

Agenda  
**Planning Commission**  
Regular Meeting  
CITY AND BOROUGH OF JUNEAU  
*Ben Haight, Chairman*  
June 27, 2017

**I. ROLL CALL**

Ben Haight, Chairman, called the Regular Meeting of the City and Borough of Juneau (CBJ) Planning Commission (PC), held in the Assembly Chambers of the Municipal Building, to order at 7:05 p.m.

**Commissioners present:** Ben Haight, Chairman; Paul Voelckers, Vice Chairman;  
Nathaniel Dye, Percy Frisby, Dan Hickok, Dan Miller, Carl Greene

**Commissioners absent:** Michael LeVine, Kirsten Shelton-Walker

**Staff present:** Rob Steedle, CDD Director; Beth McKibben, Planning Manager;  
Laura Boyce, Senior Planner; Teri Camery, Senior Planner;  
Gary Gillette, Port Engineer for Docks and Harbors;  
Robert Palmer, Assistant Municipal Attorney

**Assembly members:** Debbie White

**II. APPROVAL OF MINUTES**

May 23, 2017, Draft Minutes - Regular Planning Commission Meeting

**MOTION:** *by Mr. Miller, that the May 23, 2017, regular Planning Commission meeting minutes be approved with any minor corrections by staff or Commission member.*

***The motion passed with no objection.***

**III. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS**

Greg Chaney, Lands Manager for the CBJ, who lives in the Starr Hill area, spoke as a private citizen on the overlay district, of which his neighborhood is a part. The overlay district was approved by the Assembly last night. Mr. Chaney said he is in favor of the overlay district. Showing pictures of his neighborhood displaying his house to the Commission, Mr. Chaney noted that the majority of his house does not conform to the rear setback. Showing a map of the area, Mr. Chaney commented that within the entire neighborhood, there is not one home in this district which conforms with the D-5 zoning conventional standards.

D-5 zoning for the neighborhood was enacted around 1986, said Mr. Chaney. The problem is that of the existing homes in the neighborhood, many of them over 100 years old, do not comply with this zoning, said Mr. Chaney. As a result, he said, if anyone wants to do any reconstruction, issues arise, he said. Typically this would require a variance, he said. To help resolve this problem, the overlay district can be a potentially great solution, he said. If setbacks are averaged per the overlay district, said Mr. Chaney, it comes out to about nine feet for the rear yard setback, he noted. They would like to build a deck and they cannot build the deck they would like to build because of this, he said.

The only people that could take advantage of the average would be those who are far away from the average, said Mr. Chaney. That means that half of the people in the neighborhood are not going to be able to take advantage of the average setback, he said. Therefore, he said, the only property owners within this area that would be helped by this are three homes within the entire neighborhood of twenty homes.

Mr. Chaney said he had interpreted the overlay district verbiage to mean that the footprint of the existing residential building could be used as the basis for reconstruction through a Conditional Use Permit. Mr. Chaney said he understands this option has always been available under the reconstruction section of the code. He said when he brought this up to the Assembly at its meeting last night, some Assembly members were confused.

#### **IV. PLANNING COMMISSION LIAISON REPORT**

Assembly Liaison to the Planning Commission Debbie White reported that the overlay district was approved by the Assembly despite some confusion on the part of some Assembly. Jill Maclean did a phenomenal job explaining this item to the Assembly, said Ms. White.

#### **V. RECONSIDERATION OF THE FOLLOWING ITEMS - None**

#### **VI. CONSENT AGENDA**

Consent agenda items USE2017 0008 and CSP2017 0006 were pulled from the Consent Agenda at the request of Dennis Watson and placed on the Regular Agenda.

**CSP2017 0002:** A City State Project for the acquisition of tidelands from the State of Alaska by the City and Borough of Juneau Docks and Harbors Department for the Statter Harbor Launch Ramp project.

**Applicant:** City and Borough of Juneau

**Location:** 11801 Glacier Highway

### **Staff Recommendation**

Staff recommends that the Planning Commission recommend to the Assembly that CSP2017 0002, City Project Review for acquisition of submerged lands, is consistent with the 2013 Comprehensive Plan, Auke Bay Area Plan, Title 49 and other associated plans mentioned herein and forward to the Assembly a recommendation for approval.

**MOTION:** *by Mr. Dye, to approve CSP2017 0002 with staff's findings, analysis and recommendations.*

***The motion was approved with no objection.***

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

**VII. UNFINISHED BUSINESS** - None

**VIII. REGULAR AGENDA**

***Chairman Haight and Commissioner Hickok withdrew from all Statter Harbor items on the agenda due to conflicts.***

**USE2017 0008:** A Conditional Use Permit for Statter Harbor Development

**Applicant:** City and Borough of Juneau

**Location:** 11520 Auke Bay Harbor Road

### **Staff Recommendation**

Staff recommends that the Planning Commission adopt the Director's analysis and findings and grant the requested Conditional Use for construction of new mooring and loading floats, uplands development, kayak launch ramp, restrooms and covered shelter with potential second floor commercial space, and removal and replacement of a section of the moorage facility, subject to the following conditions:

Prior to issuance of a building permit, the applicant shall submit a lighting plan illustrating the location and type of exterior lighting proposed for the development. Exterior lighting shall be designed and located to minimize offsite glare. All exterior lighting fixtures shall be of a "full cutoff" design.

There are a total of five phases to the Statter Harbor project, said Ms. Camery. Phase Two was completed in 2016, she noted. That phase consisted of the large parking area and the boat launch ramp, she said.

This item involves Phases III, IV, and the future phase, said Ms. Camery. This involves a series of improvements including new loading floats for the charter fleet that serves cruise ship passengers on whale watching and fishing tours; an upland staging area for charter bus loading

and unloading; and an upland building with an open shelter, restrooms, and a potential second floor commercial space. Phase IV includes the charter fleet facility with approximately 866 lineal feet of side tie moorage as well as a new field dispensary. A separate kayak ramp would also be constructed to reduce conflicts with boaters, said Ms. Camery. Also the development provides a new Bay Walk, a continuation of the sea walk that was developed in the previous phase, along the perimeter of the parking area. The future phase moorage replacement would remove and replace the oldest section of Statter Harbor moorage floats, known as the horseshoe area. This section of the harbor is near the end of its useful life.

The major goal of all of these developments within the Statter Harbor Master Plan has been to separate user groups, and to improve vehicle, vessel and pedestrian circulation, said Ms. Camery.

The application is complete and the use is appropriate according to the Table of Permissible Uses, said Ms. Camery. It complies with the public notice requirements, and there is no evidence that the development endangers public health or safety, she said. There is no evidence that the development decreases the value of or is out of harmony with property in the neighboring area, she said. The project is in conformity with the Auke Bay Area Plan, the Juneau Comprehensive Plan, and the Juneau Economic Development Plan, said Ms. Camery. It is also in compliance with the Juneau Coastal Management Plan, she noted. The project meets all of the necessary conditions for approval of this project, said Ms. Camery.

The staff recommends that prior to issuance of a building permit, the applicant shall submit a lighting plan illustrating the location and type of exterior lighting proposed for the development. Exterior lighting shall be designed and located to minimize offsite glare. All exterior lighting fixtures shall be a "full cutoff design", read Ms. Camery.

#### *Commission Comments and Questions*

Mr. Voelckers summarized that these phases are essentially comported with material that has already been presented to the Commission at previous meetings. He said this is the execution of the project but that there are not any significant changes to what the Commission has been exposed to previously.

Ms. Camery agreed, stating that this was an excellent summary by Mr. Voelckers. This plan has gone through an extensive public process as well as extensive federal resource agency review, said Ms. Camery.

Mr. Miller noted that in the staff report it is stated that there is a 14,400 square foot restroom and shelter with potential second floor commercial space. He said he thought perhaps this was a typo, as this is a very large size.

Ms. Camery noted that elsewhere it is stated that the building is 12,500 square feet.

To clarify this question, Mr. Gillette said that the restroom is about 1,100 square feet, and that the building is about 1,400 square feet per floor. The flood zone issue only applies to the first floor restroom, said Mr. Gillette. This is because FEMA (Federal Emergency Management Agency) considers this a habitable space, he added. The City building code does not consider the restroom a habitable space, he added, but they must conform to federal standards.

#### *Applicant (CBJ)*

Representing the CBJ, Mr. Gillette said that there was an existing boat yard at Statter Harbor and that the 2008 plan retained the boat yard. The Docks and Harbors Board determined the best way to meet their goals for the entire Statter Harbor area was to move the boat yard up, he said. That reduced the required amount of fill lessening impact on the area dramatically, he said.

#### *Public Comment*

Former Commission member and Juneau resident Dennis Watson told the Commission that he has some concerns with the Statter Harbor items on the agenda before the Commission. With the new float formation, said Mr. Watson, new larger sizes of boats will be coming into the Harbor further than they ever have before. He said he felt this design will bring safety issues between kayakers and larger boats going in and out of adjacent areas. Because of this, Mr. Watson said he did not feel that the congestion issue has been adequately addressed. He said he felt the kayak ramp should have been located elsewhere.

Noting that he has attended almost all of the Harbor Board meetings on this issue since 2005, Mr. Watson said there has never been a discussion on whale watching vessels. There are other types of charter boats in addition to the commercial fishing fleet, said Mr. Watson. The commercial fishing fleet is not allowed to fuel at these docks, he said. This resulted in the City creating a special use dock, he said, with the use of public funds. Mr. Watson said in his opinion Docks and Harbors should never be allowed to use public funds to create an exclusive facility for a special part of the fishing and tourism fleet.

It is not in the best interests of the community to have a self-service fuel dock in that area, said Mr. Watson. He said in his opinion this is in effect giving them “the keys to the castle”. He said this is not noted anywhere in the application. It also does not show in the application where the fuel tanks will be located, said Mr. Watson. It appears from the application that they would be using existing fuel tanks, said Mr. Watson. But if the existing fuel provider does not win the bid, then those fuel tanks would not be used, he said.

#### *Commission Comments and Questions*

Mr. Voelckers confirmed with Mr. Watson that Mr. Watson has raised these issues with the Harbor Board.

Mr. Voelckers said this may be pressing the boundary of issues which the Planning Commission should be evaluating relative to what the Harbor Board handles.

Juneau resident Jim Ayres said he was in agreement with many of the items raised by Mr. Watson. He said he felt the Commission was moving very fast on this development. Like Mr. Watson, Mr. Ayres said he did not feel it is right for the municipality to accommodate a specific industry and a specific group without recognizing what the overall consequences to the community may be.

Mr. Ayers said he felt the Planning Commission was the “compass” for the community and that regarding Statter Harbor it has gotten a bit “off course”. Mr. Ayers said over his extensive career there are two important lessons that he has learned:

1. All plans need a feedback loop and course corrections because otherwise it can be a plan to drive one off the “cliff”
2. There are three ways we can destroy our ecosystems and our community;
  - i. “We love it to death by smothering it with a thick, wet blanket of humanity”
  - ii. We pollute it with trash, toxins and noise
  - iii. We over exploit it because we can’t stop ourselves

Changes in the climate must be adapted to, said Mr. Ayres, saying he was glad the Assembly had adopted its support of the Paris Treaty. There are far more people on the planet which would like to have a chunk of Juneau which we cannot accommodate, he said. Just because more growth can be accommodated, said Mr. Ayres, it does not necessarily mean that it is a good thing. The resilience of our community, economy, environment, climate and culture must be accommodated to support a sustainable way of living.

The CBJ Comprehensive Plan states that economic development should be balanced by nature and quality of life, said Mr. Ayres. The Comprehensive Plan encourages and fosters sustainable, value-added, nonpolluting economic development which sustains or increases neighborhood living, natural settings, and other opportunities, read Mr. Ayres. The development in Auke Bay is inconsistent with what is stated in the Comprehensive Plan, said Mr. Ayres. At some point there needs to be a pause, a review, and a feedback loop, said Mr. Ayres.

Auke Bay resident Mark Allen said he did not understand why the Docks and Harbors Department was taking a role in the development of potential retail space in Auke Bay. He said he was not in favor of the second floor being a retail space. CBJ should not be in the business of competing with private business in Auke Bay, said Mr. Allen. He said there has been a dislike of Docks and Harbors generated by the landscaping in front of the parking lot involving the planting of trees which commercial business owners in the area feel will block the view of the harbor eventually.

He read part of the Auke Bay Area Plan which stipulates that the plan should preserve unique views that make Auke Bay area a truly special place. Mr. Allen said he did not feel planting trees which will grow and block views from commercial businesses and the highway preserves Auke Bay views. He presented a petition signed by around 100 Auke Bay residents requesting that the CBJ not construct retail space within the Statter Boat Harbor parking and launch area.

Juneau resident Erin Howell also expressed her objection to the CBJ proposal to construct retail space on the second floor of the restroom structure. She said she felt that CBJ was trying to act as a “business owner”. She said she felt this put the CBJ in direct competition with Juneau businesses. She said there are 12 boats at the Allen Marine docks and that there are about 45 vehicles in the parking lot on any given day. She said that is roughly four cars per boat.

Lena resident Mitch Falk said that he and his wife own property in Auke Bay adjacent to the Harbor office. He said he did not feel the City should be getting into the commercial, retail, and rental business. He said he had a problem paying taxes to an entity that would go into competition with him. Mr. Falk said he felt the plan was incomplete. He said he counted 82 parking places and six handicapped parking spaces in the Statter parking lot, and that according to the original plan there was supposed to be 100 parking spaces. Now there is talk of providing designated parking spaces for the charter boats, said Mr. Falk. He said he felt this plan was given initial approval and that subsequent actions have been taken as construction moved along. Mr. Falk said he was not in favor of a second commercial story being placed upon the restroom in the harbor area. He asked where customers for the second commercial story would park.

Mr. Voelckers asked Mr. Steedle if he could address how he felt the role of the Planning Commission overlaps with the role of the Docks and Harbors Board. He said he felt it may help the Commission clarify its role in the process.

Mr. Steedle said this is a very good question, and one that is difficult to unravel. The role of the Planning Commission is to ensure that proposals meet the requirements of the Land Use Code. The other part of the role is to ensure that City projects are consistent with the City’s adopted plans, said Mr. Steedle. It is on the CSP question on which the Commission should focus its energy, said Mr. Steedle.

Mr. Miller said the USE application is a Conditional Use Permit. There are exact findings which the Commission has to make to which the staff has proposed answers. Those are the seven different criteria which must be considered and met, said Mr. Miller.

Mr. Voelckers asked the applicant if they could answer the items addressed by the public.

*Applicant*

Mr. Gillette said the Docks and Harbors Board has held a number of public meetings including

two special public meetings in January, 2016. They received a number of comments in July, 2016. He said they addressed those comments. They also presented the plan as it was developing four times at public Docks and Harbors meetings.

Pointing to a map of Statter Harbor, Mr. Gillette said one of the issues is that they were creating a choke point for traffic going in and out of the parking lot. He said they realize there are potential conflicts with the design and that they have moved the ramp up to create more space. They are very comfortable the area has been adequately designed to accommodate the traffic, said Mr. Gillette.

There is currently a lot of congestion at the fuel dock constructed by Petro Marine, said Mr. Gillette. Since the charter fleet is concentrated in this area, said Mr. Gillette, to relieve congestion in the area they plan to have a fuel dispensary. They have issued a request for Letters of Interest for that fuel dispensary, he said. They have heard from three primary fuel providers in Juneau, including Petro Marine, said Mr. Gillette. There is enough room to accommodate additional tanks, noted Mr. Gillette.

Mr. Gillette noted that there have been comments against spending City tax dollars on something that is for a special use group. This facility will be funded 85 percent by passenger fees, said Mr. Gillette. This is because the primary purpose will be to accommodate whale watch passengers derived from the cruise ship industry, he said. Fifteen percent of the funding will be generated from Docks and Harbors funds, he said. That is the percentage of independent travelers using the tour ships and dock, he said. Those funds are collected from moorage fees and charter fees charged to the tour boat operators for the staging of their buses, he said. The funding is not derived from sales tax or property tax, said Mr. Gillette.

In response to remarks stating that they were proceeding too fast on this project, they have been working on this project since its origin in 2002, said Mr. Gillette.

The plan for a commercial space above the restroom facility has not changed since May, said Mr. Gillette. An abutter's notice was sent out by the department, he said. That notice did not mention the fuel dock or the proposed commercial space, he said. He said he did bring this up with the Community Development Department and was told to send out a second abutter's notice mentioning those two items, which they did, said Mr. Gillette. It was not the plan that changed, it was the public notice which was changed, clarified Mr. Gillette.

In terms of sustainability, said Mr. Gillette, there is a growing interest in electrifying charter boats, he said. The dock will also have electric pedestals for electric vessels and water, said Mr. Gillette.

The plan for the commercial space above the public restroom was approved by the Assembly and at numerous public meetings, said Mr. Gillette. This is not a new plan, he said. This is a



promotion of the development of Auke Bay as a town center, said Mr. Gillette. This space would be used by private businesses, he said, not by the City in competition with private business.

Mr. Dye asked how important the retail space was to the overall design of the structure.

Mr. Gillette said Docks and Harbors is an enterprise fund. They received no funding from the general fund, he explained. Docks and Harbors is to be self-sufficient and pay for its own operation, he said, through fees, grants, and some sale tax money approved by voters. One way to be self-sufficient is to create leased properties, he said. If the community decided that is not what they want to see in Statter Harbor, said Mr. Gillette, then he did not feel that Docks and Harbors would implement it.

Mr. Greene asked Mr. Gillette to speak about the trees which some residents are concerned will block the view from Auke Bay commercial property and from the highway.

These trees have already been approved by the Planning Commission, said Mr. Gillette. The primary purpose of the trees is to create a green buffer between residential condominiums and the parking lot, he said. They do not grow nearly as tall in Juneau as they do in more southern climes, said Mr. Gillette. Also, he said, they are planted in only two feet of dirt, which will inhibit growth. They do not think the trees will block views, he said. They did remove six trees which they felt could potentially inhibit views, said Mr. Gillette.

Mr. Frisby asked if Petro Marine has a long term contract for its fuel dock.

Mr. Gillette said that Petro Marine has about 33 more years left on its 35 year lease. They invested close to \$1 million to build the float, he said.

Mr. Frisby clarified that Petro Marine serves all types of vessels.

Mr. Gillette said the intent for the new fuel facility is to provide fuel for the charter boats since that is where they will be departing from and returning to.

Mr. Frisby asked what the ultimate capacity of the Statter Harbor will be to accommodate future development within the marine tour industry.

They will manage it as they do the downtown docks, said Mr. Gillette. The buses are given a very limited time to load and unload their passengers, and they adhere to their schedules.

Mr. Frisby said in general it is a beautiful plan, but that it appears that the local boats and fishing boats are being pushed further and further away from the core areas, and that the

tourism industry is overtaking all of the community resources in this area. He asked how this growth will be regulated in the future.

Mr. Gillette said they are already looking 10 to 15 years into the future for future expansion.

Mr. Miller summarized that the new Statter Harbor facility will alleviate congestion for all participants in the older harbor. He verified with Mr. Gillette that the charter boats would actually moor in the new facility overnight. Mr. Miller verified that the retail space proposed to be constructed above the restroom would be an opportunity for a private Juneau business, not CBJ. Mr. Miller said he did not recall that the Commission knew that trees were being planted at Statter harbor to block the view.

**MOTION:** *by Mr. Miller, to approve USE2017 0008 and accept the staff's findings, analysis and recommendations.*

Speaking in favor of his motion, Mr. Miller said this is a Conditional Use Permit to which very specific criteria must be applied. This request meets all of the necessary criteria, said Mr. Miller.

**Roll Call Vote:**

**Yeas:** Dye, Greene, Miller, Frisby, Voelckers,

**Nays:**

***The motion passed by unanimous vote.***

**CSP2017 0006:** A City Project Review for Statter Harbor improvements

**Applicant:** City and Borough of Juneau

**Location:** 11520 Auke Bay Harbor Road

**Staff Recommendation**

Staff recommends that the Planning Commission find that the proposed City project for construction of new mooring and loading floats, uplands development, kayak launch ramp, restrooms and covered shelter with potential second floor commercial space, and removal and replacement of a section of the moorage facility, is consistent with adopted plans of the CBJ, and to endorse the city project as required by CBJ Code 49.15.540 and AS 35.30.010, with the following conditions:

1. Prior to issuance of a building permit, the applicant shall submit a lighting plan illustrating the location and type of exterior lighting proposed for the development.

Exterior lighting shall be designed and located to minimize offsite glare. All exterior lighting fixtures shall be of a “full cutoff” design.

**MOTION:** *by Mr. Miller, to approve CSP2017 0006 and accept staff’s findings, analysis and recommendations.*

Mr. Dye asked to make a friendly amendment to the main motion that it be clarified that the CSP would not cover actual construction of the second floor commercial space using public funds.

Mr. Miller accepted the friendly amendment.

***The motion passed with no objection.***

**AME2017 0002:** A rezone request for 1.23 acres from D18 (Multi-Family Residential District, 18 units per acre) to MU (Mixed-Use).  
**Applicant:** Corporation of the Catholic Bishop of Juneau  
**Location:** 416 Fifth Street

***Mr. Voelckers and Chairman Haight recused themselves from this item due to conflicts.***

### **Staff Recommendation**

Staff recommends that the Planning Commission concur with the Director’s analysis and findings and recommend approval to the Assembly for a rezone of the 0.8988 acres for the entirety of Block 25 from D-18 to MU (Mixed Use).

Ms. Boyce said that this is a request to rezone just under an acre from D-18 to Mixed Use. The public notification, signs and mailings incorrectly specified 1.23 acres, but the actual site is just under an acre.

This property is located between Gold and Harris Streets, and Fifth and Sixth Streets, downtown. It is zoned D-18 which is a multi-family zone district allowing up to 18 dwellings units per acre. It is adjacent to the Mixed Use zone district. This is a request by the property owner to rezone the entire block to Mixed Use, she said.

Ms. Boyce explained that the Catholic Corporation of the Bishop of Juneau owns the entire block. The Comprehensive Plan land use designation is TTC, Traditional Town Center. *[Ms. Boyce misspoke here; the land use designation for this property is actually MDR, Medium Density Residential, which is reflected in the staff report and presentation slides – Editor.]* It is served by city water and sewer. There is access with driveways along Fifth, Gold and Harris

Streets. The majority of the land uses are religious facilities, and they lease out some business offices.

Ms. Boyce presented a map (via a PowerPoint presentation) showing the area in question if the rezone request is approved to Mixed-Use. She indicated that the boundary along Fifth Street between D-18 and Mixed-Use cuts in and out and is not a clear line.

She said this map shows the Comprehensive Plan land use designations as well as the zoning districts. Rezones need to be in substantial compliance with the Comprehensive Plan land use designations. The subject D-18 parcels are in an area designated Medium Density Residential. Portions marked RS are neighborhood parks. The majority of Mixed Use zone districts are in traditional town center, but Mixed Use zone districts can be found in other land use designations as well, said Ms. Boyce.

Ms. Boyce said that the Comprehensive Plan describes Medium Density Residential as characterized by urban residential lands for multi-family dwelling units at densities ranging from 5 to 20 units per acre. Commercial development should be of a scale consistent with residential neighborhoods. Traditional Town Center is a new designation defined in the 2013 update to the Comprehensive Plan; prior to that it had been Mixed Use. These lands are characterized by high density residential and non-residential land uses in downtown areas and around shopping centers. Residential and non-residential uses can be combined within a single structure including off-street parking.

Ms. Boyce said for a rezoning request the properties at issue should be 2 acres or more or an expansion of an existing zone district. This request is to expand the adjacent Mixed Use zone district. A rezoning shall only be approved upon a finding that the proposed zone district and the uses allowed therein are in substantial conformance with the land use maps of the Comprehensive Plan.

Ms. Boyce gave some background information about the property. The original structure on the property was the church and rectory building. The records are not clear but development may have occurred as early as 1890 through 1912 during Juneau's initial development period. Other buildings were constructed in 1933 and 1954, said Ms. Boyce. Those buildings predate zoning, she said. Zoning came to Juneau in 1956 which is when the city started applying setbacks, use restrictions, etc. Therefore, much of the development on this block is nonconforming, she said. Development that occurred prior to 1987 – the previous zoning, once it was applied to the property, called for a 15-foot front yard setback which is less restrictive than what there is now which is 20 feet. Development also received variances to 7 feet along Sixth Street and 4 feet along Gold Street. The point is that most of the development on the block in question is nonconforming to current standards. In 1987 when the CBJ-wide rezoning occurred, D-18 was applied to this property which requires a 20 foot front yard setback. None of the development on the site conforms to that.

Ms. Boyce explained that the land use code describes the D-18 residential district as intending to accommodate primarily multi-family development at a density of 18 dwelling units per acre. It is a high density, multi-family zoning district, said Ms. Boyce. The Mixed-Use district is defined in code as a district to accommodate a mix of appropriate commercial and residential land uses. It reflects the existing downtown development pattern and is intended to maintain the stability of the downtown area. Multi-family uses are allowed and encouraged.

Ms. Boyce said staff did analysis and looked at all of the zone districts that fall within the Medium Density Residential land use designation. There is a wide range of zone districts that are found in that designation. There are properties from D-3 to D-18; Light Commercial, allowing for densities of up to 30 dwelling units; General Commercial, allowing residential units at 50 dwelling units per acre; Mixed Use, which has no limit on density; and Waterfront Commercial, which allows for 30 units per acre as well [*editor notes that later Ms. Boyce stated the correct density for waterfront commercial is 18 units per acres*]. So there is a wide variety of zone districts and there is already mixed-use within the Medium Density Residential land use designation.

Doing this analysis, staff determined that the request for a rezone to Mixed Use is not out of compliance with the land use maps, said Ms. Boyce. In the applicant's project narrative, they mentioned that an amendment to the Comprehensive Plan maps would be needed to TTC so that the Mixed-Use would be in conformance with that. However, based on the analysis, staff does not believe a Comprehensive Plan amendment is needed because there already exists a Mixed Use zone downtown with a MDR designation.

Mixed Use zoning allows for a combination of residential and commercial uses to be potentially on the same piece of property, said Ms. Boyce. The same types of uses in D-18 zoning can be found in Mixed Use zones, said Ms. Boyce. The uses not allowed in D18 require a conditional use permit in the MU. There is still a public process for applicants to consider other uses within Mixed Use zones, said Ms. Boyce. At the neighborhood meeting held in March, said Ms. Boyce, a few neighbors mentioned concerns about marijuana uses potentially being allowed on the property if it was zoned Mixed Use, since it is allowed in Mixed Use zones and not in D-18 zones. Because there is a requirement for marijuana businesses to be 500 feet from certain other uses, said Ms. Boyce, marijuana uses could not be used on that property regardless of the zoning.

A 20 foot setback requirement is required in D-18 zoning with no front setback required for Mixed Use zones, said Ms. Boyce. Up to 50 percent of the lot can be covered in D-18 zones with 100 percent of the lot allowed to be covered in Mixed Use zones, she said. The maximum height in the D-18 zones is 35 feet, with no height restrictions in the Mixed Use zones. Ms. Boyce also said she believes one of the buildings on site exceeds the current height limit. There is no limit for density in a Mixed Use zone with the limit of 18 dwellings allowed per acre

in a D-18 zone, said Ms. Boyce. The D-18 zone has a 30% vegetative cover requirement. This site previously received a variance to the vegetative cover requirement. Any future development will have to meet the current parking requirements. The property is not in any of the parking districts that allow reductions. This limits development potential on the property.

The Commission can deny the rezone request, it can recommend approval of the request to the Assembly or it can also recommend an alternate request, said Ms. Boyce. The comprehensive plan policies and guidance say that when considering a rezone we should aim to promote the highest best use of the land. The staff has found that the rezone request is in substantial conformance to the land use maps of the Comprehensive Plan, and the findings are that it meets the submittal requirements and the other requirements of the land use code and is an expansion of an existing district. The analysis we did shows there is a broad range of zone districts in the MDR designation and we recommend you concur and recommend approval to the assembly said Ms. Boyce.

#### *Applicant*

Corey Wall, of MRV Architects, said the main point they would like to make is that nothing on the site currently complies with the code, specifically the setbacks. Any modifications they may wish to make to the church property would require substantial and numerous variances, said Mr. Wall. According to Mr. Wall, the CDD staff is moving away from the variance route, and instead moving towards the use of zoning to match existing development on the site. Behind their rezone request is their desire to have the zoning of the property actually match what exists on the site, he said. Any modification to the front of the cathedral, for example, would require a variance, said Mr. Wall. If the property was rezoned to Multi-Use then all of the existing buildings would be in compliance, said Mr. Wall.

Project manager Brian Goettler told the Commission the cathedral building is in need of repair. They would like to do a modest renovation of the cathedral, add an elevator, and add access from the sidewalk for handicapped accessibility, explained Mr. Goettler. To complete this project they would require several variances, which he said he understood are going away. Subsequently, they are requesting a rezone for the property so they can make the upgrades that are necessary, he said.

#### *Public Comment*

Juneau resident Karen Allen told the Commission she lives directly across the street from the uphill side of this project. Ms. Allen said the Diocese is a great neighbor, and that she thought rezoning the block would probably be a good idea. Ms. Allen said her only concern is that she felt there was a discrepancy with the Comprehensive Plan. Ms. Allen said she would like to see the proper process followed; revise the Comprehensive Plan so that it is in accordance with Multi-Use zoning. She said she would like to see a good precedent set for this so that in the future it could be applied to other applicants.

Juneau resident Kim Metcalfe said she was born in Saint Anne's Hospital and went for eight years to Saint Anne's School. Ms. Metcalfe expressed concern that changing the zoning of the property to Mixed-Use would mean there was no limit to the number of units or height of structure within that zone. She stated she realizes there are currently no plans for change in density or height of the property, and that she was concerned about possible future uses of the property. Residents in the area are concerned about "Mixed-Use creep", said Ms. Metcalfe.

Area resident Paul Korchin said that he lives up the hill from the proposed rezone. He said the CBJ Comprehensive Plan designates this property as "MDR" (Medium Density Residential), and not TTC (Traditional Town Center). He said these designations align with the zoning of the properties. To rezone the property as Mixed-Use would functionally if not formally make the property a TTC designation, said Mr. Korchin. This is not in line with the Comprehensive Plan, he said. He stated that he did not think that the proposed Mixed-Use zoning was in substantial conformance with the Comprehensive Plan.

Juneau resident Yvette Sortiere told the Commission that the Diocese is a good neighbor, but that rezoning is not the answer. The church is already nonconforming, said Ms. Sortiere, and it has been allowed to continue to grow and remodel. While she felt the church should be allowed to implement its remodel, she said she did not feel that rezoning was the correct route to achieve these ends. She said that while the staff appears to think that the proposed rezone would substantially conform to the land use maps, they were not told why this would be in conformance. The proposed rezone would cut a slice of D-18 zoning out of the area, she said. She said she is concerned that this rezoning would have the effect of moving with the property in perpetuity. Ms. Sortiere said she would like the Commission to grant variances to the church so that it can complete the remodel that it would like to accomplish.

#### *Applicant*

Mr. Wall said it appears that potential future development is a concern of the neighbors. He said that is a difficult concern to address. It is certainly not the intent of this project, he said. He wanted to emphasize that in his opinion the legal Department of the City and Borough of Juneau is really starting to inhibit the granting of variances. He said it was their understanding that it is not simply possible anymore to obtain variances to accomplish renovation projects because there have been legal consequences from the granting of past variances. By not changing the Comprehensive Plan and by retaining the designation as Medium Density Residential, then any commercial development should be consistent with the residential neighborhood, said Mr. Wall, thus dealing with many of the concerns expressed by the residents. Any future projects would require going through the public process, said Mr. Wall.

#### *Commission Comments and Questions*

Mr. Hickok asked how many variances the project would require.

Mr. Wall said the project would probably require a variance for a front yard setback, a variance for a side yard setback, and a variance for vegetative cover.

Mr. Hickok asked the staff if variances could be combined in one project or if it was an individual process for each variance request.

Mr. Steedle said that each variance would have to be considered separately.

Mr. Frisby said he did not feel comfortable with the limited number of Commission members present at this meeting making this decision. He asked if this item could be postponed to the next meeting when hopefully more Commission members would be present.

Mr. Dye asked what the vote requirements were with limited number of Commission members present.

Mr. Steedle said that an issue would need four votes to pass.

Ms. Boyce said there is a possibility that ADA improvements could be made even though they may not align with the City code, since federal law supersedes municipal regulations. Rezoning requests need to be in conformance with the Land Use Maps; the Comprehensive Plan overall is not specifically mentioned, said Ms. Boyce. We have the residential density component we look at but isn't as clear for commercial component. For this case we looked at density and mixed use has no limit and D18 has a limit of 18 units per acre which can be increased with bonuses. We looked at the micro-level, the density on this site could potentially go up. Overall for all MDR density at the macro-level MDR density won't go beyond 14 units per acre. The mixed use district allows for both commercial and residential uses on the same lot, as does D18. Comprehensive plan policies in the plan also support this request.

Mr. Miller said that he argued about "substantial" conformance. The Commission never took enough time to look at where those borders needed to be and that he felt that "fuzzy lines" on the Land Use Maps are important; that they should not be too strict. He added that he is very concerned that the first few things that the applicant had to say were that the variance process has been discontinued or is now impossible, when in fact it is not supposed to be. While a rezone would fix the predicament of the applicants, said Mr. Miller, it would leave ambiguity with the neighbors. He stated the overlay district might help with this. Ms. Boyce pointed out the overlay district only applies to residential development.

**MOTION:** *by Mr. Miller, to approve AME2017 0002 with staff's findings, analysis and recommendations.*

Speaking against his motion, Mr. Miller said that right now he feels the process is broken. Variances are tools that the development community uses for these exact situations, said Mr. Miller. To say that variances are locked down or that variances cannot be used anymore is



absolutely false, said Mr. Miller, because it is something that can be done. Mr. Miller said that he did not think in this situation that a rezone made any sense.

**Roll Call Vote:**

**Yeas:** Hickok, Greene, Dye

**Nays:** Miller, Frisby

***The motion failed. Needs 5 votes for approval.***

**MOTION:** *by Mr. Hickok, that AME2017 0002 be reconsidered at the next regular Commission meeting when a larger quorum is expected.*

**Roll Call Vote:**

**Yeas:** Frisby, Miller, Greene, Hickok, Dye

**Nays:**

***The motion passed by unanimous vote.***

***Vice Chair Voelckers convened the body as the Board of Adjustment.***

**BOARD OF ADJUSTMENT**

**FZE2017 0001:** A Flood Zone Exception for Statter Harbor Development

**Applicant:** City & Borough of Juneau

**Location:** 11520 Auke Bay Harbor Road

**Staff Recommendation**

Staff recommends that the Board of Adjustment adopt the Director's analysis and findings and grant the requested Flood Zone Exception, FZE2017 0001. The Flood Zone Exception would allow construction of a public restroom in a Velocity Flood Zone, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a letter from a licensed professional engineer indicating that the fill will be designed to withstand the 100-year storm force which is described in the City & Borough's currently adopted Flood Insurance Study.

2. Prior to issuance of a building permit, the applicant shall provide additional backflow prevention within the plumbing disposal system to prevent floodwaters from infiltrating the CBJ wastewater system, to be approved by the CBJ Engineering Department.

Ms. Camery said there are so many criteria involved with the flood zone exception that they wanted to inform the Commission. This flood zone exception would allow the construction of a restroom at an elevation of 25 feet which is two feet below the base flood zone elevation, said Ms. Camery. It is only the restroom which is subject to the flood zone exception, said Ms. Camery. This does not include the shelter or the second-floor retail space, she noted. While the restroom is not considered a habitable structure under the CBJ building code, it is considered a habitable structure by the Federal Emergency Management Agency (FEMA), said Ms. Camery.

Ms. Camery provided an overview via a PowerPoint presentation of key criteria that were reviewed in the staff report and led to the staff recommendation.

#### *Commission Comments and Questions*

Mr. Miller noted that the restroom structure is located way inside of the bay behind several breakwaters and docks. He asked if this building could not have the requirements waived due to its location behind all of the wave-breaking structures.

Ms. Camery said this was discussed in the staff report and that it is certainly a major argument of the applicant, but that it is within the 100 year flood plain and must go by the federal regulations for that reason.

There are 11 criteria to be considered, all of which the staff has deemed as met, said Ms. Camery. She said the staff concludes that section 49.70.410 (b), (c), (d), (e), (f), (g) and (h) Exception criteria have all been met.

#### *Applicant*

Mr. Gillette said he would like to mention that one would think the breakwater and the other infrastructure preceding the location of the restroom would serve as protection for the structure should there be a flood. The City can request that FEMA evaluate the location again, said Mr. Gillette. He said to his knowledge that request has never been made to FEMA by the CDD. Also they were told it would be a long process, said Mr. Gillette.

Mr. Voelckers noted that it does not appear the City is having to spend a lot of money to address these FEMA requirements.

Mr. Hickok asked if the fact the structure is in the hundred year floodplain creates more insurance costs.

Mr. Gillette said it is his understanding that FEMA will not insure the structure. The structure will be covered by City insurance, he added. In answer to a question by Mr. Hickok, Mr. Gillette said the second story of the structure is not within the floodplain.

Mr. Miller said if there was a private developer who wanted to build on the second-floor that the banks would probably require flood insurance, since it would technically be in a flood zone. He said obtaining an exception for the structure may be a good idea because it would reduce the flood insurance for the second-floor retail space.

**MOTION:** *by Mr. Miller, to approve FZE2017 0001 with staff's findings, analysis and recommendations.*

***The motion passed with no objection.***

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

**IX. OTHER BUSINESS**

**X. DIRECTOR'S REPORT**

*Review of Title 49's Nonconforming Development Policies*

Ms. McKibben has written a brief memo on the nonconformance issues, said Mr. Steedle. They consider this to be a significant problem facing the community, said Mr. Steedle. Since the practice of the lending community has changed, noted Mr. Steedle, they feel that they need to react appropriately, he said. Ms. McKibben will be undertaking this project, said Mr. Steedle. They feel that this issue needs to be addressed now, he said.

Mr. Voelckers said he was surprised that this was viewed as a difficult undertaking by the CDD.

It would be relatively easy to clean up the existing language, said Mr. Steedle. The difficult aspect is that there is a nonconforming code for a reason, he said. It appears, however, that they are going to need to build some sort of escape hatch, said Mr. Steedle.

Ms. McKibben said she thinks a lot of their challenges will be solved by clarifying the language, breaking it up and addressing nonconforming structures, uses and lots separately. With each one of those items are policy questions which need to be addressed, she said. The problem experienced by homeowners in the finance world is that they cannot rebuild their homes to a density which is supported by current zoning, said Ms. McKibben.

Mr. Miller said in his building profession he has closed a lot of loans, and it is unbelievable how quickly those regulations are transitioning. He said he felt it was very important to understand just what the banks need before this process was initiated.

Ms. McKibben asked the Commission how they would like to work with this: through the Title 49 Committee, through a Committee of the Whole, or would they like to appoint a special committee.

Mr. Dye asked Ms. McKibben in her opinion what would be the most expedient route to take to deal with the nonconforming issue.

Chairman Haight said he felt the Title 49 committee would be the best vehicle, and that he would advise that the Title 49 Committee bring this before the Committee of the Whole as soon as possible.

**XI. REPORT OF REGULAR AND SPECIAL COMMITTEES**

Mr. Voelckers reported that the Lemon Creek Plan is almost complete. They will be meeting on June 28, (2017) . That draft plan should be before the Commission in late July or early August, said Mr. Voelckers.

**XII. PLANNING COMMISSION COMMENTS AND QUESTIONS**

**XIII. ADJOURNMENT**

***The meeting was adjourned at 10:38 p.m.***