

**BEFORE THE PLANNING COMMISSION
OF THE CITY AND BOROUGH OF JUNEAU**

JUNEAU COOPERATIVE CHRISTIAN
MINISTRY, dba THE GLORY HALL,

Appellant,

vs.

CBJ COMMUNITY DEVELOPMENT,

Appellee.

APL2021-06

Appeal of:

BLD2021-0765

CDD Director's Decision dated

December 1, 2021

FINAL DECISION ON APPEAL

Appellants Juneau Cooperative Christian Ministry, d.b.a. The Glory Hall (“TGH”), appealed the CDD Director’s (“Director”) decision to deny their request for a building permit to convert TGH building at 2437 South Franklin Street from an “emergency shelter” into commercial use and residential rental units.

The Planning Commission (“Commission”) accepted the appeal and voted to review the appeal on the record as provided under CBJ 49.20.110.

The record was prepared by CDD based upon the materials considered by the Director as required under CBJ 49.20.110(b). The record was supplemented with additional materials as requested by TGH, a hearing was held before the Commission on May 24, 2022, and both parties argued in support of their position.¹

Following arguments on May 24, 2022, the Commission deliberated in executive session as provided under CBJ 01.50.140(b)(3). After deliberations concluded, the Commission came out of executive decision and voted to remand the building permit to CDD for further consideration. The Commission circulated a Proposed Decision the parties on June 1, 2022. CDD filed a timely objection per CBJ 01.50.140 (b).

¹ Commissioners Arndt, Voelckers, Pedersen, Alper, Hickok, and Winchell participated in the original hearing and executive session. MaryAlice McKeen presented argument on behalf of the appellants TGH and CBJ Attorney Adam Gottschalk presented argument on behalf of CDD. Commissioner Alper was not present at the June 28, 2022 regular meeting and did not participate in the June 28, 2022 executive session.

At its June 28, 2022 meeting, the Commission considered the objections raised by CDD to the proposed decision on appeal and all other relevant information and voted to amend its decision. This is the Commission’s final decision on this appeal.

1. Burden of Proof and Standard of Review

This is an on the record appeal of the Director’s decision. Pursuant to CBJ 49.20.110(b), the burden of proof is on the party challenging the decision. For an on the record appeal, no evidence outside the record shall be admitted and the decision of the Director shall be upheld if there is substantial evidence in support thereof and no policy error or abuse of discretion is found therein. Under CBJ 01.50.010, “substantial evidence” means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Per CBJ 01.50.070(a)(1), this means “substantial evidence in light of the whole record, as supplemented at the hearing.” The Alaska Supreme Court has held that an abuse of discretion occurs only if the decision is “arbitrary, capricious, manifestly unreasonable, or the result of an improper motive.”² A decision will be upheld unless, after reviewing the whole record, the Commission is left with a definite and firm conviction that the Director erred in her decision.³

2. Relevant Facts

Extensive information regarding the building permit was presented by the parties at the hearing. Accordingly, the recitation of facts here is brief. On October 28, 2021, TGH’s executive director reached out to CDD expressing TGH’s intent to develop seven apartments on the second and third floors of TGH’s building in downtown Juneau and indicated that it was told by a senior planner that it did not need a conditional use permit. *R. at 4*. On November 9, 2021, a pre-application conference was held to provide a preliminary review of TGH’s proposed plans. On November 17, 2021, CDD issued a report regarding what was discussed at the pre-application conference. On November 23, 2021, TGH submitted a building permit showing the addition of seven dwelling units to the 247 South Franklin Street building. *R at 37. R at 116-142*. CDD denied TGH’s building permit on December 1, 2021 with the explanation that “increasing the number of dwelling units is prohibited by code in the hazard zone.” *R at 106*.

3. Legal Analysis

² Markham v. Kodiak Island Borough Board of Equalization, 441 P.3d 943, 949 (Alaska 2019).

³ Gold Country Estates Preservation Group, Inc. v. Fairbanks North Star Borough, 270 P.3d 787, 793 (Alaska 2012).

As provided above, TGH requested a building permit to convert its emergency shelter property into commercial use space and apartments, which is under the authority of the CDD Director. Under CBJ 49.20.110 the decision of the Director may be appealed to the Planning Commission. The Commission reviews the appeal under the standards set forth in CBJ 49.20.110(b). Under these standards, the Commission does not independently review the building permit request and make a determination based on its own analysis. Rather, the Commission reviews the decision of the Director based on the evidence in the record and is required to uphold the decision “if there is substantial evidence in support thereof and no policy error or abuse of discretion therein.”

Several sections of CBJ 49.70.300 apply to this decision. CBJ 49.70.300(a) states:

(1) Development in all landslide and avalanche areas shall minimize the risk of loss of life or property due to landslides and avalanches.

(2) Boundaries of potential and severe avalanche areas will be as shown on the landslide and avalanche area maps dated September 9, 1987, consisting of sheets 1—8, as the same may be amended from time to time by the assembly by ordinance.

(3) Notwithstanding any other provision, all subdivision other than a boundary line relocation and all development greater than a single-family dwelling within landslide or avalanche areas shall require a conditional use permit.

(4) If a developer disagrees with the boundaries shown on the maps, the developer may seek departmental relocation of the boundaries by submitting site specific studies prepared by a civil engineer experienced in avalanche and landslide analysis. Such studies shall include detailed analyses of topography, vegetation, potential snow accumulation, and other factors. The results should indicate actual hazard area boundaries and potential debris flow direction, time, distance and mass. If, in the opinion of the city engineer, the studies clearly establish that the map boundaries are inaccurate and the proposed development is outside a severe avalanche area or outside any avalanche or landslide area, the department shall proceed accordingly.

(5) The commission may require mitigating measures certified as effective by a professional engineer for development in landslide and avalanche areas. Such measures may include dissipating structures or dams, special structural engineering, or other techniques designed for the site. Mitigating measures may also include reduction in the proposed density.

Further, CBJ 49.70.300(b)(1) states: Notwithstanding any other provision, no development or any part of a development, which is within a severe avalanche area shall, by the

addition of bedrooms, conversions of buildings, or otherwise, increase the density of that parcel; provided, however, that a single-family house may be constructed on a vacant lot.

More importantly, per CBJC 49.70.300 (a)(3), ...”all development greater than a single-family dwelling within landslide or avalanche areas shall require a conditional use permit.”

Based on the documents in the record and the information presented at the appeal hearing, it does not appear CDD considered requiring a conditional use permit as required for this project per the CBJ code.

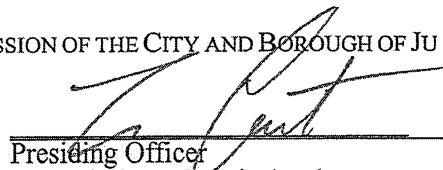
4. Conclusion

The Planning Commission finds that the Director erred in her interpretation of 49.70.300(a)(3) and remands APL2021-0006 to CDD to work with TGH to initiate the conditional use permit process.

DATED this 29 day of June, 2022.

PLANNING COMMISSION OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

By:



Presiding Officer
Commissioner Travis Arndt