. 87-49, § 2, 1987)

49.30.800 - Completion of nonconforming developments.

(a) *Completion of structures.* Any structure for which a building permit has been issued prior to the effective date of the ordinance codified in this chapter may be completed in accordance with such permit.

(b) *Completion of developments other than structures.*

(1) Any development for which a variance, planned unit development certificate, conditional use permit, or temporary permit has been issued prior to the effective date of the ordinance codified in this chapter may be completed in accordance with a building permit issued prior to the expiration of and in accordance with such variance, planned unit development certificate, conditional use permit or temporary permit. Such expiration shall occur as specified prior to the adoption of the ordinance codified in this title or six months after the effective date of the ordinance codified in this title, whichever is later.

(2) A preliminary plat approval issued prior to the effective date of the ordinance codified in this chapter shall expire 18 months after issuance, or six months after the effective date of the ordinance codified in this title, whichever is later, unless the development for which it was issued is first awarded a public transmission facilities permit.

(3) A final plat approval issued prior to the effective date of the ordinance codified in this chapter shall expire two years after such effective date, unless the plat is recorded.

(c) *Allowance for completion.* When it appears from the developer's plans or otherwise that a project was intended to be or reasonably could be completed in phases, stages, segments or other discrete units, the developer shall be allowed to complete nonconforming units only if they were the subject of a building permit issued prior to the effective date of the ordinance codified in this chapter and if they were included in the initial phase.

(Serial No. 87-49, § 2, 1987)